Tribunal on Homosexuals & Discrimination



Sat 27,·Sun 28, Nov. Sat,10-5 Sun,3.

Sir John Clancy Auditorium, University of NSW

The panel of five tribunalists includes:

Jim Cairns, MP and former Deputy Prime Minister
Senator Arthur Gietzelt, ALP Shadow Minister
Bridget Gilling, Vice-President of the NSW Council for Social Services
Barry Egan, Sec. AWU

With Counsels assisting: **Helen Coonan**, Solicitor; **Jane Mathews**, Barrister. For information phone Peter de Waal, Actions Group (02) 827 3063 AH

The 1976 Tribunal on Homosexuals and Discrimination and Its 1994 Review

Peter de Waal
BA, DipEd (Macquarie University),
GradDip Adult Ed (Sydney College of Advanced Education),
TESOL Cert (Sydney Institute of Technology)

Ian Black
PhD (Australian National University)

Peter Trebilco
ED, BA (Sydney University) FACHPER

Sue Wills
BA, BEc, PhD (Sydney University)

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Box 6
Balmain NSW 2041
Australia
pdewaal@bigpond.net.au

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This retelling of the story of the 1976 Tribunal on Homosexuals and Discrimination is welcome. It reminds us of the extent of the discrimination, rejection and violence encountered by gays and lesbians in Australia. It reminds us, too, of the courage shown by those who declared themselves, sometimes at considerable personal cost, in order to expose prejudice and hypocrisy and to fight for change, when they could have remained invisible and silent.

The 1970s was a period of enormous social change. Narrow and prejudiced attitudes were increasingly challenged, as people sought fair and equal treatment, regardless of their race, ethnic origin, sex or sexual orientation. Homosexuality was long overdue for public discussion, but it was a confronting issue for many Australians. My understanding of this social revolution and its meaning for Australian gays and lesbians was profoundly affected by my participation in the Royal Commission on Human Relationships, 1974–1977. The Commission was set up by the Whitlam government 'to inquire into and report upon the family, social, educational, legal and sexual aspects of male and female relationships'. [1] The Commissioners were myself, the late Felix Arnott, then Archbishop of Brisbane, and Anne Deveson.

The Commission specifically sought submissions on discrimination against homosexuals. This was not without controversy. Mr Michael Clohesy was a signatory to a written submission to the Commission made by CAMP NSW. He was then dismissed from his employment at the Marist Brothers' High School, Eastwood. Mr Clohesy asked to give evidence to the Royal Commission, claiming that his dismissal was an example of discrimination in employment against homosexuals. This was strenously opposed by the Catholic Hierarchy of the Province of New South Wales (which included the Catholic Education Office) on the ground that homosexual behaviour and the employment of a teacher in New South Wales fell outside the Commission's terms of reference. Counsel assisting the Commission, Miss Jane Mathews (as she then was), Mr Dennis Altman and Mr Clohesy, all of whom later played a part in the Tribunal, made submissions.

The Commission concluded that it would be impractical to exclude any part of the broad pattern of relationships from its inquiry.

> 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, 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. These matters are themselves dependent to a large extent on current social attitudes to homosexuality 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 … [2]

On the basis of a wide range of submissions, the Commission concluded that while there remained a level of fear and ignorance in the community about homosexuality, many people had a new sympathy and understanding and were ready to support changes in the legal and social consequences of being a homosexual. Recommendations were made to remove the discriminatory effects of the law, and to overcome the burden of prejudice by encouraging a better informed and more tolerant and accepting community.

How far have we come? On the evidence of this book there is some way to go, especially in regard to law reform.

By 1977 only South Australia (1972) and the Australian Capital Territory (1976) had decriminalised homosexual acts between consenting adults. The Royal Commission recommended that sexual acts between persons of the same sex should be no longer classed as a criminal offence in Australia in circumstances where a sexual act between persons of different sexes would not constitute an offence. [3] Since then, with one exception, all States and Territories have amended their criminal laws, though this has not been done uniformly.

The exception is Tasmania, where male homosexual acts between consenting adults in private remain criminal, despite a series of reports and legislative proposals. Tasmania now has the doubtful distinction of

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[1] The Letters Patent were signed by the Governor-General on 21 August 1974, and the final report was presented on 21 November 1977. *Interim Report of the Royal Commission on Human Relationships* 30 January 1976. *Final Report of the Royal Commission on Human Relationships*, November 1977.

[2] *Interim Report*, 19 December 1975, pp. 8, 44.

[3] *Final Report*, vol. 5, recommendations 93, 94, pp. 137-8.

giving rise to the first successful challenge against Australia for violating our obligations under the International Covenant on Civil and Political Rights. In a case brought by Mr Nicholas Toonen, the United Nation's Human Rights Committee decided in March 1994 that the Tasmanian laws violate Article 17 of the International Covenant, which guarantees a right to privacy .[4] The Tasmanian government's reluctance to either enforce or to repeal those laws leaves the Australian government with the responsibility of ensuring that our law is brought into conformity with the Covenant.

The Royal Commission and the Tribunal both recommended that it be made unlawful to discriminate on the grounds of homosexuality or sexual orientation in employment, education and other areas. However, only the New South Wales and South Australian anti discrimination laws include sexuality or sexual orientation as a ground of discrimination. New South Wales also makes vilification of homosexuals unlawful. [5] In view of the continuing level of discrimination and violence towards gays and lesbians mentioned in this book, the time has come to consider national anti discrimination legislation.

How far have community attitudes changed? There is evidence that the community is now better informed and on the whole more tolerant. The Gay and Lesbian Mardi Gras in Sydney is a popular community event. It is easier for gays and lesbians to live openly; some have formed professional and occupational groups. Governments are more willing to support non discriminatory laws and policies. The Commission's recommendation that the Defence Department should remove automatic discrimination against homosexuals and judge them on their merits [6] has now been accepted, at least in principle.

Undoubtedly, AIDS has contributed to the change in attitudes, as a growing knowledge of the depths of this tragedy have brought wider understanding and sympathy. This has helped progress towards social acceptance, law reform and the removal of discrimination against homosexuality. Authorities have realised that in the fight against HIV/AIDS it is essential to ensure openness, frankness and trust, free of discrimination. But the Royal Commission's hope of 1977 that schools, churches and the media would join in a campaign to change public attitudes to homosexuals [7] has not yet been realised. Some churches maintain a negative and discriminatory approach towards homosexuals.

The Royal Commission recommended that programs of sex and human relationships education both in schools and in professional training should include factual and non judgmental information about homosexuality. [8] It is regrettable that general support for education in the need for safe sex, the facts of sexually transmitted disease and the accessibility of condoms came only as part of the reaction to HIV/AIDS, and that there is still resistance in some quarters to dealing with homosexual issues in sex and relationship education.

The recognition of relationships is another area where there has been too little progress. Relationships often provide the love and support that gays and lesbians need to sustain them in a world of uncertain attitudes. The Royal Commission recommended that consideration be given to conferring certain rights and benefits on partners of the same sex living together, e.g. in housing loans, inheritance, income tax, probate duty and next-of-kin rights. [9]

The Queensland Law Reform Commission recently proposed that inheritance rights on intestacy and property rights on relationship breakdown be available to homosexual couples. [10] The Australia Law Reform Commission, in its 1993 discussion paper on Equality Before the Law asks whether partners of the same sex should be recognised for certain purposes. The federal government is considering giving partners of homosexual public servants the same benefits as heterosexual partners in areas such as superannuation and transfers. [11] But much more is needed. It is high time for Australia to look closely at the Scandinavian models for recognition of same sex relationships, and to develop a coherent national approach.

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[4] See also *Dudgeon v. UK* 4 EHRR 149; *Norris v. Ireland* 142 ECHR (Set A)(1988). Article 8 of the European Convention on Human Rights similar to the International Covenant on Civil and Political Rights article 17.

[5] 1994 legislation.

[6] *Final Report*, vol. 5, recommendation 98, p. 138.

[7] ibid. recommendations 95, 105, p. 138.

[8] ibid. recommendation 99, p. 138.

[9] ibid. recommendation 102, p. 138.

[10] Queensland Law Reform Commission (QLRC), Working Paper 37, *Shared Property*, 1992; QLRC, Working Paper 40, *De Facto Relationships*, 1992, iv, 79.

[11] *Sydney Morning Herald*, 8 September 1993.

The struggle for recognition and for justice, to which this book is witness, required courage from those who were prepared to risk a great deal to attain acceptance and a place in the community which until then was denied them. The Tribunal was a bold venture in putting the facts about lives of men and women on the line. The efforts of those who 'came out' and spoke up did, indeed, give impetus to the process of changing attitudes and laws.

This revisitation shows, however, that it is a long and hard struggle to change attitudes and to achieve a fair and tolerant society. There is still violence against gays and lesbians, there is still much to do in reforming the law. In the meantime, this re-examination of the Tribunal stands as a tribute to all those who have led the movement for reform for equal recognition, and for the freedom to live the lifestyle of their choice.

The Hon Justice Elizabeth Evatt, AO;
Australian Delegate to the United Nations Human Rights Committee;
Former President of the Australian Law Reform Commission;
First and former Chief Justice of the Family Court of Australia.

1976 seems long ago. Yet objectively it is but the blinking of the eye of time.

Over a weekend in 1976 a group of prominent citizens constituted a Tribunal in Sydney to hear evidence and argument and to make recommendations about homosexuals and discrimination. This book re-publishes the original report. It adds up to date editorial comment of a working group. The working group has tried to examine the extent to which progress on discrimination on the ground of sexual orientation has been made in Australia. Sadly, it has collected not inconsiderable evidence of the persistence of discrimination and the pain and injustice which it continues to cause.

The model of the Tribunal was the body launched by Bertrand Russell to bring to the bar of international world opinion the terrible wrong-doings of the combatants in the Vietnam War. That model was so successful in mobilising the leaders of moral opinion in the world – and presenting their evidence and opinions through the global media – that it played an undoubted part, including in Australia, in the turnaround of opinion as to the rights and wrongs of the Vietnam War.

The Vietnam Tribunals of Lord Russell spawned numerous other international and national bodies to examine similar moral and human rights questions in a public setting: enlisting the educative activities of the free media. That is what the 1976 Sydney Tribunal on Homosexuals and Discrimination aimed to do. It started its work in a most unpromising setting. An opinion poll a decade earlier had shown that only about a quarter of Australians believed that homosexual conduct between consenting male adults should no longer be a criminal offence. It is interesting to observe that another opinion poll, only three years before the Tribunal was convened, showed that 75% of respondents considered that it was "none of their business" if two men began living together in a homosexual relationship in their neighbourhood. Yet 8% believed that it would be their duty to report such a fact to the police or other authorities. In truth, those people were simply faithful to the criminal law as it stood at that time. Such law forbad sexual relations between men, even if they were adults and even in private.

The contrast between the two polls reflects a contrast seen throughout the testimony to the 1975 inquiry. It is the contrast between the private opinions of decent, ordinary individuals and what they believe to be expected of them when confronted, in public, by assertions of homosexuality. Privately, the Anglican priest or the employer of a gay teacher in a Catholic school was, in 1976, sympathetic and even supportive of a homosexual colleague. But when that colleague asserted his homosexuality in the public media, the support melted away. He had to go.

Here, then, is a paradox. Toleration of private behaviour is understandable and laudable. It is part of the Australian sense of a fair-go. Yet as the pages of this book demonstrate – both for 1976 and 1994 – prejudice, vilification, shame and low self-esteem are the constant companions of homosexuals. The only way this will be changed is by public ventilation of the irrationality of past attitudes. It is as irrational (and morally wicked) to hate a person for his or her homosexual orientation as it is for skin colour or left-handedness. The overwhelming scientific evidence now available suggests that homosexuality is either imprinted in the genetic messages of the newborn child or, in some cases, develops in very early childhood. If this is so, it removes one of the fears of society that homosexuals will try to seduce heterosexuals from the easier path of their sexual

orientation. But it also makes it clear that to hate and vilify others for their nature – or to demand that they should not give expression to that nature as a price of acceptance – is just not on. Gradually, and thankfully, this message has percolated to the Australian community. But it has only happened because the paradox was shattered. People began to refuse to accept the comfortable world of silence. They came out of the closet. They confronted their fellow citizens with the injustice of irrational discrimination. They demanded change. They were supported by enlightened political leaders – of both major political parties. They secured important reforms of the law. Criminal offences (except in Tasmania) directed expressly at the conduct of adult consenting homosexual men were reformed. But the reforms were not entirely devoid of discrimination, as the differing ages of consent in some Australian jurisdictions demonstrate. Anti-discrimination laws forbidding discrimination on the grounds of homosexuality were passed in some jurisdictions, but not others. In New South Wales, from 2 March 1994, the law now forbids vilification of homosexuals. [12] Equivalent reforms have yet to be achieved in other Australian jurisdictions. And as this book demonstrates, there are important exclusions from anti-discrimination law which remain to be repaired.

A reflection on the achievements of the eighteen years since the Tribunal of 1976 permits the impartial observer to accept that important advances have been won. The law of trusts has been adapted to reflect changing patterns of human relationships and property ownership. [13] The reform of criminal laws. The enactment of anti-crimination statutes. Federal rules against discrimination in employment. The termination of discrimination in the Australian defence forces. Different media attitudes. New approaches by the police, whose current leadership generally insists upon good relations with gay and lesbian community. At least this is true in New South Wales. It is evident most notably at the time of the Sydney Gay and Lesbian Mardi Gras – itself a significant contributor to changing attitudes.

Yet for all that, this book displays the many areas where discrimination against Australian homosexuals persists. In employment benefits. In superannuation statutes. In adoption of children. In the lack of a status akin to marriage for those who seek it.

An important point made in the commentary is the change in the religious makeup of the Australian community. If in 1976 the Christian churches appeared resistant to changes in respect of homosexuals and homosexuality, in today's growing Islamic community in Australia the resistance may be even more uncompromising and difficult to change.

Most importantly there is a continuing need to reinforce changes in community attitudes of acceptance of human difference. Anyone in doubt about the extent of bias-related violence against homosexual men and women in Australia should study the investigations of the Australian Institute of Criminology. [14] In the International Year of the Family there are still many, including in the courts, who would deny to homosexuals the recognition of "family status". Thus the Supreme Court of Canada has upheld, as outside the redress of the law of that country, the refusal of a government employer to provide a day's bereavement leave to a man who wished to attend the funeral of the father of his long-time male companion.[15] Ironically, the couple had lived together since 1976, the year of the Tribunal. The dismissal of the claim shows that the journey to eradicate legal discrimination, even in enlightened countries, has only really begun.

The journey has been complicated by the intervention of HIV/AIDS in the years since 1976. Although the virus which causes AIDS attacks human beings irrespective of their sexual orientation, its early targets in Australia, the United States, Canada, Britain and elsewhere were homosexual men. AIDS became an easy, available justification for further, new discrimination. Research suggests that AIDS has sometimes resulted in lower levels of self-esteem. [16] On the other hand, it has presented an urgent necessity to spread the educational messages in order to reduce the tragic explosion of the epidemic. In Australia, at least, this has mobilised many people. It has resulted in a remarkable program of initiatives which would have seemed impossible in 1976.

As 1994 provided the opportunity to review the 1976 Tribunal, it also presented the decision of a new

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[12] New South Wales, Anti-Discrimination Board, *Equal Time*, No 19, 1994, 4.

[13] See e.g. *Hartigan v. Widdup*, Supreme Court of the ACT, Master Hogan, unreported, 23 March 1992; cf *Bryson v. Bryant* (1992) 29 NSWLR 188 (CA), 202; *Green v. Green* (1989) 17 NSWLR 343.

[14] G Mason, *Violence Against Lesbians and Gay Men*, Australian Institute of Criminology, Violence Project, No. 2.

[15] *Canada (Attorney-General) v. Mossop* (1993) 93 CLLC 17, 006 (SCC). Lower court see *Canada (Attorney-General) v. Mossop* 71 DLR (4th) 661.

[16] G Lime & ors, 'The Relationship Between Homophobia and Self-Esteem in Gay Males with AIDS', 25(4) *Journal of Homosexuality* 69 (1993).

Tribunal – this time one of global authority: the United Nations Human Rights Committee. That Committee unanimously upheld the complaint of Mr Nick Toonen that the Tasmanian *Criminal Code* provisions on homosexual conduct breached his human right to privacy as a homosexual man. The Committee held that Australia was in breach of its obligations under the *International Covenant on Civil and Political Rights*. This decision, and the necessity it presents to reform Tasmania's criminal laws, shows how far we have come. But there still remains a long way to go.

This, then is the lesson of this book of retrospectives. It is useful to look back. It is instructive to reflect upon the wrongs that remain to be righted. It is imperative to look forward. As a community, we in Australia must ensure that the process of legal reform and public education continue until, in a future time, this form of discrimination is looked upon with astonishment and grief.

The Hon Justice Michael Kirby AC CMG;
President of the New South Wales Court of Appeal;
Chairman of the Executive Committee, International Commission of Jurists, [17] Geneva.

[17] The International Commission of Jurists has added discrimination on the ground of sexual orientation to its future Global Program on Human Rights.

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In 1976 I posed the question: “Why a tribunal, why not a homosexual conference, why not an anti-discrimination seminar or workshop for that matter?”

Because I felt strongly after having attended a number of those gatherings: I always went away with the feeling that very little active education of ‘straight society’ about our discrimination and oppression had taken place. This invariably left me with that feeling of having ‘done’ nothing.

This negative feeling turned positive when I remembered that I had always been inspired by the involvement of Jean-Paul Sartre and Bertrand Russell, both of whom I admire, in the Vietnam War Atrocities Tribunal held in Stockholm, Sweden, some years earlier.

This made me aware of the value of holding our own tribunal. By doing that we could draw attention to the discrimination and oppression suffered by homosexual people.

The New South Wales Government, and to a lesser extent the Commonwealth Government, at the time were being pressed to introduce Anti Discrimination legislation which protected the rights of homosexual women and men.

As part of an education programme around this topic, CAMP NSW (Campaign Against Moral Persecution) decided to hold a ‘**Tribunal on Homosexuals and Discrimination**’.

In order for the Tribunal to be authoritative and play an influential role in this education process it was vital to have eminent people as tribunalists and counsels. The search for appropriate tribunalists was made easier because CAMP NSW had political credibility and during its six year existence had made many contacts. Hence the calibre of the tribunalists and counsels is reflected in the quality of their insight, cross-examination, deliberations and recommendations.

The tribunalists and counsels were to hear evidence of more than 40 instances of discrimination against homosexual people. Having heard the evidence (on the Saturday), with assistance of counsel taking opposing sides, they handed down their findings (on the Sunday), consisting of recommendations, based on the evidence presented.

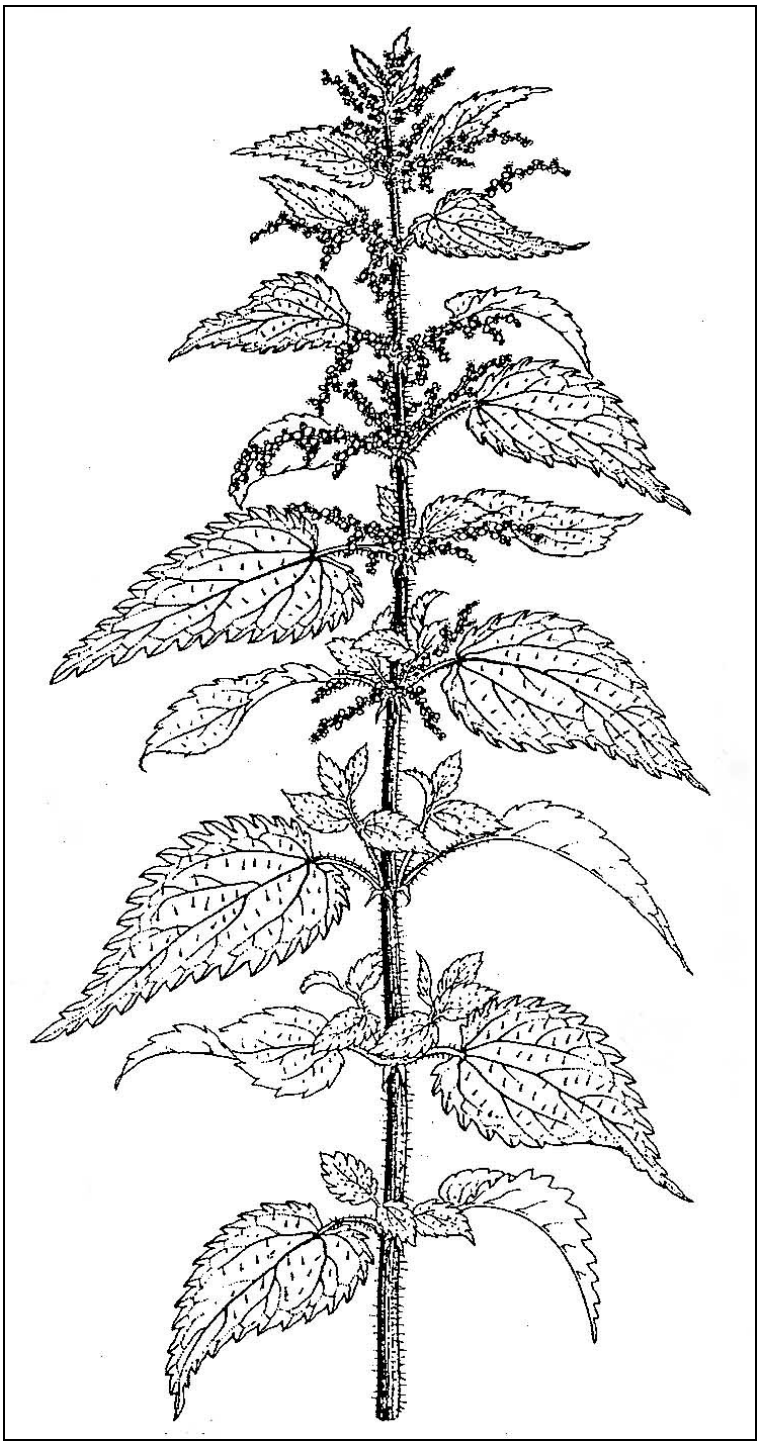
Although original materials had been deposited with the National Library in Canberra it occurred to me in 1989 that it was important for gay historical reasons to compile the written records of the 1976 tribunal. CAMP

Somehow it did not feel right to just write up the 1976 tribunal. After some more thought it came to me that the original cases could be used to measure changes, by examining each of them today. CAMP

When I contemplated this longitudinal study it became obvious to me that I needed assistance for such a task. I gathered some people who became the Tribunal Working Group and without their efforts and dedication this study would not have been possible.

Peter de Waal

The Stinging Nettle [18]



"I am quite sure that if the legislature were to grasp what they see as the nettle I think they would find it rather an attractive flower. And they would find much more support and very little antagonism indeed against any change of this sort." (Peter Trebilco, see **3.1.7** page 91).

[18] The Stinging Nettle (*Urtica dioica*) is a coarse perennial weed, which must be familiar to everyone because of its irritating stinging hairs. The roots are stout, spreading and bright yellow. The stems, which are purplish at first and creep along the soil surface, become erect and green in spring. Annual Nettle, which also has stinging hairs, has a root and the aerial stems never creep horizontally. Stinging Nettle is much larger than Annual Nettle and can grow to 120 cm tall. The flowers of both plants are green and inconspicuous.

GRAHAM CARBERY, Secretary, Australian Lesbian and Gay Archives Inc for newspaper clippings relating to the police harassment of homosexuals at the Black Rock-Sandringham beach area and post Tribunal publicity.

GEOFF FRIEND, for his professional and special assistance with photographic reproductions.

TERRY GOULDEN and JOHN GREENWAY, for colour slides of the hearing and an original Tribunal poster.

FABIAN LOSCHIAVO, for bringing the Tribunal Working Group up to date on the Anglican Church of Australia, Diocese of Sydney.

ANTHEA LOWE and DR JULIET SHEEN, for their invaluable contributions from the NSW Anti Discrimination Board.

SCOTT MITCHELL, for his assistance with current Family Law practice.

INGE NILSSON, Head of the Enrolment Division, Swedish Ministry of Defence for information in respect of homosexuals in the Swedish defence forces.

HHJ PLOEG, Captain Royal Netherlands Navy, Chief of Personnel Plans and Policy Development for information about homosexuals in the Dutch defence forces.

GRAEME POWELL, Manuscript Librarian, Australian Collections and Services, National Library of Australia for his assistance with a number of the original Tribunal documents.

BRUCE QUINN, for being custodian of the 4.4 meter high x 3.5 meter wide 'Tribunal Banner'.

CHRISTOPHER RISSELL, for his assistance with the reproduction of the "Gays need a blood test …" poster.

ROGER SAWKINS, FIA (UK), FIAA for his very valuable contribution in the superannuation area.

GREG WEIR, for his update on Kelvin Grove College of Advance Education.

ADB	Anti-Discrimination Board
ADF	Australian Defence Force
ALRA	Abortion Law Reform Association
ANU	Australian National University
ARAFMI	Association of Relatives and Friends of the Mentally Ill
ASHOG	Association of Self Help Organisations and Groups
AUS	Australian Union of Students
CAE	College of Advanced Education
CAMP NSW	Campaign Against Moral Persecution New South Wales
DFDA	Defence Forces Discrimination Act
DOF	Department of Finance, Public Sector Superannuation Section
HADF	FHeadquarters Australian Defence Force
HREOC	Human Rights and Equal Opportunity Commission
ITA	Independent Teachers Association
MCC	Metropolitan Community Church
MGC	Marriage Guidance Council
MHA	Mental Health Association
MLA	Member of the Legislative Assembly
NSW	New South Wales
PSC	Public Service Commission
QTTU	Queensland Trainee Teachers Union
RSL	Returned Services League
SASB	State Authorities Superannuation Board
SMH	Sydney Morning Herald
SRC	Student Representative Council
SSCS	Senate Select Committee on Superannuation
TWG	Tribunal Working Group
WEL	Women's Electoral Lobby

Tribunal Letterhead

Tribunal on — **27 – 28 November 1976**

Homosexuals and Discrimination

This letterhead was specifically designed and used for all Tribunal correspondence. Its was printed on pink A4 sized paper.

CAMP NSW BOX 5074 GPO SYDNEY 2001

Sisters and Brothers!

I am welcoming you all to this first ever Tribunal on Homosexuals and Discrimination.

My appreciation goes to all those people who have worked so hard to make this tribunal possible, but especially to the people involved in the various groups within CAMP NSW. It is moments like this that makes me feel proud to be involved with the group of CAMP NSW and its motto: 'for homosexual liberation'.

The philosophies behind this tribunal for me are two-fold:

1 The education of the community in regard to various kinds of discrimination suffered by homosexual people.

2 A forum for airing our grievances – and they are not just local as is evident by the fact that there are alleged discrimination cases from South Australia, Western Australia, Tasmania, Queensland and New South Wales which will be presented today.

Hopefully the airing of our 40 odd grievances in public will be taken up by the media in a constructive way and eventually benefit the homosexual community in Australia.

A number of alleged discriminations you will hear today will either be presented anonymously, under a pseudonym, or on behalf of someone else. Let me hasten to add that people who have chosen to remain anonymous or use a pseudonym, have done so because of fear of further persecution. Nevertheless all those homosexuals who used a pseudonym have signed a Statutory Declaration in order to strengthen their claims. The very few anonymous allegations to be presented are from people whom I know personally and whose integrity I trust.

The eminent tribunalists and counsels are willing to give their valuable time and knowledge in order to examine the situation in the community today. Let us all get involved in examining our own levels of awareness today, so that tomorrow we can go out to working towards a more just and tolerant community.

I now like to welcome and introduce to you our tribunalists and counsels:

The Hon Dr Jim Cairns,
Member of the Australian
Parliament and former
Deputy Prime Minister and
Treasurer of Australia.

Senator Arthur Gietzelt,
Senator for New South Wales
and Shadow Minister of the
Australian Labor Party.

Ms Bridget Gilling,
Vice President of the
New South Wales Council
of Social Service.

Mr Barry Egan,
National Secretary of the
Shop Distributive and
Allied Employees Association
and
Secretary of the Australian
Workers Union.

Council assisting the Tribunal
are:

Ms Helen Coonan,
Solicitor and feminist
activist.

Ms Jane Mathews,
Barrister and Counsel
assisting the Royal
Commission on Human
Relationships.

Thank you
Peter de Waal

1. Homosexuals and Religious Groups

Tribunalists:
Dr Jim Cairns
Barry Egan
Bridget Gilling
Senator Arthur Gietzelt

Counsel assisting:
Helen Coonan
Jane Mathews

Witnesses:
Peter Bonsall-Boone
Bruce Thomson

He had a call from four Bishops. He did not say he had a word from God, did he?

Not directly, no.

1.1 Sacking of Peter Bonsall-Boone
1.1.1 Tribunal on Homosexuals and Discrimination letter to Sir Marcus Loane, Archbishop of Sydney, 8 October 1976. 1.1.2 Statutory Declaration by Peter Bonsall-Boone, Exhibit 21. 1.1.3 Transcript of cross examination by the Tribunal 26 November 1976. 1.1.4 Today – Tribunal Working Group (TWG) letter to the Most Rev Donald Robinson, Archbishop of Sydney, 22 April 1991; ADB response May 1991; TWG letter to Archbishop of Sydney 29 August 1991; Archbishop's response 4 September 1991. Appendix A: Responses to the 1972 Australian Broadcasting Commission's – Chequerboard Television Program entitled: 'This Just Happens to be Part of Me' (see page 372).

1.1.1 Tribunal Letter

The Tribunal Collective wrote to Sir Marcus Loane, Archbishop of Sydney, on 8 October 1976, as follows:

> A panel of prominent people will compose the above tribunal. They will hear evidence of instances of discrimination (specific and general) from homosexual people on the Saturday. There will be counsel for each side in all cases presented. On the Sunday the tribunalists will hand down a report, with recommendations, based on the evidence.
>
> The dismissal of Peter Bonsall-Boone on 3 November 1972 from St Clements Church, Mosman as Church Secretary, will be presented as evidence of discrimination against a homosexual person at the above tribunal.
>
> We would like to invite you, St Clements, Mosman, or the Rev Bruce Smith to submit a written statement stating reasons you believe the above dismissal not to be discriminatory. At a later stage it may be possible for you or the others to present your view orally on the actual day of hearing.
>
> Copies: Rector and Churchwardens, St Clements, Mosman.
> Rev Bruce Smith, Moore Theological College.

1.1.2 Statutory Declaration

Coonan: To open the first session; the first part of this session is to be called **Homosexuals and Religious Groups**. And I'd call the first witness Peter Bonsall-Boone. Mr Bonsall-Boone, for the record, would you just please state your full name and address.

Bonsall-Boone: Peter Michael Bonsall-Boone, 16 Terry Street, Balmain.

Coonan: And Mr Bonsall-Boone you have a statement there that you would like to read to the tribunal.

Bonsall-Boone: (reads Exhibit 21 as follows)—

> On Tuesday 31 October 1972 I was one of four subjects in a television documentary in the Chequerboard series produced by the Australian Broadcasting Commission. The documentary was entitled "This just happens to be part of me" [19] and dealt with the private lives of two homosexual couples, one female and one male.
>
> At the time I had been employed for almost four years as Church Secretary of St. Clement's Anglican Church, Mosman, where it was my duty to administer the financial and publication side of one of the largest parish churches in Australia, as well as offering assistance to those who called either by telephone or in person for the church's help in the absence of the clergy or other members of staff, I was also frequently called upon to play the organ for funerals and wedding services, and for the weekly school service of Mosman Church of England Preparatory school, which occupied premises belonging to the Church. The training of the school choir and the arrangement of music for end of term service was also in my hands. For a short time I conducted music lessons for three classes each week.
>
> Filming for the Chequerboard program had taken place the previous July 1971, at which time I had informed the rector, the Reverend Ray Weir, of my intention to take part in such filming. He and I had previously discussed the subject of homosexuality, both in general and in relation to my being homosexual, and I had found him to be reasonably knowledgeable on the subject, having been a member of a committee formed by the State Government in 1958 to research the subject. Although no report had ever been published (due to the death of a vital member of the committee), Ray Weir had maintained an interest in the subject, and often discussed it with me. I appreciated this interest and the opportunity I had to discuss my life-style with someone who was not himself directly involved as a homosexual in the political activities of the homosexual liberation movement as I had been since the founding of CAMP NSW in 1970.
>
> The three churchwardens of St Clements were informed of the forthcoming telecast as soon as the date of its showing was announced, and were encouraged by the rector to watch the program. In discussing the program with the rector I had told him that I was aware that my appearing publicly as a homosexual could possible create some difficulty for him in the parish, and I assured him at the time that if I felt that his ministry at Mosman was being compromised by my appearance on television I would be prepared to offer my resignation. This assurance was accepted unequivocally by him.
>
> A possible threat to my employment was envisaged by the producer of the program, who assured me that I would be described on it as a church secretary, with no denominational or geographical description of my employment being given. This assurance was confirmed in practice.
>
> Following the telecast I attended work for the remainder of the week and performed my duties as usual. I received adverse reaction from the two members of staff, the verger and the gardener, both of whom avoided meeting or talking to me whenever possible. The two clergy and the staff of Mosman Preparatory school did not alter their attitudes to me at all. On Friday 3 November [1972] the rector informed that he had received a telephone call the previous evening from a parishioner who was upset that I should have appeared on television to discuss my homosexuality – he had reassured the caller that the fears s/he expressed were in no way a threat to the life and teaching of the parish.
>
> On Sunday 5 November 1972 I was telephoned by a church warden of St Clements and told that the parish had become "… hopelessly divided …" on the issue. He asked me to take the following week off and then

[19] See: Appendix A (page 372) Responses to the 1972 Australian Broadcasting Commission's – Chequerboard Television Program. 'This Just Happens to be Part of Me'.

to resign. I agreed to take the time off but arranged to discuss the resignation with him and the rector the following evening. At this interview the rector assured me that the situation was intolerable although he offered no evidence for this except a comment that he had been telephoned by four bishops during the weekend. He stated that parents of boys at the Mosman Preparatory School had expressed their concern that I should be associated with the school, although at the time he agreed with me that there was no basis whatsoever for such concern.

Several matters lead me to believe that the Church of England, Diocese of Sydney, was responsible for my dismissal. It was most unusual for the rector to be telephoned by four bishops during the same weekend, and when I agreed to appear on a television current affairs program it was arranged for the Reverent Bruce Smith, Diocesan spokesperson on morals until the subsequent failure of his marriage, to appear to put the case for my dismissal.

During the three days at work following the Chequerboard telecast I received a large number of telephone calls applauding the stand I had taken, thought not necessarily agreeing with it in many cases. I believe that my four year association with the church had given parishioners an opportunity to know me and respect my judgement, and that the vast majority of them supported me in appearing on television. When I telephoned the rector on Wednesday 8 November 1972 to tell him that I had recorded a radio interview for broadcast that night on which I had said that I did not intend to resign, he informed me that I should consider myself dismissed as from Sunday 5 November 1972.

I consider my dismissal to be an act of discrimination against me as a homosexual. It is significant that no action was taken against me until my homosexuality was publicly known. Although the Reverent Bruce Smith was prepared to fulminate against my employment at Mosman because I am homosexual, he himself knew all about this some five months before the telecast when my man and I appeared before his Ethics and Social Questions Committee to discuss with them our misgivings that they were preparing to report on homosexuality for the Diocese of Sydney without speaking to a single homosexual. The rector and church wardens of St Clements Mosman knew of my homosexuality for a long period before the telecast on 31 October 1972, and they were also aware that I had been living with a man (whom they had met several times) for the previous six years.

With experience as guide, it is a wonder to me that any homosexuals dare make themselves known. To my knowledge there are no heterosexuals who would be discriminated against in their employment for discussing or advertising their heterosexuality.

And I make this statement conscientiously believing the same to be true, under the provisions of the Oaths Act 1900.

1.1.3 Cross Examination

Coonan: Thank you Mr Bonsall-Boone; just some questions on your statement. Can you enlighten the tribunal as to why public knowledge be the thing you pick out as the factor which caused your dismissal, as opposed to the fact of your homosexuality?

Bonsall-Boone: Simply that nothing happened to me when it was known by my employers that I was homosexual until the fact of my being homosexual became public knowledge when I appeared on television.

Coonan: And it is also true, I think from your statement obvious, that your employer did not know that you were homosexual prior to actually employing you.

Bonsall-Boone: No, well, he did not ask the question.

Coonan: He did not ask the question.

Bonsall-Boone: I would have told him had he asked.

Coonan: And this, the knowledge, came to your employer subsequently.

Bonsall-Boone: Yes.

Coonan: And that knowledge had no effect on your employers until the publicity surrounding your television appearance.

Bonsall-Boone: That is right.

Coonan: Do you have anything you wish to add to your statement.

Bonsall-Boone: No.

Coonan: Thank you.

Mathews: I just have one question for Mr Bonsall-Boone. You, of course, were clearly aware before you went on this program that in doing so it could be a disruptive factor in relation to your employment. You had offered your resignation if it did cause disruption.

Bonsall-Boone: Yes, if it caused disruption in the parish, and the parish was not able to function.

Mathews: And on what basis did you anticipate that it might cause disruption.

Bonsall-Boone: Simply my association with the parish; the fact that I worked there, but no mention was made of that on the program itself. There was no associating of me with the parish at all on the program.

Mathews: Do you know if members of the parish did in fact react at all after the television program.

Bonsall-Boone: Well, the only reaction I had were calls I received by telephone and in person from people who, as I said, did not necessarily agree with what I had said but did agree that it should be said, and were glad that I had the chance to say it.

Mathews: You were not told of any parishioners complaining about your appearance on the program.

Bonsall-Boone: Only the one instance; that was a telephone call.

Egan: Yes, I would like to direct a question to the witness. In the fourth paragraph of the statement it reads, “It is most unusual for the rector to be telephoned by four bishops at the same time.” I would find that most unusual for the rector to receive four telephone calls at the same time from four bishops. I assume that they were one after the other or something to that effect, but they were not, it was not a conference hook-up between the four bishops and the rector.

Bonsall-Boone: No, no, it was four telephone calls on a one Saturday.

Egan: On one day, so we ought to alter the record to that effect.

Bonsall-Boone: Fair enough, yes.

Egan: Thank you.

Gilling: Mr Bonsall-Boone, the rector stated that parents of the boys at Mosman Preparatory School had expressed their concern. Would you know whether the concern was specific in any way?

Bonsall-Boone: I think that it was not specific in that it was not really directed at me; it was directed, it was society's fear of the homosexual. The homosexual male who is supposed to have an automatic attraction to younger males. But so far as I know it was not specifically directed at me.

Gilling: And further, did the boys at the school know before these events of your homosexuality?

Bonsall-Boone: I would not think so.

Gilling: Afterwards, when they obviously would have, was there any evidence of their concern about you?

Bonsall-Boone: No, not on the part of the boys at all.

Cairns: Mr Bonsall-Boone you are saying that it is not really the presence of a homosexual in the staff room position you were in that counted, it was the publicity about that, the public knowledge about that.

Bonsall-Boone: It was that which created the dismissal. Yes.

Cairns: Could you say how you think that public knowledge works. What effect does it have?

Bonsall-Boone: On me, on …?

Cairns: No. Would it be correct to say that the people who influence decisions in the parish would be divided say into three groups: those who might accept or agree, those who might tolerate in silence, and those who might actively oppose. If that was so, publicity could be seen to have an effect.

Bonsall-Boone: Yes I see. Well, there certainly were these three schools of thought. But it was not of course my intention to create any sort of situation in the parish itself. The telecast had nothing whatsoever to do with my job. It was about being homosexual. And, no doubt in the parish there would have been people who did not agree with me but supported what I was doing in making my homosexuality public, and others who agreed with me, others who violently disagreed with me. None of this had been previously expressed to me, although I understand it had been discussed by the churchwardens and parish councillors behind my back. But no reports of any of these meetings were ever given to me.

Cairns: Now you said that you think that a majority supported you in appearing on TV. You are satisfied you would be accurate about that?

Bonsall-Boone: Yes, judging from the reaction I received from the parish. I was really very busy on the telephone for the three remaining days at my employment there, talking to a large number of the parishioners who had got to know me by this time.

Cairns: Are you in the position to say how many you think might be violently opposed?

Bonsall-Boone: I can only …, as you might understand, I have had no feed-back whatsoever from the church authorities at Mosman on the subject, but I had three violently opposing letters from parishioners. I had no letters from parishioners. I had no letters from parishioners supporting my stand, just telephone calls, but the violently opposing letters, of course, I suppose were …, it was necessary to give it down in black and white because there were numerous biblical texts and things which were popped in.

Cairns: Would it be true to say, do you think, that the majority would be prepared to accept you, or tolerate you, and it would only be a very small minority of violently opposed people who might have changed the

situation?

Bonsall-Boone: I would think so because I think it is in many ways a measure of the type of religion which is being followed by individual people. Those who opposed me most vociferously were extremely fundamentalist evangelical people, who tend to say more on this sort of subject.

Cairns: Are you then suggesting that the majority of the parish in fact have decisions made for them in cases like yours by that kind of majority?

Bonsall-Boone: Yes I think so.

Cairns: You said that, in the first part of your statement, that speaking of the rector, that he had agreed with you there was no basis whatever for such concern.

Bonsall-Boone: That was in relation to the school I think – yes.

Cairns: Now if there was a basis for concern, what would that basis be?

Bonsall-Boone: Simply the society's generalised fear of homosexuals; male homosexuals and young people.

Cairns: What is that generalised fear?

Bonsall-Boone: That male homosexuals are keen, either for their own ends, or in order to create new homosexuals, to act sexually with very young people.

Cairns: And is that true?

Bonsall-Boone: No.

Cairns: It is not true?

Bonsall-Boone: No, it is no more true than to take the heterosexual example of mature males who take the opportunity of making sexual advances to young women.

Cairns: Well that is pretty common practice, is it not? Those sort of males are very anxious to convert women to heterosexuality.

Bonsall-Boone: Yes.

Cairns: Well now, how does that compare with the attitude of a homosexual to a young boy?

Bonsall-Boone: I can only speak for myself in this matter. I realise of course that there are homosexuals who respond sexually to much younger people, but I myself do not and don't know of people who do. I just imagine *in vacuo* that the proportion is probably similar.

Cairns: Would you think there is anything wrong if a homosexual did behave in that way?

Bonsall-Boone: I don't feel able to comment, or to judge in that way on others people's expression of themselves.

Cairns: Thank you.

Gietzelt: Peter, has there been any suggestion that your performance as church secretary would lead to any

conclusion that you were inefficient or in any way unable to carry out your official duties? Had there been any criticism of your activities as an employee?

Bonsall-Boone: No, never.

Gietzelt: Had there been any suggestion by the rector that prior to going on the program that your sexuality was a problem?

Bonsall-Boone: No, no, he did not see homosexuality as a problem.

Gietzelt: He did not see it as a problem?

Bonsall-Boone: No.

Gietzelt: In the general sense, as well as the personal sense?

Bonsall-Boone: Yes, in both ways.

Gietzelt: So he had never discussed with you in some way or other community attitudes to homosexuals might create some sort of problem within the church?

Bonsall-Boone: No.

Gietzelt: So far as your local activities were concerned as a church secretary?

Bonsall-Boone: No, this had never arisen.

Gietzelt: Well, I gather what you are saying and what you wrote in your submission that he was somewhat sympathetic to the general problem of understanding a person who was leading a homosexual life.

Bonsall-Boone: Yes, he seemed rather more usually aware of what it might be to be a homosexual.

Gietzelt: Well, why do you think he subsequently changed from being sympathetic to being unsympathetic at the time of a crisis, as far as you were concerned?

Bonsall-Boone: I think four telephone calls from bishops would, you know, be a pretty good swinger.

Gietzelt: Would it be correct to draw the conclusion, therefore, that he responded to pressure from the top echelons of the church?

Bonsall-Boone: I think so. I feel this also from a change in attitude. He was a different man after the weekend from the man that I worked for the week before, he was unable to communicate with me, as we always, just talked together; of course as people incline to when they work together. He was unable to communicate with me. He was very pale and very, **VERY,** angry and was just not getting through the way he always used to. He was behaving, I felt, like a man under very strong pressure.

Gietzelt: Has he ever suggested that there had been any complaints about your sexual preference from within your church activities in Mosman?

Bonsall-Boone: No, no there was no problem there.

Cairns: He had a call from four bishops; he did not say he had a word from God, did he?

Bonsall-Boone: Not directly, no.

Egan: Is this the first tribunal that you have had an opportunity to present your case since 1972?

Bonsall-Boone: Yes.

Egan: Has there been no other avenue available to you to put your case?

Bonsall-Boone: Only at the time, current affairs programs on television and radio.

Egan: You have had no other form of redress?

Bonsall-Boone: No.

Gietzelt: Did you receive any expression of support from any of the other rectors or members of the church in any other part of Sydney?

Bonsall-Boone: I did, from friends; I must qualify that. But then, after a long association with the Church of England, I am friends with quite a number of clergy, and I had messages of strong support from clergy in other parts of Australia.

Cairns: Could I just ask a final question. Would you agree that the parish authorities have a right not to employ an atheist or a communist?

Bonsall-Boone: Again, I find it hard to judge. I suppose they would have the right to employ anyone they wished. But they certainly questioned me when I was being employed on my association with the church. They were interested to know whether I belonged to the church, this was most certainly part of me being employed there.

Coonan: Thank you. Could I tender to the tribunal marked Matter 1, Exhibit number 21, a copy of Mr Bonsall-Boone's statement together with a letter to the Archbishop of Sydney asking if he would care to make any comments on this alleged case of discrimination. Thank you, Mr Bonsall-Boone.

1.1.4 Today

The TWG wrote the following letter, on 22 April 1991, to the Anglican Archbishop of Sydney, Donald Robinson:

> In November, 1976, a Tribunal on Homosexuality and Discrimination heard evidence on a range of issues where discrimination against homosexual men and women was perceived.
>
> After 14 years, a wide range of the issues raised before the Tribunal have been rectified – I mention the NSW Anti Discrimination legislation as one example. It is the intention of a number of those who were responsible for the setting up of the Tribunal to now contrast all the matters raised in 1976.
>
> One matter that I would appreciate your making some comments about concerns the dismissal of Peter Bonsall-Boone, in October, 1972.
>
> Mr Bonsall-Boone was employed as Church Secretary of St Clement's, Mosman in 1969; from the outset, the Rector knew of his homosexuality.
>
> In October, 1972 the ABC televised a Chequerboard program that dealt with homosexual couples. One couple were male, the other female. Mr Bonsall-Boone was one of the male partners interviewed.
>
> The next morning, he was asked to resign, he refused to do so, and was fired a week later.
>
> The reviewers of the Tribunal would value your response to the outcome from a similar set of circumstances, currently.

On 24 April 1991 the Anglican Archbishop, the Most Reverend Donald Robinson, of Sydney responded:

> Thank you for your letter of 22 April.
> I have no direct knowledge of the circumstances or the people referred to in your letter. The events were well before my time as Archbishop of Sydney.
> I regret I am unable to assist you.

The NSW Anti Discrimination Board indicated in May 1991 that:

> The churches remain exempt from the provisions of the NSW Anti-Discrimination Act. A complaint of discrimination in employment against a church could not be received by the Board.

On 29 August 1991 the TWG wrote again to the Anglican Archbishop of Sydney:

> Thank you for your prompt reply dated 24 1991 to our enquiries as to the Sydney Diocese's attitudes to the employment of homosexual males.
> You may recall that, in our earlier letter, we recited the details of Perter Bonsall-Boone's dismissal from his position with a suburban church?
> We realise that you were not in charge of the See when the events took place.
> We were seeking your comments on the same reaction towards an employee, were the same set of circumstances to arise, currently. We assume, from reports from Synod that there has been no change in the Diocese's attitudes, and that, unless there is some amendment to the NSW Anti-Discrimination legislation, no changes might be anticipated?

The Archbishop, the Most Reverend Donald Robinson, of Sydney responded on 4 September 1991 as follows:

> Thank you for your letter of 29 August which arrived while I was away from Sydney. Turning to your last paragraph I would comment as follows:
> First, in general terms, and not knowing all the circumstances relating to the situation to which the earlier paragraph of your letter refers, I would say it is very difficult to comment on situations which may arise in the future. It is also difficult to reply as to what the attitudes of the Diocese might be. [20]
> Parishes pursue independent policies as regards employment of lay staff. Unless they require a licence for liturgical purposes, they do not come under episcopal or synodical supervision. Again, the various organisations, charitable and otherwise, associated with the Diocese of Sydney are substantially autonomous in the conduct of their day to day affairs, such as employment.

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[20] See: Appendix B: (page 376) *Report of the Standing Committee on a 1983 Sydney Synod Motion on Homosexuality and Ministry*.

Let parents be warned that the high-minded young man who refrains from kissing their daughter before marriage is not likely to want to do so after marriage …

1.2 Festival of Light Publication
1.2.1 Tribunal on Homosexuals and Discrimination letter to the director of the Festival of Light, 6 November 1976. 1.2.2 Discriminatory extracts from the Festival of Light's publication: *Sex Education, The School and Your Child*, January 1975, Exhibit 16 prepared by Peter de Waal. 1.2.3 *Stallion: Celebrating Gay Awareness*, issue no. 12, pp. 5-6, 'Of Men and Little Boys'. 1.2.4 Transcript of cross examination by the Tribunal on 27 November 1976. 1.2.5 Today – TWG letters to Executive Officer, Australian Festival of Light, 10 April and 7 June 1991; ADB response May 1991; TWG letter to the Rev Fred Nile, Festival of Light, 7 June 1991.

1.2.1 Tribunal Letter

The Tribunal Collective wrote to the Director Festival of Light, on 6 November 1976, as follows:

> Further to our letter dated 13 October 1976, which dealt with financial matters and gave you an outline of the above Tribunal; the tribunal collective has decided to bring the following matter before the tribunal:
>
> The publication *Sex Education, The School and Your Child* written by the Parent Responsibility Study Group and published by the Australian Festival of Light (NSW), January 1975 and in particular the section dealing with 'Homosexuality and Homosexuals', will be presented as evidence of discrimination against homosexual people.
>
> We would like to invite your organisation to submit a written statement outlining its reasons for believing the above publication not to be discriminatory against homosexual people. At a later stage arrangements might be made to present your organisation's views orally on the actual day of hearing.
>
> Copy: Parent Responsibility Study Group

1.2.2 Publication Excerpts

EXHIBIT 16
Alleged Discrimination by the Festival of Light in their publication:
Sex Education, The School and Your Child

Written by the Parent Responsibility Study Group and published by the Australian Festival of Light (NSW),

January 1975.

The publication is discriminatory against homosexuals because we are at all times portrayed in the above publication as substandard. Below are some excerpts:

Page 41, last paragraph:
The predilection of homosexuals for child partners will ensure that no opportunity is lost to seduce the young. To this end, Gay Liberation (the homosexual organisation) sees its role to 'liberate' children and alienate them from the family, the custodian of moral standards. Your child is their target!

Page 42, fourth paragraph:
The following are some enlightening quotes from the homosexuals' *Retort to the Anglican Ethics and Public Questions Committee's Report* [21] on this subject – 'Present sex education courses', the 'Gay Libs'. complain, 'teach that homosexuality is a perversion and label homosexuals as depraved. Changes need to be made to ensure that youth is informed about homosexuality … it is necessary to have homosexuals as sex education teachers in order to eliminate the guilt'.

Page 42, last paragraph:
Lesbians, female practising homosexuals, have a classical home background lacking proper body-image 'she should have been a boy, we wanted a boy'; repelled in infancy by an aggressive dominating father; deprived at adolescence of an adequate mother-figure with whom to identify and copy in developing mature man/woman relationships – these girls in loneliness and isolation become vulnerable to Lesbian influence and recruitment. Lesbianism also is neither hormonal nor genetic but **learned**.

Page 44, second paragraph:
Homosexuality is neither genetically determined nor hormonally determined but acquired as a habit – **learned**.

Page 44, fourth paragraph:
Many homosexuals marry an opposite sex partner … either hoping to cure their aberration or to put up a front to the world by demonstrating that they can produce children. No cure is effected and there are many embittered spouses and children. Let parents be warned that the high-minded young man who refrains from kissing their daughter before marriage is not likely to want to do so after marriage … and though he will be more than willing to allow himself to be seduced into begetting a child or two, that will be the end of it!

Page 44, fifth paragraph:
There are responsible homosexuals who, after some time, feel that it is unfair to ruin the lives of young heterosexuals, and, deciding on abstinence have found peace at least through work – creative work. The Anglican *Report on Homosexuality* on p. 15 quotes Wolfenden Report [22] as saying … There are no prima facie grounds for supposing that because a particular person's sexual propensity happens to lie in the direction of his or her own sex it is any less controllable than that of those whose propensity is for persons of the opposite sex … (p. 16) then the choice that remains for the genuine 'invert' is the choice **not** to pursue homosexual fantasies or indulge in homosexual practices. [23]

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[21] The correct title of the above publication is: *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*, Sydney, April 1974, published by Campaign Against Moral Persecution.

[22] *Report of the Committee on Homosexual Offences and Prostitution*, London 1957, Her Majesty's Stationery Office.

[23] The words after (p. 16) above are actually from *The Returns of Love* by Alex Davidson, London, 1970 and **not** from the 'Wolfenden Report' as implied in the Festival of Light publication. Also the original text is **without** emphasis.

1.2.3 Stallion Magazine Article [24]

Of Men and Little Boys

by Gerald Hannon

Many conversations with 'liberal' straight people on the subject of homosexuality follow a predictable format. After declaring that they don't care **what** we do in bed as long as it doesn't affect them, they express concern for the plight of children seduced and abused by a large and pathological segment of the homosexual population.

Perhaps no other myth concerning homosexuals is so prevalent as this one, and though it has been laid to rest many times in the past, its persistence among otherwise enlightened folk decrees that it be interred once more.

The facts are:

1. Sexual relations between adults and young people seldom involve physical or mental coercion.

2. The incidence of **violent** seduction is higher among heterosexuals than among homosexuals.

When a child is violently forced into sexual compliance, the crime is one of **assault** and should be dealt with as such by the law. The sexual element is only of peripheral interest, and should be excluded from legal consideration.

All of this has been said many times, yet the myth persists, partly because most people are incapable of accepting that fact that children are sexual beings. For a variety of reasons, innocence is equated with purity in our culture, and purity with chastity, and it is unavoidable logically that if a child is to be innocent, he must also be chaste. In the world's most erotophobic culture – ours – sex is still the most persistent example of **adult** depravity; a concomitant of the fall from innocence and Eden.

I have seen a Mexican peasant grandmother soothe fretful two year old boy by cooing to him and gently kissing and licking his cock and balls. The room was full of people – there was nothing furtive about her actions, in fact they were scarcely noted by the others. I might add that the boy was soon peacefully asleep.

I ask you to try and imagine a Middle Australian mother or baby sitter doing the same thing. It is impossible. The woman would be considered depraved beyond redemption.

That the topic of child sexuality arouses such a violent reaction in the straight world is understandable – it is less easy to countenance the attitudes of the gay community. In the pecking order, 'chicken hawks' are well near the bottom. They are objects of amusement and contempt, and many more responsible members of the gay community feel the need to apologise for their presence, and to declare that they are an almost non existent minority. They fear that the whole movement may be discredited by the actions of these recalcitrant few.

The time has come to face that fact that there is a **sizeable** minority of gay men who are primarily interested in sexual relationships with adolescents, and that these people, by the mere fact of their sexual preference, are working – albeit often unwittingly – toward some of the ideals of the gay liberation front with regard to the family.

To illustrate my point, let us examine the child in relation to the family as it exists today. The familial power is oppressive and stultifying and based on mutual manipulation. The child is one of the possessions of the parents, a eunuchoid doll that is supposed to attain to sexual awareness at 18, gleefully enduring celibacy thereafter until an appropriate marriage has been consummated. Anything which would free the child from this environment is important. Sex is something that does. A child's sexual life turns him **outward** from the family; by its very nature it is exploratory and community oriented, and once begun the child is in the process of leaving home, psychologically at least. The straight world considers us to be dangerous where children are concerned. The irony is that they are **right** – not to the physical well being of their offspring however, but to the family structure that imprisons them, a structure based in part on the concept of possession. "In some cultures children have only very vague concept of family relationship, and the rearing of children is something of a communal effort … Often in these cultures the concept of motherhood and fatherhood is very vague. * **These cultures tend also to be very sex-positive in comparison with our culture**." [emphases added by Hannon].

It is easy to see that this article could now move into the area of children's rights generally, but I shall content myself with saying that if the child is to cease being property, if it is to attain [*sic*] to full civil liberties, if it is to achieve economic independence, if it is to relate meaningfully to society as a whole then of necessity it must move away from the family unit of the Christian West. Anyone who leads the child into

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[24] *Stallion: Celebrating Gay Awareness* was a magazine published in the early 70s by Herd Publishing Company Pty Ltd in Alexandria. This particular article was taken from the undated issue number 12.

* Churchill, Wainwright, *Homosexual Behaviour Among Males*, Prentice-Hall, 1967, p. 306.

sexual awareness and exploration is helping to do just that.

We feel that one of the most positive aspects of the sexual drive is its variety and unpredictability, and from this point of view it is hypocritical to assume that paedophiles represent a group to which one either does or does not belong. All gay men should face the fact that at some point in their lives they may be captivated by some particularly luminous young man, and they should be prepared to embrace that experience joyfully, confident that the experience is potentially an enriching one for both parties and a step forwards to sex-positive culture.

Loving a child and expressing it sexually is revolutionary activity. The activists of tomorrow are more than likely in someone's arms today.

1.2.4 Cross Examination

Coonan: Could I now call the next witness, also Mr Bonsall-Boone and Mr Bruce Thomson. For the tribunal's information it is Exhibit 16. Mr Bonsall-Boone, we already have your name, could we please have Mr Thomson's name and address for the record.

Thomson: Yes, John Bruce Thomson, 72 High Street, North Sydney.

Coonan: And Mr Thomson and Mr Bonsall-Boone, you are here to present a case of alleged discrimination against the organisation, the Festival of Light. Would you please tell the tribunal the allegation.

Thomson: The allegation concerns the publication they have put out: *Sex Education, The School and Your Child*. It was written by the Parent Responsibility Study Group, and published by the Australian Festival of Light, NSW in January 1975. The publication is discriminatory against homosexuals because we are at all times presented in the publication as sub-standard. It is a fairly lengthy publication, but we are referring to pages 41 to 44, and I think the easiest way to receive this would be if we read the parts which we feel are discriminatory and comment on those section. On page 41, there is a comment there:

Bonsall-Boone: "The predilection of homosexuals for child partners will ensure that no opportunity is lost to seduce the young. To this end, Gay Liberation (the homosexual organisation) sees its role to 'liberate' children and alienate them from the family, the custodian of moral standards. Your child is their target."

Thomson: No statistics can be quoted by the Festival of Light to prove that homosexuals are more likely to molest or seduce children then heterosexuals are. The issue of civil rights for children is totally negated in the paragraph and furthermore the child – who reads this paragraph – is discriminated against because it is only presented with one viewpoint, instead of with the total spectrum of life-styles.

Bonsall-Boone: Following a passage dealing with teachers being homosexual, the Festival of Light writes: "Well! There it is! The homosexuals themselves have spelled it out. Do we really want this sad and vicious nonsense spread in the schools? Do you want homosexual teachers influencing your children?"

Thomson: This paragraph makes a very naive statement about homosexual teachers in the education system. If all homosexual teachers were to disappear from the Education Department's payroll then very few children would receive an education. The underlying discrimination in the paragraph is that homosexual teachers cannot be good educators.

Bonsall-Boone: "Lesbians, females practising homosexuals, have classical home background lacking proper body-image 'she should have been a boy, we wanted a boy'; repelled in infancy by an aggressive dominating father; deprived at adolescence of an adequate mother figure with whom to identify and copy in developing mature man/woman relationships – these girls in loneliness and isolation become vulnerable to Lesbian influence and recruitment. Lesbianism also is neither hormonal nor genetic but **learned**".

Thomson: The Festival of Light cannot produce empirical evidence that will conclusively prove that

lesbianism is learned. The paragraph is an oversimplification, a generalisation of sexual development in human beings. Because of this lack of evidence and generalisation this paragraph is discriminatory.

Bonsall-Boone: Page 44, paragraph two: "Homosexuality is neither genetically predetermined nor hormonally determined but acquired as a habit – **learned**."

Thomson: Again, the lack of empirical evidence makes this into a denigrating and discriminatory statement.

Bonsall-Boone: And the fourth paragraph on page 44: "Many homosexuals marry a opposite sex partner … either hoping to cure their aberrations or to put up a front to the world by demonstrating that they can produce children. No cure is effected and there are many embittered spouses and children. Let parents be warned that the high-minded young man who refrains from kissing their daughter before marriage is not likely to want to do so after marriage … (laughter) and though he will be more than willing to allow himself to be seduced into begetting a child or two, that be the end of it!"

Thomson: If the Festival of Light and others did not discriminate on such a large scale regarding openness of sexuality then homosexuals would obviously not get married with heterosexuals in order to hide their true sexuality.

Bonsall-Boone: And the fifth paragraph on page 44: "There are responsible homosexuals who, after some time, feel it is unfair to ruin the lives of young heterosexuals, and, deciding on abstinence, have found peace at least through work – creative work."

Thomson: The opening of the paragraph is discriminatory in as much that not all homosexuals would be able to do creative work, neither is it possible that all homosexuals were turned that way by 'nasty women/men'.
It is discrimination to expect homosexuals not to have sexual outlets and fantasies with people of their own choice. The section is closed with a comment: "HOMOSEXUALITY IS OUT – WITH ITS FETISHES AND FANTASY. IT IS NOT AN ACCEPTABLE ALTERNATIVE LIFE-STYLE."

Coonan: Thank you. Now, just some questions. In chief you have stated that your overall objection to this publication is that it treats homosexual people as sub-standard. Can you just elaborate on what you mean by sub-standard – do they consider you intellectually sub-standard, emotionally, or in what way sub-standard?

Thomson: I think sub-standard in all ways; we are not acceptable to their standards.

Coonan: In society?

Thomson: I hasten to add there I think their standards are a little bit higher then the majority of standards in this world.

Coonan: So, by sub-standard, you mean not fit to be part of society?

Thomson: Yes, and in particular to their form of society.

Coonan: They have stated, quite baldly, that there is a predilection for homosexuals to seduce young persons. Is there any basis to this statement or is it, in your view, just prejudice?

Thomson: Well, they are basing it on an article that was in Stallion Magazine titled "Of men and little boys," which is why their comment there they state. "Well! there it is! the homosexuals themselves have spelled it out." I doubt if many homosexuals would refer to 'Stallion' as being one of our magazines as such, produced for us, but not by us.

Coonan: So what you are saying is that there is no, not necessarily any, consensus in the homosexual community about how homosexuals behave?

Thomson: Not generally, no.

Coonan: There is some broad divergence presumably in standards between homosexuals?

Bonsall-Boone: In this same way that there is in the community at large, yes.

Coonan: Just getting on to the point about homosexuals being teachers. What value do you see homosexual teachers as having in a class room?

Thomson: I think that most homosexuals you will find devote themselves far more to their jobs than the average heterosexual. And teaching is a profession which needs a lot of extra work. Myself, I am not a teacher, but I used to think teaching was a nine to three job and being a nine to five worker I envied them, but now I realise that it is a lot more than that. I think you will find that the majority of homosexual teachers put themselves into work a lot more.

Coonan: Why would that be, are they overcompensating for something, if so what?

Thomson: No, it is not an overcompensation I think, it is more love for the work.

Coonan: Do you see any dangers in having known homosexual teachers in classrooms, known to the children, that is?

Thomson: Not at all. It would give children a chance to discuss problems that they would have; and they do have. Instead of going to a teacher not knowing what the reaction would be, they would be going to speak to a teacher knowing that they would get a sympathetic ear.

Coonan: No doubt other members of the panel will want to ask you specifically about how you consider homosexual behaviour occurs; whether it is learned, or something innate. Can you describe how one becomes aware of one's homosexuality?

Bonsall-Boone: It is very difficult to describe, because it just happens. I imagine that one becomes aware of homosexuality when one becomes aware of sexuality; at puberty. Although, for many homosexuals, they are not truly aware of their homosexuality until somewhat later – early twenties, sometimes a lot later than that. I became aware of my homosexuality because I had a very sensible relative who explained to me very early in my puberty that there are such people as homosexuals; there were men who related better physically with other men, there were women who related physically with other women. I remain grateful that I was given the opportunity to learn this at the stage when I did, because it certainly saved me the dark days of adolescence that so many homosexuals go through these days, offered no alternative to the heterosexual norm. They think that they are the only person in the world and that is pretty terrifying thought to have to live with.

Coonan: Thank you.

Mathews: I find it rather difficult to be a devil's advocate in relation to this publication. What I did want to ask about was this magazine *Stallion*, because the quotes from the article in this Festival of Light publication do, by and large, bear out what the Festival of Light says: "Homosexuals do have some kind of predilection for young boys." Can you tell something about this magazine?

Thomson: No. I assume it is one of the glossies and not one of the magazines that one of the groups within Sydney put out.

Mathews: Well it says: "Magazine of Sydney homosexuals."

Thomson: That is why I emphasised that fact that I felt that was a misnomer.

Mathews: But I gather that you disagree with the statement in Stallion, do you?

Thomson: Not entirely, but getting back to what has been said before, the predilection of children; I think there we have got to look at whether we are talking about ten or twelve year olds, or whether we are talking about fifteen or sixteen year olds who would have some idea as to what they are doing, with this term children. But the article here, as I said before, it is the same in the heterosexual world as it is in the homosexual world.

Bonsall-Boone: An article on the seduction of young people in the heterosexual sense appearing in *Cleo*, or in a journal of that general type, would surely not be taken by anybody to indicate that all heterosexuals are like this. This is one quotation from an article. I notice it is from issue 12, there were presumably 11 issues that the Festival of Light scoured through before they came across this little gem, and to use it to show that all homosexuals are like; that is taking things a little bit too far, I think.

Gilling: In your comment regarding page 41, (see page 12) you indicate that the Festival of Light is saying that homosexuals are more likely to molest or seduce children than heterosexuals are, then you go on by inference to suggest that children do have a right to have sexual experience with both homosexuals and heterosexuals, or that there should be no discrimination in setting out the life style before them. I would just like to say, with the question of seduction of the young, and get your views on seduction by heterosexuals, and also your general view on whether there is a statistical age at which children be allowed by law to be seduced or there should be no legal bar or no social bar to their sexual behaviour, whether it is a matter of chronological age or whether is it a matter of maturity, and, if so, how guard the immature.

Bonsall-Boone: I think that the whole area of sexuality as controlled by the legal process is one which needs looking into. I feel that, crimes shall we say, committed against young people or old people or middling people – it does not matter, are no greater or of less importance because sexual activity is involved. I feel that the so called seduction of young children is very often not this, but a crime of violence. In that case, I would not accept it as being a legitimate expression by the seducer. But as a sexual act, I am sorry, I just cannot see it in that connection.

Gilling: In other words, would I be right in interpreting your saying that you do not see any chronological age below which a child should be protected from either homosexual or heterosexual advances, providing there is no violence, no physical violence, then?

Bonsall-Boone: Yes. Well, I would not, sorry, I would not narrow it to physical violence either, there are other forms of invisible violence.

Gilling: But you would not put a chronological age on it anyway.

Bonsall-Boone: No.

Gilling: In other words, you would not see, for instance, in the new Child Welfare Act, there being any reason for a carnal knowledge provision at any age?

Bonsall-Boone: No.

Egan: The publication of the Festival of Light, do you know its method of distribution. Where is it distributed?

Bonsall-Boone: Well, most churches, I should say that, but the church I am connected with were advised and we are continually advised of the publications the Festival of Light have. At their conference, and other

organisations which they attend, they produce their publications there for sale, most of them are for sale, not just generally distributed. Apart from that, I do not know the full distribution, whether they have a selection of people like libraries that they send these to, I do not know.

Egan: The reason for my question is the doubt in my mind whether a publication that may be completely wrong, may even be defamatory, may not fall into the area of the tribunal. In other words, it may be a publication in which the freedom of expression and the freedom of publication is involved, and if it was a publication of a nature, for example to be used in churches as an official document or in school as a part of the school curriculum or a publication that had some official standing, I could see that discrimination could exist, but if it is a publication just for the general community circulation and public debate, do you feel that is necessarily discrimination, or just inaccurate or defamatory material?

Bonsall-Boone: Well, I think when it is produced by their study group known as the Parent Responsibility Study Group, and makes a statement that this is what they feel should be the life style to follow, not only amongst their own members, but obviously amongst others because they are circulating this amongst people who are not connected with the Festival of Light.

Egan: Well, what you maybe seeking from this tribunal is a statement about the publication, rather than any action to prohibit its circulation. In other words, if this tribunal had the authority to suppress this publication because it was discriminatory or allegedly discriminatory, do you think it is of such nature that such action should be taken?

Thomson: Yes.

Cairns: Do you feel there should be any protection for children against seduction by older people.?

Thomson: I think, as far as seduction goes, not only children, but if we could maybe say the immature, uneducated those that can be got at and seduced.

Cairns: Well then, do you feel that protection, whatever it is, should be the same for any seduction by homosexuals as by heterosexuals?

Thomson: Yes, yes they should be treated the same. Do you agree?

Bonsall-Boone: Yes, with the rider of what I said before, that I think that there is nothing which, there is no reason why sexual activity should be separated from the rest of the body of the law. We do have laws specifically as the carnal knowledge one that you mentioned, Ms Gilling, which are specifically related to sexual activity and these I question the need for.

Egan: Mine is very short point, that is if I get it in. In the last paragraph of the Exhibit it refers to "Christian view in addition to scientific evidence," and then gives some references. Neither of the witnesses can see any scientific references; I am having difficulty ascertaining that where the scientific references are, perhaps the witnesses could assist the tribunal?

Bonsall-Boone: I think we have been similarly baffled.

Thomson: They may class Stallion as being a scientific textbook.

Cairns: You made the point that homosexual teachers can be good teachers. Does your experience indicate in what way? For instance, would it be true to say that homosexual people, including teachers, are less likely to be aggressive, less likely to be tolerant, more sympathetic. That they might have more respect for the exercise of needs by other people than the average?

Thomson: I think so, because of the life that we are living ourselves gives us an insight into what tolerance is all about. I do not think that there are not other reasons, I do not think that there are other reasons why a heterosexual teacher could be just as good. But I feel that a lot of homosexual teachers take their job a lot more seriously than do the heterosexual teachers. A lot of them too, because of being single, do not have the home problem, that they are able to spend a lot more time working for the children, working for their students.

Gietzelt: Following the same sort of reasoning through, would you take the view that homosexual teachers from your experience or personal knowledge of others that there is likely to be a more sympathetic approach to a young gay than to a young girl if they are teaching in a co-ed school, for example. Would you find that there would be absolutely no discrimination practised at all – in terms of attitudes to the other sex.

Thomson: I would doubt it, but you are a bit out of my area.

Gietzelt: Are you able to comment on it at all?

Bonsall-Boone: I would not think that there would be any discrimination. The situation, of course, has historically been, or at least in recent times, that males taught males and females taught females. Now, assuming that the statistical majority of those males and females are heterosexual, I think to imagine that because of their heterosexuality they are going to discriminate in some way against people of their own sex that they have in their own classes would be a bit difficult. I feel differently, too, in some of the things that have been said about teachers. I, for the life of me, cannot see the difference between a homosexual teacher and a heterosexual teacher. I think probably some homosexual teachers are good teachers, some of them are probably pretty awful teachers and the same goes for heterosexuals, I am sorry.

Gietzelt: In this area of publication that you refer to in the submission. Of course that which occupies the central part of the publication of the Festival of Light is Stallion. Is it correct to describe it as a "Magazine of Sydney homosexuals?"

Bonsall-Boone: No. It was a magazine which was produced commercially, and it has gone out of existence now I think, but it was just a commercial venture. You may, you are probably already aware that during the last four or five years various magazines, newspapers purporting to be for homosexuals have suddenly sprung up in Australia, following similar experiences overseas, the majority have folded simply because they are not doing the job they say they are doing, and they have probably made a fair amount of money for the person whose clever idea it was in the first place. But I feel that was the basis of the idea in the case of Stallion and most similar ones, purely a commercial venture.

Coonan: Unfortunately we are running behind time. So we will have to leave this segment and tender the original booklet referred to in the statement.

1.2.5 Today

On 10 April 1991 the TWG wrote to the Executive Officer, Australian Festival of Light as follows:

> In November 1976 the Tribunal on Homosexuals and Discrimination heard evidence on a range of issues where discrimination against homosexual women and men was perceived.
>
> The Parent Responsibility Study Group of the Australian Festival of Light published their publication *Sex Education, The School and Your Child* in January 1975. The chapter on Homosexuality and Homosexuals in this publication was presented to the above Tribunal believing it to be discriminatory against homosexual women and men.
>
> We drew the Tribunal's particular attention to the following discriminatory, inaccurate and also unsubstantiated statements in this chapter: 'Homosexuality and Homosexuals' pp. 41-45.

- The predilection of homosexuals for child partners;
- Lesbians, having a classical home background lacking proper body image, an aggressive dominating father and deprived of an adequate mother figure. Girls in loneliness and isolation become vulnerable to lesbian influence and recruitment;
- Homosexuality is neither genetically nor hormonally determined but acquired as a habit and learned;
- Homosexuals marry to cure their aberration and produce children;
- Homosexuals are claimed to ruin lives of young heterosexuals.

After 15 years, many of the issues raised before the Tribunal have been rectified, and I mention the NSW Anti-Discrimination legislation as one example. It is the present intention of a number of those who were responsible for the setting up of the Tribunal to compare the situation in 1991 with matters raised in 1976.

Could you please inform us:

1. Is the above mentioned *Sex Education, The School and Your Child* publication still current?
2. Has the above publication been edited since it was published in January 1975?
3. Has the above publication been replaced?
4. If three (above) is the case could you please forward a copy including an account for the cost.

In regards to the Festival of Light Publication the ADB advised in May 1991 that:

If the NSW Anti-Discrimination Act is amended to outlaw homosexual vilification the Festival of Light might be chargeable with vilification.

On 7 June 1991 the TWG wrote to the Reverend Fred Nile and again to the Festival of Light the following identical letters:

On the 10 April we wrote to the Australian Festival of Light (see attached copy of letter) to obtain information as outlined. To date we have not received a response from your organisation.

We would appreciate if you could expedite a reply. However, if there is no response in the near future we will assume that there has been no change within your publication and we will publish this accordingly.

No response has been received from either the Executive Officer of the Australian Festival of Light or the Rev Fred Nile at the time of publication.

The threat is real … not imagined … homosexuals offer a genuine sexual distraction … to many people … in … their life.

1.3 Church of England Report on Homosexuality

1.3.1 Tribunal on Homosexuals and Discrimination letter, dated 16 November 1976, to the Rev Bruce Smith, Chairman, of the Ethics and Social Questions Committee of the Church of England, Diocese of Sydney.

1.3.2 Excerpts from the *Report on Homosexuality*, Exhibit 22, by the Ethics and Social Questions Committee of the Church of England, Diocese of Sydney, 1973.

1.3.3 Cross examination by the Tribunal on Homosexuals and Discrimination on 27 November 1976.

1.3.4 Today – Attitudes towards homosexuality in the Anglican Diocese of Sydney in 1990.

Appendix B – *Report of the Standing Committee on a 1983 Synod Motion on Homosexuality and Ministry* (see page 376).

1.3.1 Tribunal Letter

The Tribunal Collective wrote to the Rev Bruce Smith, on 16 November 1976, as follows:

> The Hon Jim Cairns; Barry Egan; Senator Arthur Gietzelt; Ms Bridget Gilling, will be the tribunalists at the above Tribunal. They will hear evidence of instances of discrimination (specific and general) from homosexual people on the Saturday. Ms Helen Coonan, solicitor and Ms Jane Mathews, barrister will be counsel for each side in all cases presented. On the Sunday the tribunalists will hand down a report, with recommendations, based on the evidence.
>
> Pages 20-24 of the *Report on Homosexuality* presented to the Synod of the Church of England, Diocese of Sydney will be presented as evidence of discrimination against homosexual people at the above tribunal.
>
> We would like to invite you to submit a statement outlining your reasons for believing the above section not to be discriminatory. We would like to apologise for the very (short) notice, but the delay has been beyond our control.

1.3.2 Excerpts from Report on Homosexuality [25]

EXHIBIT 22
The Society and its laws

[25] Church of England, Diocese of Sydney, Ethics and Social Questions Committee, *Report on Homosexuality*, Sydney 1973, pp. 20-4.

Throughout this report we have been examining the problem of homosexual practice from a specifically Christian point of view. We have argued that they are incompatible with one's spiritual welfare. But it is not our view that spiritual considerations are unrelated to the concern of society. On the contrary, what is good for or harmful to one's spiritual welfare must always be relevant to the welfare of society. Nevertheless, the laws of society are prevented from coinciding with the commandments of God not only because of the latter's greater range and depth of application but also because of the inherent limitations in societies of sinful men and women. Legality and morality are never co-extensive in our experience.

It is this discrepancy between morality and legality which the Wolfenden Committee [26] acknowledged when they said that they were "not charged to enter into matters of private moral conduct except in so far as they directly affect the public good. Or again, unless a deliberate attempt is made by society, acting through the agency of the law, to equate the sphere of crime with that of sin, there must remain a realm of private morality and immorality which is, in brief and crude terms, not the law's business."

While the law can never include all morality within its scope, it by no means follows that what an individual does on his own or in concert with another in private is not the concern of the law. If actions, albeit in private, are harmful to those involved or productive of consequences that affect the public good then the law is bound to intervene in some form. The greater the degree of harm being done the more decisive the form of legal intervention.

The degree of harm of an attitude or action is indicated by the strength of the judgement felt that it is intrinsically wrong, and is confirmed by the degree to which it deprives those who indulge in it of their ability to take their place within accepted framework of social relationships or the degree to which it affects those social relationships themselves. The practising homosexual, from the point of view of the Bible as well as from the point of view of the existing Australian laws, certainly indulges in an intrinsically wrong way of life (hence the use of such words as 'unnatural' or 'abominable') which also partly or completely excludes him from heterosexual fulfilment. But, we believe, he also adopts a way of life which threatens the social institution of marriage itself.

The practising homosexual contradicts the heterosexual pattern at its most fundamental level. Fornication and adultery attack the institutional expression of heterosexual relations in marriage very seriously but they do not offer such a basic contradiction. Overt homosexuality defies the polarities of sex. The failure of the Wolfenden Report [27] to take sufficient notice of these distinctions is a serious weakness. Since 1957 this weakness has become plain as the homosexual challenge has become more organised and articulated. Homosexuals are demanding not only 'tolerance' but 'acceptance' of their life style on the basis that all sexual orientations are neutral and normal. There is mounting pressure to persuade society that it is time for abolition of the hetero-homo distinction in sexual activity.

The ramifications of this movement are enormous. It demands nothing less than a radically new society. Kate Millett [28] (a self-confessed lesbian – see Altman [29] pp. 200-202) says: "The enormous social change involved in a sexual revolution is basically a matter of altered consciousness, the exposure and elimination of social and psychological realities underlying political and cultural structures. We are speaking, then, of a cultural revolution, which, while it must necessarily involve the political and economic reorganisation traditionally implanted by the term revolution, must go far beyond this as well." Altman speaks of the need for 'massive change' and a 'transformation of society' (op. cit. p. 213, 220) as well as a 'withering away of the state' to which the abolition of distinctions in sexual orientation is a necessary prelude (ibid. p. 225).

While it would be unrealistic to equate pronouncements with achievements there can be no doubt that the

[26] *Report of the Committee on Homosexual Offences and Prostitution*, London 1957, Her Majesty's Stationery Office, pp. 9 and 24.

[27] ibid. p. 22.

[28] Millett, Kate. *Sexual Politics*, Doubleday, New York, 1970.

[29] Altman, Dennis. *Homosexual Oppression and Liberation*, Angus and Robertson, Sydney, 1972.

western societies are facing a genuine social and cultural challenge from this movement. In keeping with a general mood of social unrest and moral uncertainty and acting simultaneously with other movements which aim to challenge the status quo and to liberate individuals and groups from various forms of oppression, the homosexual revolt contributes to this ferment by attacking our society at the fundamental level of its own sexual definitions and self-understanding. "Indeed, the homosexual's very existence," says Altman, "is an affront to the way in which society defines roles, sexuality, achievement, and this fact is the essence both of our oppression and of our revolutionary potential" (ibid. p. 226).

The threat is real and not imagined. Practising homosexuals offer a genuine sexual distraction (from the goal of monogamous heterosexual marriages) to many people at some stages or in some circumstances of their life. Were their numbers to increase or were they to achieve greater social acceptance their capacity to confuse and distract would increase. Previously society asked the homosexual to change his ways, now the homosexual demands that society change. The significance of this challenge for society could not be clearer.

It is out conviction that the monogamous heterosexual marriage union not only represents the mind of God for his human creation but is also the necessary social unit which offers the greatest potential for human fulfilment in relationship. That this potential is not always easy to achieve – because of the inherent weakness of the parties involved and the external pressures to which they may be exposed – goes without saying, but for these very reasons we must make every effort to ensure through legislation and social conditioning that marriages are given the maximum chances and that the younger generation are not exposed to conflicting models of sexual relationships which in many cases, could lead to arrested sexual development. [30] The expression of the community's disapprobation of overt homosexuality through legislation would seem to be an essential part of such a programme.

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 sexual activity by society. At the same time the law has to deal with realities in its endeavour to protect the approved institutions and contain those forces which threaten them. It will be the task of the legislators to see how closely the possible approximates to the desirable and give it the best legal form. We would not undertake that task but merely make the following recommendations:

First: Because of the confused state of existing legislation in the Commonwealth of Australia on homosexuality [31] the laws relating to homosexual offences should be made more uniform.

Second: Because of the possibility of inflicting permanent emotional and psychological damage on the person accused of a homosexual offence: First-offenders, at least, should appear in private before a properly constituted tribunal.

Third: Because of the wide differences in homosexual offences and because prison may exacerbate the problem of homosexuality: Careful research should be undertaken to determine the form of penalties to be prescribed for homosexual offenders with a view to substituting other forms of penalty than imprisonment except for more heinous or repeated offences.

Fourth: Because of the serious possibility of involving police in unjust and morally degrading behaviour: The processes of apprehension should be carefully reviewed so as to eliminate the provocation of homosexuals to commit offences (i.e. 'agents provocateurs').

Fifth: Because of the need to help the practising homosexual to adopt a different way of life: In addition to any other court ruling, convicted homosexual offenders should be directed to receive

[30] Church of England, Diocese of Sydney, Ethics and Social Questions Committee, *Report on Homosexuality*, 'The Aetiology of Homosexuality', by A E Craddock, Sydney 1973, p. 36.

[31] ibid. 'Legislation on Homosexuality' Sydney 1973, p. 51.

qualified psychological help, provided that such help has the co-operation of the person directed to receive it.

Sixth: Because of the need: Governments should provide facilities for psychological help and rehabilitation for those who wish to avail themselves of these facilities.

Seventh: Because homosexual behaviour is inimical to the interest of society: Governments should restrict by legislation the promotion (by advertising or other means) of homosexual practices as legitimate.

1.3.3 Cross Examination

Coonan: Then we move on to the next statement with the same witnesses concerning the Church of England Report on Homosexuality which is Exhibit 22.

Thomson: The Ethics and Social Questions Committee to the Synod of the Church of England, Diocese of Sydney, and I ask Peter to just read a piece from the foreword by Marcus Loane, Archbishop of Sydney.

Bonsall-Boone: "This report," he says, "shows clearly that the growing demand to recognise homosexual conduct as a legitimate life style institutes, in fact, a serious threat to marriage and family life as the fundamental units of society." The report continues for some twenty pages and includes, largely, biblical references which are said, by the committee making the report, to have something to do with homosexuality. Not many of them do. The report includes a quotation from a psalm: "How wonderful are thy works, O Lord," and "How great is thy 'something' in heavens." The following paragraph says no homosexual could ever say that because they just do not understand anything that is wonderful, but after twenty odd pages of that sort of thing we come to seven recommendations. The first is because, this is on page twenty two of your copies, "Because of the confused state of existing legislation in the Commonwealth of Australia on homosexuality: The laws relating to homosexual offences should be made uniform."

Thomson: In wanting to do this they are not looking towards decriminalisation, but more towards criminalising lesbians. In fact, all the way through it has been the idea to make things worse, not make it any easier for homosexuals in Australia.

Bonsall-Boone: I did forget to mention that in the balance of the report women are excluded, except for a very small mention that there is such a thing as a lesbian or two. This first recommendation again does not mention lesbians, but this was the intention of the idea of making the laws uniform. The second recommendation: "Because of the possibility of inflicting permanent emotional and psychological damage on the person accused of a homosexual offence: First offenders, at least, should appear in private before a properly constituted tribunal."

Thomson: I do not think there is any comment to make on that one.

Bonsall-Boone: The third: "Because of the wide differences in homosexual offences and because prison may exacerbate the problem of homosexuality: Careful research should be undertaken to determine the form of penalties to be prescribed for homosexual offenders with a view to substituting other forms of penalty than imprisonment except for more heinous or repeated offences."

Thomson: Yes, I feel that there they are looking towards some easing of the situation, but not towards what we would like to see and that is the decriminalisation.

Bonsall-Boone: The fourth recommendation: "Because of the serious possibility of involving police in unjust and morally degrading behaviour: The processes of apprehension should be carefully reviewed so as to

eliminate the provocation of homosexuals to commit offences (i.e. 'agents provocateurs')."

Thomson: Just before commenting on that, I would like to read just a bit of what Marcus Loane, the Archbishop said "the Synod of the Diocese of Sydney … voted overwhelmingly in favour of receiving and publishing this report." We at CAMP NSW, after it was published, approached the Diocese to see if we could join with them in discussing with the police the problem here: "unjust, morally degrading behaviour." We received no reply whatsoever from them, although it was supposedly received overwhelmingly by the Diocese, but they were not prepared to go any further with it.

Bonsall-Boone: "Because of the need to help the practising homosexual to adopt a different way of life: In addition to any other court ruling, convicted homosexual offenders should be directed to receive qualified psychological help, provided that such help has the co-operation of the person directed to receive it." The sixth recommendation: "Because of the need: Government should provide facilities for psychological help and rehabilitation for those who wish to avail themselves of these facilities." Those two recommendations do not accord with earlier and correct statements, so far as I know, made in this report, that unless a homosexual wants to stop being a homosexual, there seems to be no point in subjecting him or her to any sort of treatment whatsoever because it will not work, it will not do anything. And the seventh recommendation reads: "Because homosexual behaviour is inimical to the interest of society: Governments should restrict by legislation the promotion (by advertising or other means) of homosexual practices as legitimate."

Thomson: I think there is very little advertising of homosexual practices in this day and age, it is not actual homosexual practices that are being advertised. Again, this is more pressing down of the homosexual than in any way liberating and assisting.

Coonan: Thank you. Because of the difficulties with time I do not propose to ask any further questions, but tender the original document and ask if the tribunal or counsel would like to ask any questions.

Mathews: I only have one question. The whole thesis of this publication is that homosexuals **now** constitute a threat because they are **now** becoming more militant and I think it is epitomised by a phrase on page 22: "previously society asked homosexual to change his ways, now homosexuals demands that society change." Do you agree with that, with that statement?

Thomson: Agree in what we are doing, I do not think it is a threat to society, though.

Mathews: I appreciate you would not agree with the conclusion that they have drawn.

Cairns: Would you agree the threat comes from the other direction?

Thomson: Yes, there is a threat definitely there to us, in our life style, that we are being asked to change and very few people are willing to listen to what we have to put forward.

Bonsall-Boone: The wording, of course, is quite unsubtle: 'previously society **asked** the homosexual, now the homosexual **demands**.' I think it is syntax of fright rather then anything else.

Cairns: Is it your view that homosexuality is as natural as heterosexuality?

Bonsall-Boone: Yes.

Cairns: Why does it have a lower incidence?

Bonsall-Boone: I have no idea.

Cairns: In the quotes from the report we have one "overt homosexuality defies the polarities of sex." Does

the report indicate anywhere why it considers the polarities of sex as so important to maintain?

Bonsall-Boone: Yes, this is done on a Pauline theological basis of the man being the head of the women, and the head of the household and having to boss the woman around all the time.

Cairns: It is based on the authority of the man, then?

Bonsall-Boone: Yes, yes, according to the Pauline interpretation.

Gilling: Would you think it possible to distinguish, with the people who have psychological counselling and psychiatric treatment, to distinguish the motives for undertaking it? In other words to distinguish those who, well, obviously you can distinguish those who undertake it because of the legal duress, but is it possible to distinguish those who undertake it because of the social duress under which they find themselves and those who undertake it because they genuinely internally, regardless of the attitudes of society, do want to change.

Bonsall-Boone: I think it would be impossible to distinguish. I could not fully understand that somebody could, completely, in a self generated way and internally want to become something which they know nothing about. I would tend to feel that any seeking of treatment, which I prefer to see in inverted commas, any seeking of treatment by homosexuals I would imagine has some societal basis.

Thomson: I think a lot more of it is not to change but is to be able to cope with what we have. Far more people seek psychological help to try and cope with the way they find themselves, not to change, but just to cope with and accept what they know is virtually irreversible.

Coonan: Mr Egan, do you have any questions?

Egan: Yes, my difficulty with this document is that I cannot find where the report has attempted to draw on information other then the documents of the church. In other words, there does not appear to have been any attempted inquiry into the subject prior to the report being compiled. Have you any knowledge to the contrary?

Bonsall-Boone: There is a limited bibliography of some fifteen titles, mostly older works from the 1950s, but it is difficult to see where the results of reading these works comes into the report itself. Except for quotes from one particular New York psychiatrist, who is well known as having antipathetic ideas towards homosexuals, Bergler [32] I think it is, and they quote him because he says that homosexuals are sick and really need his treatment.

Egan: But there are no references to any of the modern material available?

Bonsall-Boone: No, no, and in fact, this is the committee to which I alluded earlier in my first section (see **1.1.2** page 4) there. In fact this committee would not have consciously spoken to any homosexuals, at any stage during their two years of deliberation, except that I pushed the point and wrote several letters until we were eventually asked to come along.

Egan: Thank you.

Gietzelt: The document seem to lay stress that whereas previously homosexual attitudes personally had to change, that society is now being asked to make changes in its attitude to homosexuals. Now could you perhaps give us some evidence, both of you, about this stress that they make about permanent emotional and psychological damage of the individual homosexual. Is it better that you have taken steps that you have taken from your personal point of view? Are you suffering less emotional and psychological damage now than what you did previously to making and accepting your individual positions?

[32] Bergler, Edmund. *Homosexuality: Disease Or Way Of Life*?, Collier Books, New York, 1962.

Thomson: Far less I find, both in the sort of social side and also with my job. To be accepted and not putting up a front is a great relief.

Gietzelt: The document itself is pretty wrong emphasis itself then on the problem as it is described in their understanding of the issue.

Thomson: Oh yes.

Bonsall-Boone: I have the feeling that it is trying to maintain the sort of psychological damage which it sees as a problem of the homosexual, by pressing the homosexual further and telling homosexuals that they really have something to be ashamed of.

Gietzelt: There is likely to be more damage if people contain it within themselves than if they acknowledge and accept and practice their own life style.

Bonsall-Boone: Yes.

Gietzelt: Has this been your own personal experience?

Bonsall-Boone: It has.

Coonan: Thank you, thank you both.

1.3.4 Today

Since the 1973 Report on Homosexuality (see **1.3.2** page 21) was presented to the Sydney Diocese Synod by the Ethics and Social Questions Committee, several key statements have been published which could be taken to express the official view of the Anglican Diocese of Sydney.

In 1984 the Synod endorsed a report responding to a motion at the 1983 Synod which read "Synod is of the opinion that homosexuality is not a bar to any ministry in this church." [33]

The report rejected the view that homosexual practice was in any way acceptable, and stated that the active practice of homosexuality "was a bar to every ministry." Every office or duty in the parish communion was declared to be closed to active homosexuals **or to any who support them**.

There has not been any change in this position. Bishop John Reid, in the 7 February 1990 official press release at the time of the 1990 Sydney Lesbian and Gay Mardi Gras, described the Mardi Gras as emphasising "… fallen sexuality, characterised by selfishness and promiscuity, and the destruction of intimacy by exhibitionism."

However, some individual lesbian and gay people who have had a high public profile and openly contradict the official view of the Diocese, have been left undisturbed by Diocesan authorities. No direct action, save the Archbishop's refusal to renew one lay assistant's licence, has been taken against these individuals.

There have however been instances of the exclusion of lesbians and gay men from several parishes on the basis of their refusal to give a commitment not to 'practice' homosexuality.

The diocesan AIDS pack with information relating to all aspects, medical and pastoral, of the AIDS crisis takes an official Diocesan line. Active homosexuality remains a sinful ungodly lifestyle. But surprisingly the

[33] See: Appendix B (page 376): *Report of the Standing Committee on a 1983 Sydney Synod Motion on Homosexuality and Ministry*.

AIDS pack gives information on condom use and needle exchange programs.

It could broadly be stated that no change has occurred in the Sydney Anglican Diocesan attitudes on an official and synodical level towards homosexuality since the early 1970s. There is a strong lobby within the Synod which opposes change of any kind on this matter, although the matter may be less of a preoccupation for the Synod than it was in the mid 1980s.

The Synod has not yet faced the issue, implicit in the 1984 report, of how people of homosexual orientation or inclination (presumably through no wilful act of their own) might express and celebrate God's gift of sexuality in their case.

The Right Reverend John Selby Spong, Anglican Bishop of Newark, New Jersey, describes the Sydney Anglican Diocese as: "… unique, not only in Australia but throughout the world, for its arch-conservatism and failure to meet the modern needs of its parishioners. You would be hard-pushed to find a diocese more monochromatic than Sydney. It's like having a church full of Ian Paisleys." Bishop Spong said the Sydney Diocese was a frozen example of a church created last century by people with a "Northern Ireland evangelical mentality" who could not accept women, homosexuals or Catholics.

In May 1991 the ADB responded about the Sydney Anglican Diocese 1973 homosexuality report recommendations as follows:

- Discriminatory anti-homosexual laws be made uniform (see recommendation 1, page 23): criminal laws are being repealed state by state, opposite to the direction the Church called for;

- First offenders appear before a properly constituted tribunal (see recommendation 2, page 23): has not occurred because of law reform;

- Forms of penalties for homosexual offences could be substituted with other penalties (see recommendation 3, page 23): homosexual laws have been reformed;

- Police as agent provocateurs (see recommendation 4, page 23): currently homosexuals are arrested for non-specifically homosexual offences although there are claims that police still provoke in certain areas;

- Psychological help for homosexual offenders (see recommendations 5 and 6, page 23): on same basis as other offenders;

- Governments should restrict by legislation the promotion of homosexual practices as legitimate (see recommendation 7, page 24): has occurred in the United Kingdom but not Australia.

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2. Homosexuals and Government

Tribunalists:
Dr Jim Cairns
Barry Egan
Bridget Gilling
Senator Arthur Gietzelt

Counsel assisting:
Helen Coonan
Jane Mathews

Witnesses:
Ron Austin
Peter Bonsall-Boone
Bob Cotter
Peter de Waal
Robyn Kennedy
Brigitte Seega
Kym Skinner
Peter Trebilco

… outdoor and vigorous … normal and healthy …

2.1 Policy of the Australian Defence Department

2.1.1 Letter from N.J. Attwood, First Assistant Secretary, Personnel Administration and Policy, Department of Defence, dated 27 August 1976.

2.1.2 Letter from the Tribunal on Homosexuals and Discrimination to Jim Killen, Minister for Defence, dated 4 October 1976.

2.1.3 Letter from D.J. Killen Minister for Defence, dated 1 November 1976. Exhibit 1A.

2.1.4 Department of Defence Policy regarding homosexuals in the armed services. Exhibit 1.

2.1.5 Cross examination by the Tribunal on Homosexuals and Discrimination on 27 November 1976.

2.1.6 Today – TWG letter to Secretary, Department of Defence, 24 November 1990; Letter from Headquarters Australian Defence Force (HADF), 8 January 1991; TWG letter to Secretary, Department of Defence, 29 August 1991; Letter from HADF, 17 October 1991; TWG letter to HADF, 15 January 1992; TWG letter to Human Rights and Equal Opportunity Commission (HREOC), 17 January 1992; Letter from HADF, 21 January 1992; TWG letter to HADF, 8 March 1992; TWG letter to the Caucus Committee on the Defence Ban, 24 July 1992.

2.1.6.1 TWG letter to Ministry of Defence, the Netherlands, 30 August 1990; letter from H.H.J. Ploeg, Captain Royal Netherlands Navy, Chief of Personnel Plans and Policy Department, 17 October 1990

2.1.6.2 TWG letter to Ministry of Defence, Sweden, 30 August 1990; Letter from Inge Nilsson, Head of the Enrolment Division, Swedish Department of Defence, 10 October 1990

See: Appendix C: Proposed sacking of Leonard Matlovich from the USA Air Force and dishonourable discharges of Barbara Randolph and Debbie Watson from the USA Army, *Time Magazine*, 9 June 1975, pp. 34-5 and 16 June 1975, p. 48 (see page 380).

See: Appendix D: Questions Concerning Swedish Military Service (see page 381).

2.1.1 Letter from the Federal Department of Defence

CAMP NSW received, on 27 August 1976, the following letter from N J Attwood, First Assistant Secretary, Personnel Administration and Policy at the Department of Defence:

In reply quote DEF537/6/2

In reply to your letter dated 15 August 1976, I wish to advise that the policy regarding homosexuals in the Armed Forces remains the same as that conveyed to you on 20 June 1975, with one amendment.

This refers to the attendance of an officer of the appropriate sex being present during an interview of a person suspected of homosexual activities. The attendance of this officer at the interview is no longer mandatory and is now conditioned by the wishes of the person being interviewed.

2.1.2 Tribunal Letter

The Tribunal Collective wrote the following letter to Jim Killen, Minister for Defence, on 4 October 1976:

A panel of prominent people will compose the above tribunal. They will hear evidence of instances of discrimination (specific and general) from homosexual people on the Saturday. There will be counsel for each side in all cases presented. On the Sunday the tribunalists will hand down a report, with recommendations, based on the evidence.

The 'Policy Regarding Homosexuals in the Armed Services,' forwarded to us by your Department on 20 June 1975 and by further letter on 27 August 1976, will be presented as evidence of discrimination against homosexual people at the above tribunal.

We would like to invite your department to submit a written statement stating reasons you believe the policy not to be discriminatory. At a later stage arrangements might be made to present your department's views orally on the actual day of hearing.

2.1.3 Letter from the Federal Minister for Defence, D J Killen, dated 1 November 1976

EXHIBIT 1A

I refer to your letter of 4 October 1976 concerning the policy of homosexuality in the Armed Services.
There has been no change in the policy as stated in the papers forwarded previously.
There is nothing my Department has to add to the policy and procedures expressed in those papers.

2.1.4 Policy Concerning Homosexuals in the Armed Services, 1975

EXHIBIT 1

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 discreetly and with as little publicity as 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:

    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.

2.1.5 Cross Examination

Coonan: We are now up to, although we are running late, we are up to the second segment in the morning session, that of homosexuals and government and we have as our next witness Peter Trebilco, referring to Exhibit 1.

Trebilco: On the 20 June 1975 CAMP NSW wrote to the Department of Defence asking them to express what policy they had regarding homosexuals in the armed forces, and they replied, giving us a number of points which I will now read: (reads 'Policy Regarding Homosexuals in the Armed Services', see **2.1.4** page 31). Subsequent to that document, CAMP NSW received a letter dated 27 August 1976 from the First Secretary of the Department of Defence (see **2.1.1** page 31) advising that the policy I have just read had now one further amendment, and the amendment I quote: "This refers to the attendance of an officer of the appropriate sex being present during an interview of a person suspected of homosexual activities. The attendance of this officer at the interview is no longer mandatory and is now conditioned by the wishes of the person being interviewed." And subsequently we received a letter stating that the policy had not been altered. And in Exhibit 1A we have a letter from the Minister for Defence, the Hon DJ Killen, and he says: "I refer to your letter of 4 October 1976" (see **2.1.3** page 31) "concerning the policy on homosexuality in the armed services. There has been no change in the policy as stated in the papers forwarded previously. There is nothing my Department has to add to the Policy and procedure expressed in these papers."

Coonan: Thank you Mr Trebilco. If I could just establish from you at the outset before the tribunal asks you questions, what would you like to see operating as the policy in relation to homosexuals in the armed services?

Trebilco: I think that providing the armed services are assured that there is no question of force or coercion, then it should be regarded as a normal expression of human sexuality between the two men or the two women concerned and left at that.

Coonan: Thank you. Cross examination?

Mathews: Again, only one question. Again the thesis of this whole policy seems to be the statement in paragraph three that: "Life in the services is outdoor and vigorous; essentially normal and healthy endeavour." I suppose you would say that homosexuality was quite consistent with that?

Trebilco: I do not see that the defence department has any reason to use a standard stereotype based on no evidence whatever. Having stated that it is an outdoor and vigorous exercise they do not say why that precludes homosexuals. They do not say why it includes heterosexuals.

Gilling: Mr Trebilco, there has been some publicity, maybe even months or years ago, about, I think in the United States Navy, there was an officer who made public he was a homosexual. [34] I cannot remember the circumstances surrounding that or how it was resolved, but my question is: Would you have any idea what the publicity is in the armed services of countries with a comparable social system to ours?

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[34] See: Appendix C (page 380): *Time Magazine*, 9 June 1975, pp. 34-5; and 16 June 1975, p. 48,

Trebilco: There is a statement of government in the Netherlands (see **2.1.6.1** page 39), for instance where homosexuality is an accepted social behaviour pattern and it is not a ground for disciplinary action of any sort in the armed services, nor is it in the armed forces of Sweden (see **2.1.6.2** page 40). In the United Kingdom's armed forces you have those rather peculiar exemptions from the so called Wolfenden [35] laws which cover the members of the armed forces and merchant marine who are expressly excluded from the permission to express their sexuality in private with another adult consenting person. But by and large I think what the Australian Department of Defence says covers most governments. They prefer not to have any waves made, they are afraid, they mention they do not want the publicity for themselves.

Gilling: So you would take it they would be willing to tolerate homosexual behaviour, providing that it did not come to anybody's notice.

Trebilco: Yes.

Gietzelt: The Wolfenden report did make some specific recommendations about the armed services, setting it apart from the general understanding of the problem at that time. Has there been any suggestion of any further reports from the United Kingdom on this matter?

Trebilco: I know that the various homosexual movements are trying to have that part of the law amended again, because there is no apparently no valid grounds for this differentiation. Except on the grounds of discipline and this is still completely unfounded.

Coonan: Mr Egan, do you have any questions.

Egan: No, thank you.

Coonan: Thank you Mr Trebilco.

2.1.6 Today

The TWG wrote to the Secretary of the Department of Defence on 24 November 1990 stating that:

> In November, 1976, a Tribunal on Homosexuality and Discrimination heard evidence on a range of issues where discrimination against homosexual men and women was perceived.
>
> After 14 years, a wide range of issues raised before the Tribunal have been rectified – I mention the NSW Anti Discrimination legislation as one example. It is the intention of a number of those who were responsible for the setting up of the Tribunal to now contrast all the matters raised in 1976.
>
> I would appreciate your advice as to whether there has been any change in Departmental policy?
>
> I enclose, for your information, a copy of a letter from the Swedish Ministry of Defence as well as a copy of those portions of 'Homosexuals and the society' that relate to the Swedish armed forces.

J G Longden, Commodore, Director General Service Personnel Policy of the Department of Defence responded by letter dated 8 January 1991 as follows:

> DM 84-38810 SPP 11/91
>
> I refer to your letter of 24 November 1990 in which you seek advice on any changes which may have occurred in the Australian Defence Force (ADF) policy on the employment of homosexuals.
>
> I attach for your information a copy of the Defence Instruction (General) which details the current policy on homosexual behaviour in the ADF. This policy was last reviewed in 1989 following queries

[35] *Report of the Committee on Homosexual Offences and Prostitution*, London 1957, Her Majesty's Stationery Office.

received from the Commonwealth Ombudsman, and the review re-affirmed the stance taken given the unique circumstances of the ADF.

I trust this information is of assistance to you.

Introduction

1. Homosexual behaviour is not accepted or condoned in the Defence Force. Defence policy makes adequate provision for the discharge of members who engage in homosexual activities where factors such as violence, coercion, public display or interference with a minor accompany these activities.

2. Members can be and are regularly discharged for a variety of reasons not listed in the DFDA: eg failure of a basic training course, indebtedness, incompatibility with Service life, etc. ADF policy is that members who engage in consenting homosexual behaviour be treated in a similar fashion, sympathetically and with discretion.

Aim

3. The aim of this instruction is to state the policy of the ADF regarding homosexual behaviour.

Policy

4. The ADF policy on homosexuality is that when a member admits to or is proven to be involved in homosexual conduct, consideration is to be given to the termination of that member's service.

Reasons for Policy

5. Compelling reasons exist for the unacceptability of homosexual behaviour in the Services. These are:

   a. **Command and Morale**. Homosexual behaviour is prejudicial to effective command relationships and to the maintenance of the high levels of morale and discipline necessary for the efficient functioning of the ADF.

   b. **National Security**. Although this policy reflects sentiments somewhat different from those held within sections of the Australian community, there still may be a stigma attached to homosexual activity. Because of this, homosexual behaviour by members may present security risks.

   c. **Health**. The health risks to persons engaged in homosexual activity are real and well documented.

   d. **Minors**. Parents permit their children who are minors at law to join the ADF; this places the Services in the role of 'loco parentis'. This responsibility requires that the minors be protected from aberrant behaviour.

Administrative Action

6. Commanding officers are reminded of the sensitive nature of the investigations into allegations of homosexual behaviour and of the need for sympathy, understanding and discretion when dealing with the member.

7. When allegations or admissions that a member is engaged in homosexual behaviour are substantiated, Commanding officers are to consider processing the member for discharge in accordance with this policy and individual Service instructions, the member being informed of the decision and given the opportunity to make a statement in rebuttal.

8. Consequential applications for resignation or discharge at own request should generally be accepted.

The TWG wrote again to the ADF on 29 August 1991 as follows:

I acknowledge your prompt reply to my letter of 24 November 1990, concerning the Department's current policies on the recruitment and continuing employment of male and female homosexuals.

The Tribunal Working Party has also made enquiries of other countries' Defence Forces, and I have enclosed copies of the replies received. That from Sweden we have had translated, and the translation is

also enclosed.

The observations of the Swedish Commander-in-Chief seem remarkably apposite?

We would value your further comments, unless you recommend that we approach the Minister for his remarks?

Would it be of use to seek the Commonwealth Ombudsman's opinion on the terms of the Human Rights and Equal Opportunity Commission Act 1986, and particularly Regulation 4 of 21 December 1989?

I look forward to your reply,

The TWG received the following letter on 17 October 1991 from A L Thompson, Commodore, RAN, Acting Assistant Chief of the Defence Force (Personnel) at the Department of Defence in Canberra:

Your letter of 29 August 1991, to the Secretary was referred to me for response as my responsibilities include the review of all Defence Force policies and practices which may be discriminatory under the Human Rights and Equal Employment Commission (HREOC) Act.

We are presently reviewing our homosexuality policy as part of our review of all discriminatory policies and practices which may be contrary to the HREOC Act and Regulations made thereunder. You might be aware that a discriminatory act or practice may be justified if it is 'an inherent requirement of the job'. It is our task to examine all nineteen forms (see footnote 38 at **2.2.3** page 42) of proscribed discrimination to establish which are 'inherent requirements of the job' in the Australian Defence Force context. This is a broad and complex task and while we are tackling it vigorously I cannot predict a completion date.

It is not appropriate for me to comment regarding your queries concerning approaches to the Minister and the Ombudsman. It is your prerogative to approach any person who may help you in your cause.

The Tribunal Working Group wrote again to the ADF on 15 January 1992 as follows:

Thank you for your letter of 17 October [1991]; the delay in our response is due to our giving very careful consideration as to our next course of action. It is also due to the deadlines we have for the publishing of our material.

Your letter gives us clear indications that the review of the Defence Force policies which could be discriminatory will take an appreciable length of time. For this reason, reference to the Minister would be of little point, as he could only refer the matter to you?

However, we have thought it useful to seek the views of the Human Rights Commission, on both the calibre of the Defence Forces reviews, and the timetable.

There are two minor matters that we would raise: you mention 19 forms of proscribed discrimination, but our reading of the HREOC Act reveals only 17, and you made no mention of having received that material we sent from the Netherlands and Sweden. We had hoped that it could have been of some use in the review process?

The TWG wrote to the Human Rights and Equal Opportunity Commission on 17 January 1991 as follows:

This Working Group is made up of four people who were associated with the organisation of the 1976 Tribunal on Homosexuals and Discrimination. The Tribunalists were: Dr Jim Cairns, Ms Bridget Gilling, Senator Arthur Gietzelt and Mr Barry Egan. They were assisted by two counsel, Ms Helen Coonan and Ms Jane Mathews.

We decided to compare and contrast social, legal, political and economic attitudes to lesbian and gay male issues, then and now.

One of the matters considered by the Tribunal was that of the Defence Forces stated policy that no known male or female homosexual would be employed in the Defence Forces, and that, should such a person be detected as a member, instant dismissal would be the outcome.

This policy was reiterated by many of the appropriate Ministers, over the years.

In preparing our report – The Re-examination – we wrote to the Secretary, Department of Defence, to seek information as to the present policy. With this request for information, we enclosed material we have obtained from the Netherlands Defence Department (In English), and a detailed report from the Swedish Commander-in-Chief, for which we provided an English translation.

I enclose a copy of the reply from the Department; we have pursued the matter of usefulness of the overseas material, in another letter to Commodore Thompson.

We were aware that a review, as outlined in the Commodore's reply, was being carried out. It appears that this review has now been going on for at least 20 months.

I am sure that your officers are aware of this review by the Department, in all proscribed areas of discrimination. Our point is that it seems to be taking an inordinate length of time, and, from the commodore's language, to be designed to avoid the spirit and force of the Human Rights and Equal Employment Commission Act.

Overseas experience, in Commonwealth and foreign countries is that women need not be disadvantaged on the assumption that they are "weaker" than men, physically, emotionally or intellectually. Physical disability, of itself, may require that a careful structuring of the nature and place of work may have to be made.

The decision of many European Community countries is that male and female homosexuality could only be a reason for not recruiting an individual if social pressures on that person have been such as to render them emotionally or psychologically inadequate.

Before many of the States' legislation was amended, removing the crimes associated with male-to-male sex (lesbian behaviour was not acknowledged), the Department's policy had some rationale. A senior office[r] could be seen as condoning the commission of felony. The legal situation is changed, and Anti Discrimination legislation is in place in the Commonwealth and several States.

The Working Group members, Dr Sue Wills, Professor Ian Black, Mr Peter de Waal and I, would be very happy to help any of your officers, if it is thought that we might have something to offer.

The TWG received a response from A L Thompson, Commodore, RAN, Acting Assistant Chief of the Defence Force (Personnel) at the ADF dated 21 January 1992 which states as follows:

Thank you for your letter dated 15 January 1992. I regret my failure to acknowledge the material forwarded by you from overseas. We did in fact have the information you provided. In the conduct of any review of personnel policies where overseas developments warrant consideration we gather relevant data and research results. In addition there is a regular exchange of information with major military allies through various forms.

You sought clarification of the number of forms of discrimination proscribed under the Human Rights and Equal Opportunity Commission Act. I think our different totals arise from the Defence Force's view that discrimination on grounds of mental, intellectual and psychiatric disability are three discrete forms of discrimination, notwithstanding their grouping in Regulation 4 of the Human Rights and Equal Opportunity Regulations dated 21 December 1989. Whether or not such discrete recognition of each of these forms of discrimination is correct is of little import in our present work as all forms of disability/impairment are being addressed together in the Defence Force's review of its policies and practices.

The TWG wrote the following letter on 8 March 1992 to the ADF:

Mr Trebilco has asked me to write to you regarding the following:

1. It appears from the enclosed press clipping of Tuesday 3 March 1992 that "… the recent decision by the Federal Government to allow homosexuals into the defence forces …" is a departure from the established policy which was adopted many years ago by the Defence Department.
2. Could you please inform me what is the new policy?
3. Could you please forward a copy to me.

4. Could you please inform me how this policy change has come about?

The Human Rights and Equal Opportunity Commission responded, in part, on 14 April 1992 as follows:

> As you may be aware from recent media reports, the Commission has been involved in reviewing the AFD's current policy on homosexuality following complaints received from ADF service members regarding discrimination on the basis of sexual preference …
>
> To come within the exception of 'the inherent requirement of the job', an employer must identify the relevant requirements and, should it maintain that a particular applicant or employee is thereby excluded, be able to specify why. In other words, employers are under an obligation to consider each applicant on his or her merits in light of the 'the inherent requirement of the job', rather than making judgements on the basis of stereotyped views or assumptions of the capacities of, for instance, individuals of a particular sexual preference.

On the 24 July 1992 the TWG wrote to Senator Terry Aulich, Chairperson, Caucus Committee on the Defence Ban, which stated:

> In November 1976 the **Tribunal on Homosexuals and Discrimination** heard evidence on a range of issues where discrimination against homosexual women and men was perceived.
>
> The Tribunalists were:
>
> Dr Jim Cairns, MP, formerly Deputy Prime Minister and Federal Treasurer;
> Ms Bridget Gilling, Vice President, Council of Social Service of New South Wales;
> Mr Barry Egan, National Secretary, Shop Distributive and Allied Trades Employees Association and Secretary, Australian Workers Union;
> Senator Arthur Gietzelt.
>
> The Counsels assisting were Ms Helen Coonan, a solicitor, and Ms Jane Mathews, Barrister-at-law, previously Counsel Assisting the Royal Commission on Human Relationships and currently a Justice of the New South Wales Supreme Court.
>
> After 16 years, a number of the issues raised before the Tribunal have been rectified, and I mention the NSW Anti-Discrimination legislation as one example. It is the present intention of the Tribunal Working Group, a number of those who were responsible for the setting up of the Tribunal, to compare the situation in 1992 with the 40 plus matters raised in 1976.
>
> The Defence Department's discriminatory policy on the recruitment and continuing employment of female and male homosexuals was a matter brought before the Tribunal in 1976. A further matter brought before the Tribunal was the dismissal of a lesbian from the Army.
>
> From our research and information received from other countries there is **no basis** for the Australian defence force's conclusions that:
>
> 1. Homosexuals pose a health risk.
> 2. Homosexuals are a threat to good morale.
> 3. Homosexuals are a national security risk in the forces. We like to draw your attention to staff of the Foreign Affairs Department where sexual preference is not grounds for exclusion from employment or dismissal.
> 4. Homosexuals pose a risk to minors.
>
> For your consideration we have included:
>
> 1. A translation of 'Questions Concerning Swedish Military Service' from a major official Swedish Government report on 'Homosexuals and Society' published as early as 1984.

2. Copy of a letter from the Swedish Ministry of Defence regarding homosexuality policies in the defence forces.

3. Copy of a letter from the Dutch Ministry of Defence on policy regarding homosexuals in the Defence Forces.

4. Copies of correspondence the Tribunal Working Group has had with the Australian defence force.

At a time when the Government is encouraging non-discriminatory employment practices everywhere else in the community, it is hardly appropriate for the Australian defence forces to be maintaining such a blatantly discriminatory policy.

Finally, we need to draw your attention to the fact that the present ban is in contravention of the Human Rights and Equal Opportunity Commission Act 1986, and in particular Regulation 4 of 21 December 1989.

2.1.6.1 Netherlands Ministry of Defence

The TWG wrote on 30 August 1990 to the Dutch Ministry of Defence:

I am in the process of compiling a comparative document which looks at how homosexuality (both female and male) is dealt with in defence forces in various countries.

My comparative research document will concentrate on the period 1975/76 and today.

I would be pleased if you could forward to me a copy of relevant policies which deal with this particular issue.

For example, issues regarding homosexuality in defence forces I am researching are:

- were/are homosexuals barred from entering the defence forces;
- was/is homosexuality an accepted social behaviour pattern in the defence forces;
- was/is homosexual behaviour in the defence forces ground for disciplinary action and possible honourable/dishonourable discharge;
- were/are homosexuals given specific and perhaps non-combat duties.

I very much look forward to receiving policies and other relevant information.

The following letter, dated 17 October 1990, was received from H H J Ploeg, Captain Royal Netherlands Navy, Chief of Personnel Plans and Policy Department in the Netherlands:

In reply to your letter of 30 August 1990 with questions about the policy regarding homosexuals in the defence forces, I would answer you as follows:

Military personnel policy does not discriminate on the basis of sexual orientation.

Since 1974 gives [*sic*] homosexual orientation [is] no grounds to be found unfit for service in the Netherlands armed forces. Should the examining body and/or the conscript himself expect serious problems during his term of service in the armed forces as a result of his homosexual orientation, then he will first be declared fit (unless found unfit for other reasons) and subsequently be given the status of conscript extraordinary. During the medical examination and upon entering the Service no questions will be asked relating to the sexual orientation of the conscript/applicant. In the event that the sexual orientation is brought up by the conscript, it will not be recorded.

The number of homosexuals in the armed forces is unknown.

There is an official advisory and coordination committee on homosexuals in the armed forces which advises members of the government on subjects pertaining to homosexuality. Participating in this committee are representatives of the armed forces and the Directorate of Civilian Personnel. Some members are social scientists.

A small number of homosexuals in the armed forces is united in the Foundation Homosexuality and Armed Forces. There is a regular contact between the official advisory committee and the Foundation.

Within all the armed forces research within the behavioural sciences will be carried out to investigate the position of homosexuals in the armed forces. The Royal Netherlands Navy is conducting talks with

homosexuals within the service in order to find out how they live and work within its own organisation.

Although until now there are no known structural problems about the functioning of the homosexuals in the armed forces it has to be considered that most of the homosexuals make a secret of their sexual orientation out of fear for reactions.

I hope you have been sufficiently informed.

2.1.6.2 Swedish Department of Defence [36]

The same letter, dated 30 August 1990, was addressed to the Swedish Ministry of Defence as was forwarded to the Netherlands Ministry.
The following response was received 10 October 1990, from Inge Nilsson, Head of the Enrolment Division at the Swedish Defence Department:

On behalf of the Swedish Ministry of Defence, the Enrolment Board of the Armed Forces, would like to give you the required information.

First of all, since there is no special treatment of homosexuals there doesn't exist any document concerning people of this personal disposition in the armed forces. The general trend of Swedish authorities is a considerable will of tolerance and understanding.

There is a major official report handed over to the Government in 1984 called *Homosexuella och samhället* (Homosexuals and the society, ISBN 91-38-68269-1) giving a survey of the homosexual issue in Sweden. We enclose a copy of the pages having to do with the armed forces.

The translation perhaps isn't too easy for you to perform and furthermore six years have elapsed since the report was published. So below we give you a summary of the circumstances of today and earlier.

From 1969 on the Swedish version of the International Classification of Diseases (WHO) has been applied connected to special military instructions for degree of fitness. The Swedish version in its 1979 year edition excluded homosexuality from the list of diseases.

The military instructions up to 1976 implied exemption of homosexuals. From 1976 on there was also given the formal possibility of just a slight note of homosexuality without following reduction of fitness or, consequently, exemption.

The military instruction of 1989 meant excluding also the diagnosis of General sexual anomalies, the only "sexual classification" to remain being Transsexualism.

Parallel to these changes there has been a gradual transfer of responsibility of decision regarding mental fitness. All conscripts are interviewed by psychologists who are now in the position of stating whether a conscript should have his mental fitness reduced or not. Certainly the cooperation with the doctors is intense.

Regardless of the above described alteration of instructions and responsibility of assessment we want to stress the ever lasting practice.

This it is and has been for decades of interest for the defence to assess all possible deficiencies from their influence on military service exclusively of private nature. From the view of the individual person homosexuality might however be considered a major problem in a number of cases. When so is the case the care of the individual is of decisive importance to us.

The above discussion goes for Swedish conscripts, but since the recruiting of employed officers is performed from the basis of appropriate conscript officers the described policies are valid also for the staff. Homosexuality is thus per se no ground for disciplinary action or discharge.

Female officers go through the same military training and education as their male colleagues. The principles about handling homosexuality are naturally also the same.

We hope that we have brought you a clear idea of the matter and hope your document will be a success. If possible we would very much like to have it sent over.

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[36] See: Appendix D: (see page 381) 'Questions Concerning Swedish Military Service'. In 1984 a major official Swedish Government report on 'Homosexuals and Society' [ISBN 91-38-68269-1] was published. This appendix contains the translated sections relevant to the armed forces.

I was brought up before the major who was a homosexual herself, and was questioned. I was asked during the interview to write a list of the homosexuals that I knew in the army.

2.2 Sacking of Helen Pasley by the Australian Department of Defence

2.2.1 Statement by Helen Pasley, to the Tribunal on Homosexuals and Discrimination, Exhibit 27.

2.2.2 Presentation of the alleged statement of homosexual discrimination by the Australian Defence Department to the Tribunal on 27 November 1976.

2.2.3 Today – *Sydney Morning Herald*, 10 August 1991.

2.2.1 Statement by Helen Pasley

EXHIBIT 27

Statement by: Helen Pasley.
To: Tribunal on Homosexuals and Discrimination
Re: Alleged Homosexual Discrimination by the Australian Defence Department.

During 1961 I signed on to join the Australian Army. I was accepted into the Army, having passed the medical examination. I intended to make the army my career and had signed on for a service period of six years. I had a faultless record, until two and half years later I was dishonourably discharged. The shortest period of service then was 3 years.

The only reason for the interview which eventually led to my discharge was the fact that on my free weekends I was signing out to an address of an ex army woman who was known to be a homosexual. I state that at that particular time I was not having any homosexual relationship and had not had any in the past. As far as I was concerned, I was carrying my job satisfactorily and had not any complaint made about my proficiency in the army. I state that many of the officers in the army also attended this ex army woman's place on the weekends. The privates who went to this woman's place had to ring first to see if any of the officers were there. If the officers were there for the weekend, then the privates couldn't go.

I was brought up before the major who was a homosexual herself, and was questioned. I was asked during the interview to write a list of the homosexuals that I knew in the army. I refused to do so and was told that it would not be to my advantage not to answer. Ten days later, after two and half years service, I was taken by a sergeant to the major's office. There I was stripped of my badge and buttons and marched through the middle of Victoria Barracks. This I found most humiliating. I was given a discharge certificate which contained my name, rank, description, etc., with the words 'dishonourable discharge' stamped diagonally across it. The reason that was given for my discharge was 'conduct to the prejudice of the corps'.

The result of this was that for a long time I was unable to get employment. At the places I enquired, I was asked what I had been doing since I left school. I stated that I had been in the army and that the employer

could ask for my discharge certificate. This meant that at that particular time I was unemployable. I had to fully support myself and was thus going through many hardships.

2.2.2 Presentation of Helen Pasley's Statement to the Tribunal

Coonan: Could I now ask Brigitte Seega to read a statement in relation to Exhibit 27?

Seega: Reads Exhibit 27 to the Tribunal.

Coonan: Thank you that is a signed statement by a woman called Helen Pasley and it is tendered herewith.

2.2.3 Today

Navy wants to sack women for lesbianism [37]
By Greg Austin
DEFENCE CORRESPONDENT

CANBERRA: The Navy has asked three women implicated in homosexual activity at HMAS Kuttabul in Sydney to show cause why they should not be discharged.

Two other women will face internal disciplinary measures for a similar reason. This means they will receive a formal warning not to repeat the activity.

A spokesman for the ADF confirmed this yesterday but declined to comment on claims that the policy contradicted a Federal law [38] banning job discrimination against homosexuals.

"The Navy wanted to discharge three of the women under Naval Forces Regulations which give the Chief of Naval Staff the power to discharge a sailor if he is satisfied that the retention of a sailor is not in the interest of the Navy," the spokesman said.

The spokesman said: "The presence of a homosexual who is not accepted by the rest of the crew" [in a naval ship] "leads to a breakdown in morale," he said.

"There is also a health aspect to this. When we go into battle, the Navy is, in effect, a floating blood-bank and the Navy can't run the risk of HIV-infected people giving blood.

There are quite a number of minors in the ADF and we believe we have a duty to parents to ensure that their heterosexuality is protected. We are not out to make judgement on people's sexual lives," he said.

- The Navy will abolish all remaining female ranks at the end of the month. The acronym WRAN will no longer exist and the same ranks will apply to all. Women superiors will still be called 'Ma'am' rather than Sir.

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[37] *The Sydney Morning Herald*, 10 August 1991, p. 7.

[38] The 'Federal law' referred to is the [Commonwealth] HREOC Act 1986 and in particular its Regulations. These Regulations were amended by Statutory Rules 1989 No. 407 on 21 December 1989 and commenced on 1 January 1990. Section 4 states that … any distinction, exclusion or preference made on the grounds of … (ix) sexual preference … (b) on the basis of the imputation to a person of any ground specified in paragraph (a) is declared to constitute discrimination for the purpose of the Act.

With the establishment of the HREOC, responsibility for ILO Convention 111 was removed from the Attorney-General's Department and was vested in the Human Rights Commission. Until January 1990 the Commission's jurisdiction to investigate complaints under the Convention was restricted to the seven grounds of: race; colour; sex; religion; political opinion; national extraction; social origin. The above Statutory Rule increased the grounds for attempted resolution by the Commission of complaints of discrimination in employment and occupation to nineteen: age; medical record; criminal record; impairment; marital status; mental disability; intellectual disability; psychiatric disability; nationality; physical disability; **sexual preference**; and trade union activity.

I have no sexual function as a person according to this Act.

2.3 New South Wales Crimes Act
2.3.1 Tribunal on Homosexuals and Discrimination letter to Frank Walker, Attorney General, dated 30 October 1976. 2.3.2 NSW Crimes Act 1900, as amended, Sections 79, 80, 81, 81A and 81B, Exhibit 11. 2.3.3 Letter from Frank Walker, NSW Attorney General, dated 4 November 1976. 2.3.4 Letter from Roger Court, Director, NSW Criminal Law Review Division, Department of Attorney General and Justice, dated 28 October 1976. 2.3.5 Tribunal on Homosexuals and Discrimination letter to Roger Court, Director, NSW Criminal Law Review Division, dated 2 November 1976. 2.3.6 Tribunal on Homosexuals and Discrimination letter to Roger Court, Director, NSW Criminal Law Review Division, dated 16 November 1976. 2.3.7 Cross examination by the Tribunal on 27 November 1976. 2.3.8 Today – ADB response, May 1991; Crimes (Amendment) Act, 1984. See Appendix E: The Michigan Bill: a proposal for discussion, CAMP NSW draft, dated 6 September 1976 (see page 385).

2.3.1 Tribunal Letter to Attorney General

The Tribunal Collective wrote the following letter to Frank Walker, NSW Attorney General, on 30 October 1976:

> A panel of prominent people will compose the above tribunal. They will hear evidence of instances of discrimination (specific and general) from homosexual people on the Saturday. There will be counsel for each side in all cases presented. On the Sunday the tribunalists will hand down a report, with recommendations, based on the evidence.
>
> Sections 79, 80, 81, 81A and 81B of the Crimes Act 1900 as amended will be presented as evidence of discrimination against homosexual people at the above tribunal.
>
> We would like to invite your department to submit a written statement outlining its reasons for believing the sections not to be discriminatory. At a later stage arrangements might be made to present your department's views orally on the actual day of hearing.

2.3.2 New South Wales Crimes Act 1900

EXHIBIT 11

Unnatural offences

Buggery and bestiality. cf. 46 Vic. No. 17, s. 59.
Amended, ibid. s. 5 (c)

79. Whosoever commits the abominable crime of buggery, or bestiality, with mankind, or with any animal, shall be liable to penal servitude for fourteen years.

Attempt, andc., to commit buggery. cf. 46 Vic. No. 17, s. 60. Amended, Act No. 31, 1951, s. 2 (f).

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.

Indecent assault on male. ibid. s. 60.

81. 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.

Outrages on decency. cf. 48 and 49 Vic. c. 69, s. 11. New section added, Act No. 16, 1955,s. 3 (a).

81A. Whosoever, being a male person, in public or private, commits, or is 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.

Soliciting, andc., male person in a public place. New section added, ibid.

81B. (1) Whosoever, being a male person, in any public place–

(a) solicits or incites; or

(b) attempts to solicits or incite, in any manner whatsoever any male person to commit or to be a party to the commission of any offence under section 79, 81 or 81A shall be liable to imprisonment for twelve 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 section 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.

2.3.3 Letter from Frank Walker, NSW Attorney General, dated 4 November 1976:

I refer to your recent letter concerning the Tribunal on Homosexuals and Discrimination to be held later this month.

I do not believe it would be appropriate for my Department to make any formal submission to the Tribunal, nor, in fact, that I should take such action. It is my understanding that the Director of the Criminal Law Review Division of my Department, Mr Roger Court, will be in attendance with 'observer' status and should the need arise he is in the position to advise the Tribunal of developments in this area since the Government came to Office last May.

You will be aware that so far as the Labor Party is concerned there is no official policy on

homosexuality and associated matters, it being left to individual members of the Party, as a matter of conscience, to determine their own attitude. I have my private views of the general question which would be known.

There have been developments since the Government came to Office, both in regard to discrimination generally and homosexuality specifically. You are no doubt aware that the Government has a policy commitment to the introduction of anti discrimination/equal opportunity legislation, and my colleague the Premier, the Honourable N.K. Wran, Q.C., M.L.A. at the present time is in the process of settling legislation.

In a related area, ethnic affairs, legislation is also proposed, and again this is being dealt with by the Premier.

So far as homosexuality is concerned I have had numerous discussions with homosexual groups, both prior to and since coming to Office, and am in the process of organising, on behalf of the Government a public seminar, to be held in February next year, on Victimless Crime. There will be overseas authorities presenting key-note addresses and persons with involvement within Australia with victimless crime will be presenting papers and leading discussions.

The Session on Homosexuality will have four prominent speakers, at least two of whom could be described as more than aware of and more than sympathetically inclined towards the homosexual cause.

A final matter I shall mention is that the Member for Lane Cove, Mr John Dowd, MLA, has given notice of a motion for debate in the Legislative Assembly that this House:

(1) Considers the law of NSW prohibiting homosexual acts between consenting adult males in private is unjust and causes severe hardship;
(2) Calls on the Government to repeal that law;
(3) Examine, and if necessary, strengthen the law;
    (a) protecting minors from sexual assault and interference; and
    (b) providing penalties for those committing sexual acts on minors, particularly the law relating to persons having the care or control of minors.

This could be debated later this month.

2.3.4 Letter from Roger Court, Director, NSW Criminal Law Review Division to John Greenway, dated 28 October 1976

Your proposed Tribunal on Homosexual and Discrimination has just come to my attention.

As you probably know, possible reform of NSW laws relating to homosexuality is currently being considered by my Division – indeed, with some priority. Moreover, the Government is proposing to hold a major public Seminar late in February 1977 on Victimless Crime and homosexuality will be one of the five specific areas then to be discussed. A primary objective of that Seminar will be to test public opinion with a view to early legislative measures.

I would like to be involved as an observer at your Tribunal as it seems to me that such a course might be of mutual advantage to your organisation and to the government, through the Attorney General and my Division.

Perhaps your Executive might consider this and communicate with me further in due course.

2.3.5 Tribunal Letter to Roger Court, Director, Criminal Law Review Division, dated 2 November 1976:

The executive of CAMP NSW has with great pleasure received your letter about the Tribunal.

We are delighted to extend an invitation to you to be present during the proceedings and reporting of the Tribunal.

We will forward a formal invitation when these are printed in the next few days. It will contain full details of the Tribunal.

With thanks again for your letter.

2.3.6 Tribunal Letter to Roger Court, Director, Criminal Law Review Division, dated 16 November 1976:

> We would like to draw your attention to the second paragraph of the copy attached which originated from the Attorney General, Frank Walker (see **2.3.3.** page 44).
>
> We hereby invite you to make a statement as outlined in the Attorney General's letter. The sections of the Crimes Act which are to be presented to the tribunal as discrimination are 79, 80, 81, 81A and 81B.
>
> We are looking forward to your participation. If you have any further enquiries please do not hesitate to contact me on 827 3063 AH.

2.3.7 Cross Examination

Coonan: The next matter concerns the Crimes Act and it is going to be referred to by Ron Austin. Somebody from the Attorney General's Department, namely Roger Court, had agreed to appear in relation to this Exhibit and this allegation but has since been unable to attend.

Austin: I am Ron Austin, CAMP NSW. The Crimes Act 1900 (reads **2.3.2.** see page 44) and the Summary Offences Act 1970 (see **2.4.2** page 51).

Coonan: Do you wish to make any comment in relation to these?

Austin: I am open to be questioned.

Coonan: Yes.

Mathews: Just two quick questions to the Summary Offences Act, of course, the section itself does not discriminate in any way against anybody; it is the interpretation of that section that you complain about is it?

Austin: That is correct.

Mathews: How has it been interpreted.

Austin: Well, I recently had an interview or was involved with other people in the interview with the Attorney General, and I happened to make the comment that I frequently hold hands with a lover in public or kiss a lover or a friend in public, that is, a male friend, and he said you know you are committing a summary offences act.

Mathews: Do you know of cases which have led to conviction under this section for that type of activity?

Austin: I have heard of cases. Yes. The Summary Offences Act is the act that is most commonly used against homosexuals in terms of common assault, indecent behaviour, all sorts of activities. I cannot be seen in the street relating as a homosexual to another homosexual in a normal course of relating to another person that is, as a homosexual person, showing affection or even if I see somebody I would like to relate to. A heterosexual man may see a heterosexual woman in the street and make some advance. There is no law that says he cannot. There is against me.

Mathews: It would depend on how far you went; there might be a law that said he could not. But to get on, we are short of time. Just on to the Crimes Act aspect of it, South Australia has recently introduced a law which in effect takes the sex of the offender and the victim out of its sex offences legislation, so that it is equally an offence whether it is committed by a man on a woman, a woman on a man, or people of the same sex. Would you agree with that as a desirable piece of legislation?

Austin: I, I think the whole Crimes Act here, as far as I am concerned, discriminates against me. I have no sexual function as a person according to this Act. I am not allowed to commit any sexual act. There is just no way around it as far as the law is concerned. I break the law a number of times a week or a month or however. And many of us break the law perhaps every night of the week, because the law prescribes that I am entitled to be homosexual, but I am not entitled in any to perform the functions of my sexuality. I do not think there should, I think the law should be repealed, that it should not be there at all. It is blatantly, totally discriminating.

Mathews: In relation to matters such as indecent assault, or forms of assault, if you took away the sexual connotations so that it could be equally committed by a man on a woman, or woman on a man, as well as on same sex couples, would that be satisfactory?

Austin: I think that instead of the criminal, this proscription here, the criminal act, there could be an act that would cover criminal sexual offences starting with rape or forced penetration against any person or any persons and the lesser offences coming under that. But I do not see that our sexuality should be proscribed against as it is in the law at the moment. We have to be protected from assault, and from coercion and from violence, subtle coercion, all forms of coercion and I think there are ways that these laws can be implemented. There is a proposed law at the moment that is being supported by CAMP NSW, by Rape Crisis and the women's movement based very much on the Michigan law [39] pertaining to rape which covers all criminal acts, sexual acts and protects the rights of the individual and I think is all that needs to be there.

Gilling: Quickly. A previous witness indicated that the nub of proscriptive legislation should be violence and assault, and not only should the homosexual content be taken out of it but also the sexual content. In other words, the essential thing is that you do not assault people. It is not relevant whether it is a sexual assault, or banging them on the head. What would be your views about that?

Austin: I would agree. I think that this would be a very desirable thing. And I think it would be a very easy law to implement and to govern and to police in effect. As it is now with the Summary Offences Act and criminal law, it is open to so much abuse. The Summary Offences Act, for instance, against homosexuals can be interpreted by the individual enforcers of the law. If they are very anti-homosexual they can be very pernicious. It is left so much to individuals to interpret these summary offences acts and as far as the criminal law is concerned, I think it should only deal with acts of violence, those acts of violence, as you say, can be being hit on the head, or you can be knocked out, or whatever, for the purposes of the sexual act, a forced sexual act. I mean, assault, a sexual assault, can be any number of things. It can be trying to kiss someone against their will. And these are the only areas where I see the law having any right.

Gilling: But you seem still to be indicating you see that trying to have sexual intercourse or kiss somebody is in a different category from trying to pinch their watch or whatever else it may be. You are still indicating that you do see a sexual component as making it special. Am I interpreting correctly?

Austin: I am not sure that I can answer you, because I think that there is difference in my mind at this point in time against acts of against property shall we say, and most of our law is protecting people's property, even when it comes to sex, we are protecting somebody's property very often if one wants to interpret in that way, and I do. But I see the acts that we commit against other people, acts of violence against other people, against a person as being somewhat different to committing a crime against someone's property.

Gilling: Even via their person by trying to knock them out first?

Austin: I do not know. I cannot answer you, I am not clear on that in my own mind.

Cairns: You said you were agreeing with the other witness about taking the sexual component out of the

[39] See: Appendix E (page 385): The Michigan Bill: a proposal for discussion, by CAMP NSW, draft dated 6 September 1976.

offence. He said that the other component, the violent one, the aggressive one could have more than physical aspects. Do you agree that there could be something that ought to be unlawful that is not the physical assault of some kind?

Austin: I am not quite sure that I follow what you mean. I think I do. Violence can manifest itself in different ways and we can be violent, emotionally violent, we can be physically violent. Perhaps I do not see how the law can prescribe in that area, I do not see that. But I think if we can remove the aspects of the law that are discriminating, then we can open up areas of education. People have to educate to re-think. There are alternative ways of relating and of thinking. I think it is bound up also in terms of the sexist bias of our society that there is so much violence. If these things can be removed and I do not think the law can remove them, but I think the law can make a start by opting out of the sex life of people and just be there to protect people's rights, their person and then the emotional violence can be dealt with in another way by changing perhaps, or working towards changing the concepts, that we now accept or think are valid.

Cairns: I think the law has given weight in the past to things like undue influence, the position of a teacher in relation to a child, obviously in the army senior officer in relation to someone much junior, as a teacher that ought to be taken into account. Do you think the law can do this properly?

Austin: It is a very difficult area, I think, I do not think the law can. I think it can only come about with a change in attitude in society itself. In a different consciousness about what human sexuality is, what human relationship is, if an older person can relate in a loving and caring way to a younger person, why not? The younger person very often seeks the older to relate to, it is not necessarily the older person.

Cairns: Involving some sexual component?

Austin: Maybe a sexual component, maybe not a sexual component. Very often we want to see a sexual component where there is not a sexual component.

Cairns: Thank you.

Gietzelt: In the Summary Offences Act, does that specifically deal with the question of two persons of the same sex in public, making, expressing some form of affection? Does that come under the Summary Offences Act?

Austin: Yes, most homosexual men are arrested on that basis of soliciting in public places in public toilets, parks, beaches wherever. This is where the Summary Offences Act is very discriminating against homosexual men in particular, and it discriminates against homosexual women. There have been a number of case of women being harassed and sometimes ending up in court because of overt, what is considered overt behaviour which is just normal behaviour for two people who care for one another. And this is where the Summary Offences Act can operate against me, the expressing of myself as a person in relation to the other person I am with. If I am with somebody I care about, a lover, I should be able to express with that person freely and normally in any place. There is no limitation on heterosexuals holding hands or being affectionate or enjoying a relationship with each other in a given place. And we all have places where we behave in certain ways and I think this where the Summary Offences Act can be so often discriminatory against us. In fact it is very oppressive against homosexuals.

Cairns: Do you think that there would be an increase in expression of homosexual feelings if it was freer like that?

Austin: I, I think in time there would be, but what I think might also happen is that there would be much freer feeling or flow of feeling between people of the same sex who are not homosexual. You will often find men and women who are unable to express the normal healthy affections they feel for each other, because of the inhibitions placed on them by the attitude 'oh, maybe it is homosexual' so there is a fear of expressing

freely. Many men are cut off from their own sensitivity in playing out this concept or stereotype of what a male is.

Gietzelt: That would more likely be a community fear rather than a legal one, would it not?
Austin: Yes, but I think the legal thing is supported by the community fear and very certainly supported by the dictates of the church and various sections of the society, who have these fears and who would, even at this point in time, be very obstructive to any legislation at all that would ease the oppression and discrimination of homosexuals.

Coonan: Thank you Mr Austin.

2.3.8 Today

In May 1991 the ADB indicated that the NSW Crimes Act, 1900 had been amended:

> Omitted from Section 79 has been "Whosoever commits the abominable crime of buggery, or bestiality, with mankind, or with an animal, shall," and instead inserted was "Any person who commits an act of bestiality with any animal shall."
>
> Omitted from Section 80 has been "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," and instead inserted was "Any person who attempts to commit an act of bestiality with any animal shall."
>
> Sections 81A and 81B have been omitted.
>
> Section 79 was repealed by the *Crimes (Amendment) Act, 1984.*
>
> 'Buggery' is no longer a defined offence, being replaced by 'homosexual intercourse', which is defined in section 78G; this section was added by the *Crimes (Amendment Act*, 1984) and further amended by the *Statutes Law (Miscellaneous Amendments) Act*, 1984.
>
> Section 80 was repealed by the *Crimes (Amendment) Act*, 1984. Penalties only apply to two cases of homosexual intercourse or aggravated sexual assault: where the other person is under the age of ten years; and where the other person is over the age of ten years, but under the age of 18 years (sections 61M, 78H and 78J). Attempts to commit any of these offences are covered by sections 61K, 61P, 66B, 66D, 78I, 78L, and 78O.
>
> Section 81 was repealed by the *Crimes (Amendment) Act*, 1984. The crimes of aggravated indecent assault and indecent assault were restated by the addition of sections 61L and 61M, by the *Crimes (Amendment) Act*, 1989. This Act also amended the 1902 Act by adding the offence of committing an act of indecency with or towards a person under the age of 16 years. However, the *Crimes (Amendment) Act*, 1984 had added section 78Q, which specified the offence of committing an act of gross indecency with a male under the age of 18 years.
>
> Section 81A was repealed by the 1984 Amendment Act. It was the repeal of this section that effectively defined that homosexual intercourse and other acts were not illegal if between males over the age of 18 years, in private and where both parties have given consent to the acts being attempted or done. A 'public place' is defined in section 8.
>
> Section 81B was repealed by the *Crimes (Amendment) Act*, 1984 and section 78Q (2), inserted by the same Act, expanded the previous offences to "solicits, procures, incites or advises any male person under the age of 18 years to commit or to be a party to the commission of an act of homosexual intercourse, or an act of

gross indecency, with a male person." The penalty was increased to imprisonment for two years.

There is no explicit reference to female homosexual offences, and the only offence that might be seen as applying directly is that in section 80A, "Sexual assault by forced self-manipulation." This was added by the *Crimes (Amendment) Act*, 1989.

There is no limitation on heterosexuals … enjoying a relationship with each other …

2.4 New South Wales Summary Offences Act
2.4.1 Tribunal on Homosexuals and Discrimination letter to Ron Mulock, Minister for Justice, dated 23 November 1976. 2.4.2 NSW Summary Offences Act, 1970 as amended, Section 7, Exhibit 33. 2.4.3 Telegram from Ron Mulock, NSW Minister for Justice, Exhibit 33A. 2.4.4 Today – Offences in Public Places Act, 1979; Summary Offences Act, 1988. Cross examination by the Tribunal on Homosexuals and Discrimination on 27 November 1976 (see **2.3.7** page 46).

2.4.1 Tribunal Letter

The Tribunal Collective wrote to Ron Mulock, NSW Minister for Justice on 23 November 1976:

> The Hon Jim Cairns, Mr Barry Egan, Senator Arthur Gietzelt, Ms Bridget Gilling, will be tribunalists at the above tribunal. They will hear evidence of instances of discrimination (specific and general) from homosexual people on the Saturday. Ms Helen Coonan, solicitor, and Ms Jane Mathews, barrister will be counsel for each side in all cases presented. On the Sunday the tribunalists will hand down a report, with recommendations, based on the evidence.
>
> Section 7, of the Summary Offences Act 1970 as amended, will be presented as evidence of discrimination against homosexual people.
>
> We would like to invite your Department to submit a statement outlining its reasons for believing the above section not to be discriminatory. We would like to apologise for the very short notice, but the delay has been beyond our control.

2.4.2 New South Wales Summary Offences Act

EXHIBIT 33

Offensive, etc., conduct.

7. A person who in or within view from a public place or a school behaves in a riotous, indecent, offensive, threatening or insulting manner is guilty of an offence.

Penalty: Two hundred dollars or imprisonment for three months.

2.4.3 Telegram from the NSW Minister for Justice to the Tribunal Collective:

EXHIBIT 33A

> Regret cannot meet your request for Departments views on Summary Offences Act stop Act at present under review by Departmental committee stop Committee work should not be pre-empted by public discussion until report considered by Government stop Suggest Government sponsored seminar on victimless crime February next as platform for your views.

2.4.4 Today

The NSW Wran Labor Government repealed the Summary Offences Act post 1976. An Act was introduced in its place to deal with similar offences but with no specific reference to homosexuals.

This Act was repealed by the *Offences In Public Places Act*, 1979, which was repealed by the *Summary Offences Act*, 1988.

The 1979 Act removed 'offensive behaviour' and put 'affront' and 'grave affront' in its stead. This is reported to have not met the needs of the police in controlling public behaviour, and section 4 of the 1988 Act restored 'offensive conduct or language'.

Section 20. (5) 'Act of prostitution' includes sexual activity between persons of different sexes or of the same sex, comprising –

(a) sexual intercourse as defined in section 61A of the Crimes Act 1900; or
(b) masturbation committed by one person on an other, for payment.

This is the same expression as the definition of prostitution in section 3 (1). The introduction of homosexual prostitution is novel.

… if I were to go ahead with the interview then I would stand a good chance of being dismissed from my job.

2.5 Threat to Victorian Public Servant
2.5.1 Letter from Carl Reinganum to the Tribunal on Homosexuals and Discrimination, dated 21 November 1976. 2.5.2 Submission from Carl Reinganum of 98 Charles Street, Prahran, Victoria, Exhibit 43. 2.5.3 Presentation of Exhibit 43 to the Tribunal on Homosexuals and Discrimination on 27 November 1976. 2.5.4 Today – TWG letter to Public Service Association of Victoria (VPSA), 22 April 1991; TWG letter to Public Service Board of Victoria (PSBV), 22 April 1991; Letter from PSBV, 27 May 1991; TWG letter to VPSA, 6 June 1991; Undated letter from VPSA.

2.5.1 Letter from Carl Reinganum to the Tribunal Collective, dated 21 November 1976:

Herewith a submission for your Tribunal on Homosexuals and Discrimination.
I have no objections to the contents being made public, should the occasion arise.

2.5.2 Submission from Carl Reinganum

EXHIBIT 43

In 1973 I was invited by the Melbourne 'Age' to give an interview as part of the press coverage for Gay Pride Week. The object was to obtain views on the homosexual movement from a homosexual himself, who would be prepared to be named, photographed, etc.

Before agreeing to the interview, I decided to check the possible consequences with my superior at work. The Secretary of the Victorian Public Service was telephoned for his opinion, and it was made clear that if I were to go ahead with the interview then I would stand a good chance of being dismissed from my job. Also, should I decide to appeal against my dismissal, then the VPSA (Victorian Public Service Association) would not support me in any move for reinstatement. I was told that the grounds for my dismissal were covered by section 59(1) of the (Victorian) Public Service Act which deals with misconduct by public servants. The misconduct would, in this case consist of my publicly stating that I was a homosexual.

Since then the Secretary of the VPSA has been contacted for an official opinion regarding the hiring and firing of homosexuals in the public service. The Secretary replied to the effect that his organisation had no official policy on the matter.

2.5.3 Reinganum Statement Presentation to the Tribunal

Coonan: Could I ask the next two witnesses, Kym Skinner and Bob Cotter, to read their respective statements to conclude this session.

Skinner: I am reading Exhibit 43 which is a submission by Carl Reinganum of 98 Charles Street, Prahran (reads Exhibit 43 see page 53).

Coonan: Thank you. Mr Skinner.

Cotter: I am reading Exhibit 2 which is press release made by CAMP NSW on the 14 June 1976. It is headed 'Homosexuals Condemn Health Commission'. (reads Exhibit 2, press release only – for full details on this matter see **2.6.1 – 2.6.7** page 58).

Coonan: Thank you Mr Cotter.

Mathews: There are two matters that I should mention. One related to matter number eight which was the Summary Offences Act (see **2.3.** page 43) and the Crimes Act (see **2.4.** page 51). My attention has been drawn to the fact that a telegram was received by telephone from the Minister for Services which reads (reads Exhibit 33A – see **2.4.3** page 51). And also in relation to that last matter, a communication has been received from the Minister for Health, received on the 24 November 1976 saying, "I refer to your communication of 4 October …" (continues to read Exhibit 2 – for full details see **2.6.1 – 2.6.7** page 58).

Coonan: Thank you. The last two statements are tendered and that concludes this session.

2.5.4 Today

The TWG wrote on the 22 April 1991 to the Chairman of the Victorian Public Service Board as follows:

> In November, 1976, a Tribunal on Homosexuality and Discrimination heard evidence on a range of issues where discrimination against homosexual men and women was perceived.
>
> After 14 years, a wide range of the issues raised before the Tribunal have been rectified – I mention the NSW Anti Discrimination legislation as one example. It is the intention of a number of those who were responsible for the setting up of the Tribunal to now contrast all the matters raised in 1976.
>
> As part of their coverage of Gay Pride Week in 1973, the Age contacted a Victorian Public Servant, seeking an interview from him.
>
> He spoke to an officer in the Board, who told him that he could expect to be dismissed the Service, should he give such an interview. He was further told that the probable grounds for dismissal would be under the terms of section 59(1) of the Act – misconduct by a public servant.
>
> The misconduct would be the avowal of his homosexuality.
>
> I would appreciate your comments on the likelihood of such advice being given, in the same circumstances, currently.

The Chairman, M C Keppel, of the Victorian Public Service Board responded on 27 May 1991 as follows:

> I refer to your letter of 22 April 1991 requesting comments on the likelihood of Board officers currently providing advice similar to that provided in 1973 regarding public avowal of homosexuality.
>
> The Public Service Act of this State contains provisions to the disciplining of permanent officers of the Victorian Public Service. These provisions include Section 59 which specifies a series of offences and penalties and Sections 60 to 64 which specify procedures for considering these offences and determining penalties. However these provisions specify that the disciplining of officers is the responsibility of chief

administrators, ie. chief executives of Government Agencies, not the Public Service Board. Accordingly, Board officers would not currently provide any advice as to whether public avowal of homosexuality would constitute an offence under Section 59 justifying dismissal from the Public Service. Any decision on this matter would be the responsibility of individual chief administrators and would depend on the impact that such a public avowal would have on the ability of the officer concerned to continue to undertake his or her duties in the agency concerned.

It should be noted that Equal Opportunity legislation in this State does not provide that discrimination on the ground of sexual preference is unlawful. Similarly, Section 15A of the Public Service Act, which specified personnel management principles to be observed in public service employment does not extend the requirement for fair and equitable treatment in all aspects of personnel management, to sexual preference. However the Commonwealth Human Rights and Equal Opportunity Commission Act provides that the Commission can investigate complaints of discrimination on the ground of sexual preference by employers including State Government agencies.

The TWG also wrote, on 22 April 1991, to the General Secretary of the Victorian Public Service Association as follows:

In November, 1976, a Tribunal on Homosexuality and Discrimination heard evidence on a range of issues where discrimination against homosexual men and women was perceived.

After 14 years, a wide range of the issues raised before the Tribunal have been rectified – I mention the NSW Anti Discrimination legislation as one example. It is the intention of a number of those who were responsible for the setting up of the Tribunal to now contrast all the matters raised in 1976.

One matter concerned a Victorian Public Servant. In 1973, he was invited by the Age to give an interview as a part of press coverage for Gay Pride Week. Before agreeing, he telephoned the office of the Victorian Public Service Board. The officer who received the telephone call told the Public Servant that if he did grant an interview, he stood a good chance of being dismissed the Service.

The referred grounds would be under section 53(1), Public Service Act, which covers misconduct by Public Servants. The misconduct would be his public avowal of his homosexuality.

The Tribunal heard that an approach by the Public Servant to your Association resulted in his being told that the Association would not support him in seeking his reinstatement, were he to be dismissed. He was also advised that the Association had no policy on the employment of homosexuals in the Public Service.

I would appreciate your comments on the Association's response, were such an incident to happen, currently.

On the 6 June 1991 the TWG wrote again to the Victorian Public Service Association as follows:

I refer to my letter of 22 April, concerning your Association's policy concerning the classification as misconduct of a public servant's public avowal of her/his homosexuality.

I do not appear to have received your reply.

I would note that I have received a response from the Chairman, Public Service Board of Victoria.

Robin Lindsy, Industrial Analyst, Equal Employment Outcomes with the Victorian Public Service Association responded in the undated letter as follows:

I write in answer to your letter of 22 April 1991. I apologise for the delay in replying, but services to members take priority. Also, your letter raises a number of issues which require more detail to answer comprehensively.

From the information you provide it appears that the issues involved are:

- public knowledge of homosexuality at a time when it was illegal,

- public knowledge of a public servant engaging in an illegal activity,
- public comment by a public servant.

The context of the then illegality of homosexuality explains the reference to s.59 (see below) of the Public Service Act, 1974, even at that time it would be an extreme response, although one which the Board would be entitled to take. Now that homosexuality is no longer illegal in Victoria this response would not be provided. However, depending on the precise circumstances and the information provided in the interview relating to their employment as a public servant could constitute an offence under s.16.5(7) (see below) which relates to public comment by public servants.

	Public Service Act 1974 Part V-Discipline
	Offences.
	59. (1) Every officer who–
Para (a) substituted by No. 9096 s. 11.	(a) commits any breach of the provisions of this Act or of the regulations; (b) commits any act of misconduct; (c) is negligent or careless in the discharge of his duties; or (d) is inefficient or incompetent and such inefficiency or incompetency appears to arise from causes within his own control shall be guilty of an offence.
	(2) An officer who is guilty of an offence under sub-section (1) shall be liable to any one or more of the following penalties:
	(a) Admonition;
Para (c) amended by No. 9466 s. 3.	(b) Reprimand; (c) A fine not exceeding $400; (d) Reduction in classification or grade; (e) Reduction in salary; (f) Removal from office and appointment to another office; or (g) Dismissal.

s.16.5(7) No officer shall make any communication, directly or indirectly, to any person (whether an officer of the public service or otherwise) not officially entitled thereto, upon any matter affecting the administrative unit in which such officer serves, or the business or the officers therefor, or relating to the public service, or the official position or acts of such without the express permission or authority of the Minister or the chief administrator.

The VSPA is in the process of developing a comprehensive policy on all equal opportunity issues, of which sexual preference is one. The basis of our first draft policy is that people have a right to choice in terms of sexual preference, and should not suffer any form of discrimination on the basis of that choice. How any particular complaint is dealt with depends very much on the circumstances involved and to the extent that the complainant wishes to make their sexuality the major issue.

The equal opportunity provisions available to public servants are those of the Victorian Equal Opportunity Act and s.15A (see below) of the Public Service Act, known as the 'Merit Principles' which form the basis of personnel policy in the Victorian Public Service.

	Public Service Act 1974 **Principles applying in administration of Act.**
S. 15A inserted by No. 10046	**15A. (1)** In the administration of this Act the following principles shall be observed: (a) Recruitment to the public service shall be from qualified individuals selected solely on the basis of relative ability, knowledge and skills in fair and open competition which assures that all receive equal opportunity; (b) Promotion and advancement within the public service shall be from qualified individuals selected in fair and open competition solely on the basis of relative efficiency measured in relation to the position involved;

	Public Service Act 1974
	Principles applying in administration of Act.
s. 7.	(c) All offices and employees shall receive fair and equitable treatment in all aspects of personnel management without regard to political affiliation, race, colour, religion, national origin, sex, marital status or physical disability;
	(d) Equal pay shall be provided for work of equal value with appropriate consideration being given to the different requirements of various occupational employment categories;
	(e) Officers and employees shall be used efficiently and effectively;
	(f) Officers and employees shall be provided with effective education and training where such education and training would result in better organisational and individual performance;
	(g) Officers and employees shall be protected against arbitrary action, personal favouritism and coercion; and
	(h) All necessary steps shall be taken to ensure that all officers and employees maintain proper standards of integrity, conduct and concern for the public interest.
	(**2**) The Board and each chief administrator shall give effect to the principles set out in sub-section (1) in exercising any power or carrying out any duty or function under this Act.

Sexuality or sexual preference is not yet included in the Equal Opportunity Act as a ground for discrimination, and so this limits the extent to which action could be taken by VPSA industrial staff – if a complaint of harassment on the basis of sexual preference could not be resolved within the complainant's agency, the only other recourse would be the Public Service Board's Hearing Process.

I hope this information meets your requirements.

The Commission is saying: we will only care for your health if you accept our morality.

2.6 New South Wales Health Commission Article on Homosexuals and V.D.
2.6.1 News release by CAMP NSW, dated 14 June 1976, Exhibit 2.
2.6.2 News item in *Sydney Morning Herald*, dated 15 June 1976.
2.6.3 The withdrawn article 'A Serious Aspect of the Gay Life', by Stephen Ives in the Journal *Health in New South Wales*.
2.6.4 Letter from CAMP NSW to Kevin Stuart, NSW Minister for Health, dated 12 July 1976.
2.6.5 Letter from Kevin Stuart, NSW Minister for Health, dated 5 August 1976.
2.6.6 Tribunal on Homosexuals and Discrimination letter to Kevin Stuart, NSW Minister for Health, dated 4 October 1976.
2.6.7 Letter from Kevin Stuart, NSW Minister for Health.
2.6.8 Today – NSW Department of Health, Health Information and Translation Service; TWG letter to NSW Department of Health, AIDS Bureau, 15 July 1991; Letter from Department of Health, AIDS Bureau, 21 August 1991.
2.6.8.1 Current NSW Department of Health STD Poster.

2.6.1 CAMP NSW News Release 14 June 1976

EXHIBIT 2

Homosexuals Condemn Health Commission

The homosexual group, CAMP NSW today launched an attack on the NSW Health Commission over the withdrawal of an already published article on homosexuals and venereal disease. The article had already been published in the Health Commission journal, *Health in New South Wales*.

A spokesperson for CAMP NSW said today that CAMP NSW had just learned that the 25,000 copies of *Health in New South Wales* had been destroyed on the recommendation of the five Health Commissioners to the previous Minister for Health, Mr R Healey. The recommendation had been made to the Minister because of objections to the article by senior members of the Health Commission hierarchy.

The spokesperson for CAMP NSW described the action as an outrageous rejection of responsibility. "The function of the Health Commission is to care for the health of all people in NSW. However, in the decision to withdraw the article on VD and homosexuals, we see that, in fact, the Commission has a policy of **selective health care**. The Commission is saying: we will only care for your health if you accept our

morality."

CAMP NSW said that it had long recognised and been concerned that VD is a problem among the homosexual community. Its efforts to check the disease had always, however, been restricted by official apathy. "In the publication of the article in Health in New South Wales", the spokesperson said, "we saw a glimmer of hope that the Health Commission was throwing off the shackles of the **medieval moral rectitude**, and was at last prepared to show some concern for the health of homosexuals. In the decision to withdraw the article, however, the ostrich like Commission **condemns itself as oppressive and irresponsible**."

CAMP NSW **called** upon the Minister for Health to immediately order the republication of the article, and to take even stronger steps to help the homosexual community reduce the incidence of venereal disease among its people.

For further information:

Monday 16.00hrs – 19.30hrs 827 3063
20.00hrs – 23.00hrs 660 0080 (Peter de Waal)
Tuesday: any time till 10.00hrs; evening – 827 3063

2.6.2 Sydney Morning Herald article [40]

Health journal withdrawn

Objection to article on homosexuality

About 25,00 copies of a NSW Health Commission journal have been withdrawn from distribution because of a few sentences in an article dealing with homosexuality and venereal disease.

About 6,500 copies of the journal, called Health in New South Wales, are usually distributed to primary and secondary schools.

A Health Commission spokesman said yesterday the commission did not object to the subject of the article or the technical information contained in it.

The objection was to "one or two sentences which tended to promote homosexuality as an alternative life-style", he said.

The five health commissioners had agreed to withdraw the journal from distribution after seeking advice from the NSW Department of Education. The commissioners were concerned that these few sentences could contravene the Education Department's view about how this subject should be taught, thus putting a strain on the relationship between the two Government agencies.

The Health Commission was one of the few outside agencies allowed to distribute material in schools. It was more or less a guest in these matters.

"Everyone agreed there was value to be gained in publishing such an article", the commission spokesman said.

It was expected that the next issue of the journal would contain an article about homosexuality and venereal disease.

The spokesman said that it was estimated that 80 per cent of syphilis was transmitted homosexually.

The homosexual group CAMP NSW criticised the health commission's action yesterday, criticising it as an outrageous rejection of responsibility.

It called upon the NSW Minister for Health to order the republication of the article and to take strong steps to help the homosexual community reduce the incidence of venereal disease among its people.

2.6.3 Withdrawn Health in New South Wales Journal Article [41]

A Serious Aspect of Gay Life | by Stephen Ives

[40] *The Sydney Morning Herald*, Tuesday, 15 June 1976, p.12.

[41] *Health in New South Wales*, Quarterly Journal of the Health Commission of NSW, Autumn 1976 Vol. 16, No. 1, pp. 8-11.

When a person falls sick in our society it is usually a time for family and companions to express their sympathy and offer their support. If the sickness is contagious they may feel some alarm about their own health, but this does not usually extend to holding the patient morally responsible if they do catch it from him. There is an implicit acceptance that the microbes affecting human health are a frivolous bunch, whose behaviour is often incomprehensible to mere human understanding, since they appear to attach themselves arbitrarily to any individual. Germs are not regarded as a flaw in any human being, rather a flaw in the nature of existence itself.

Unfortunately, this generous stoicism is not extended to all diseases. Where most diseases are felt to be largely beyond individual control, the venereal diseases are often felt to be very much within individual control, since the sexual activity which has undeniably accompanied contracting VD is frequently of a type which traditional society condemns – whether adulterous, promiscuous, premarital, or homosexual. Although heterosexual and homosexual share the social problems associated with VD, the homosexual also experiences special problems related to the untenable position in which society places him.

Growing Acceptance of Homosexual Life-styles

The recent passage of a homosexual law reform bill through the South Australian Parliament is the first official recognition in Australia of changing attitudes towards homosexual behaviour. Additionally, the ACT Legislative Council has approved a proposed ordinance to legalise homosexual acts in private between consenting adults.

Such a change could be attributed to a number of factors – liberalising of western attitudes towards alternative lifestyles; growing militancy of gay groups throughout the world; the exploitation of bi-sexualism in the public entertainment field by artists like David Bowie, who has become a cult figure with the young; and so on. Bowie's approach has nothing in common with the ludicrous fairy acts of comedians, who hold 'poofters' up for public ridicule and rejection. Rather, it is a celebration of the immense variety and richness which fringe groups can bring to a culture.

Unfortunately, this recent acceptance of homosexuality as just one more life style or as a question of civil liberty, is mainly confined to younger age groups and does not really affect the attitudes of those who subscribe to the old normal deviant distinction. The removal of legal sanctions in itself is unlikely to change this.

Demystifying Sex

In [Jean] Astruc's *A Treatise of Venereal Disease* of 1754 he writes. "the venereal disease was sent into the World by the Disposition of Providence, either to restrain, as with a Bridle, the unruly Passions of a sensual Appetite, or as a Scourge to correct the Gratification of them." This is an opinion which is far from uncommon today. Some people still feel that 'people like that' deserve to get VD, as if any sex outside marriage were a naturally dirty act meriting punishment with an appropriate disease.

Thankfully, these attitudes are being replaced by a greater acceptance of sexuality as a natural and enjoyable feature of human life. The fact that a book like Alex Comfort's *The Joy of Sex* has sold over 5 million copies throughout the world is an indication of the attempt by large sections of the population to discover the true mechanics of human feeling and sexual response, and to escape the fantasised sexuality of popular media and entertainment.

As this demystification of sex continues and sex drops from the elevated position it has assumed this century to take its place alongside other human drives, it can be expected that the venereal diseases also will lose the aura of shame and myth.

However, this is speculation about some future age more enlightened then our own, and for the present, when someone contracts venereal disease, an overwhelming sense of shame and fear of exposure is the most likely reaction.

The Double Fear

If the two stigmas of homosexuality and VD come together, it isn't surprising to find gay people reluctant to seek treatment, and if they do, hesitant about admitting their sexual preference, since the censorious attitudes of some Australian citizens may be shared by a number of Australian doctors.

Some may know of the confidential VD clinics operated free of charge by the Health Commission, or of a doctor they consider to be sympathetic (perhaps gay himself), who is familiar with the various favourite haunts of the gonococci and spirochaetes in homosexuals. However, others who attend their local doctors or an unknown doctor may be afraid of revealing their homosexuality, and consequently may only be given routine screenings for heterosexuals. This leaves them vulnerable to the possibilities of long term untreated VD.

Urethral gonorrhoea and penile chancres appear in homosexual and heterosexual alike, but amongst homosexuals rectal and oral infections are also common and may have no obvious symptoms. If the doctor is not aware that his patient is homosexual (that homosexuals are easy to pick is just one of the

many myths), these other sides of infection may not be suspected. Even if his patient has come to him because of symptoms in these areas, they can easily be mistaken for something else if the possibility of VD has not been discussed.

The serological blood test for syphilis will probably not show positive until about one month after infection. Diagnosis before this depends on scrapings from the chancre, which may be in or around the rectum and go unnoticed. Similarly, though rectal gonorrhoea (proctitis) can cause severe pains, quite often there are few symptoms and a rectal swab and culture are required for diagnosis. Gonococcal infections of the throat are rarely suspected or diagnosed, and reports from overseas suggest that treatment may require a higher dose of penicillin than a urethral infection. The two infections often accompany each other in both homosexuals and heterosexuals, and treatment for the urethral infection will not necessarily cure the throat infection.

The Health Commission's VD clinic staff are naturally more familiar with every manifestation of VD than most private doctors since this is the specialised field in which they work every day, and all new developments in diagnosis and treatment are closely observed. People who come to the clinic for a check-up are encouraged to be totally honest about their sexual contacts, and assured of total confidentiality and a sympathetic non judgemental approach by the staff. Unfortunately, there are still many people who would reject the idea of visiting the clinics, on the grounds that they are institutionalised and part of a system which may want to punish them in some way. This anxiety is particularly strong amongst gay groups, since they fear that this branch of the public service may have links with that other one they have good reason to avoid, the police.

VD and Health Education

The damage done by the old terror campaigns, which promised via public toilet walls insanity and death to the VD victims, and offered chastity as the only protection, will take a long time to repair, but recent efforts to alter public attitudes to VD through health education appear to be proving worthwhile. One approach was via a racy poster which was distributed widely through the state, including display in public transport. It has attracted the attention of not only the public but also other Departments of Health, who have requested permission from the Health Commission of NSW to use the poster throughout Australia and in New Zealand.

In keeping with recommendations of the World Health Organisation at the 28 World Assembly concerning contact with high risk groups for VD education, a programme was run one night for gay guys at the Wayside Chapel in Kings Cross. Various information was provided via talks and a sex education film about homosexual relationships, and there was plenty of opportunity for frank discussion. If the contact made on such a occasion alleviates some of the anxiety felt about VD and produces a sounder basic knowledge of VD in a few homosexuals, hopefully they themselves will either consciously or unconsciously be continuing that night's programme amongst their group.

Numerous sessions are organised for school pupils and student teachers with the cooperation of teachers' colleges and schools, in recognition of the importance of involving the young and their educators in any process of social change.

Fear of Exposure

To imagine that homosexuals will eventually receive treatment even if a doctor does overlook the initial signs is to forget the double fear of VD and homosexuality. Many homosexuals lead a totally divided life, having a conventional straight role with family and friends – a role which often leads to unhappy marriage – and then furtively pursuing casual sexual encounters in public parks and toilets. Here the chances of contracting VD are great. Such a person, having caught VD, lives in constant fear of exposure as a homosexual and having his intricate network of deceit and pretence brought crashing down. Can he really be sure that the stated confidential treatment of VD will remain that way, particularly when he knows only too well that the law makes homosexual behaviour a criminal act?

Probably he will delay seeking help until such time as urgent symptoms force him to treatment, a situation which unfortunately does not arise with syphilis (and sometimes gonorrhoea). The symptoms of syphilis, though often quite florid in the secondary stage, rarely produce severe signs of illness. The headache and fever can easily be dismissed as signs of flu. The period over which a person might be aware of syphilis by way of a sore on the genitals or a secondary rash is usually quite brief, the more deadly later symptoms emerging after years of apparent good health.

It is interesting to speculate that a great many late syphilitic patients suffering from brain or heart damage may have been homosexuals who feared taking appropriate action to terminate their disease.

Many reports suggest that there has been immense rise in the incidence of syphilis amongst homosexuals in the past 20 years – from 17% of total reported cases of syphilis in the early 1950s, to over 70% in the

1960s. It would be naive to attribute this enormous rise solely to a great increase in homosexual behaviour, without reference to the social factors involved.

Of course there will be an increase in the number of people engaging in homosexual acts if much of the fear and guilt is removed, as has happened in younger age groups in recent years. However, this could scarcely account for such a massive increase in the proportion of syphilis amongst homosexuals. It is more likely that much homosexually acquired VD was treated in the 1950s under the guise of heterosexually contracted infection.

More importantly, the figures also suggest that many simply may not have sought treatment, for fear of reprisals in a social setting far more repressive than ours now (at the time of the communist witch hunts in USA homosexuality was a convenient slur, all other means failing).

A Question of Social Responsibility?

This widespread occurrence of VD, and syphilis in particular, amongst homosexuals can in part be related to the peculiar situation in which they are forced due to social rejection. Some homosexuals resent the failure of the vast bulk of society to comprehend their situation and consequently feel no responsibility in return, even towards other homosexuals. The need for companionship which all individuals experience, especially those locked out of conventional marriage (not to mention those locked in!), frequently leads to sexual encounters with numerous partners.

Such a forceful need combined with a held unconscious resentment for a society which seems determined to obstruct all but a narrow range of human affections, can lead an infected person, who often refuses to admit the possibility of his infection, recklessly in pursuit of sexual contacts regardless of the possible consequences. Because homosexuals, like heterosexuals, are denied the possibility of social approval of their liaisons, it is not easy to condemn such behaviour.

Our society has an ethical tradition based on a concept of shared responsibility, each person giving and expecting in return a high degree of respect for the rights of the individual. It is unrealistic to expect all homosexuals to endorse this concept, since their sexual rights are not observed by society.

Though the problem of knowingly transmitted VD is by no means confined to homosexual groups, since many heterosexuals also do so for a variety of reasons, society cannot reasonably condemn homosexuals in this category as antisocial, since society has never taken the vital step of incorporating the homosexual into its framework.

Anyone diagnosed as having one of the venereal diseases is asked by their doctor to tell their sexual contacts so that they can also be treated. Obviously this poses a number of problems. If the sexual encounter was a casual one it may not be possible to trace him again. If the VD patient wishes to conceal his infection, through shame, envisaged conflict with a regular sex partner, or fear of exposure as a homosexual, it is difficult to persuade him to inform his contacts or allow someone else to do so for him. The Health Commission's clinics employ social workers who assist in contact tracing but at best it can only partially succeed while VD retains its social stigma.

Social Change is Fundamental to Eradication

Both gonorrhoea and syphilis are easy to cure with appropriate doses on penicillin, and for certain recalcitrant cases or for those allergic to penicillin there are always alternative drugs. Because of this extremely effective treatment schedule, control of the venereal disease is not a problem for medicine but a problem for society.

If everyone in the early stages of venereal disease could be given treatment before they passed it on to others the problem would be eliminated.

While sex within marriage is the only socially sanctioned form of sexual activity and admitting a venereal infection invites social disapproval, VD will remain with us and out of control. For homosexuals the problem is acute, since they are living within a society which not only condemns but interdicts by law their right to sexual expression in their own way.

2.6.4 CAMP NSW's Letter to the NSW Minister for Health, Kevin Stuart, dated 12 July 1976

Deputation

I write to seek an appointment with you for a deputation of two or four representatives of CAMP NSW.

CAMP NSW wishes to discuss with you the situation regarding the health of homosexuals in New South Wales.

Specifically, we wish to discuss the recent action of the Health Commission in withdrawing from circulation an article on homosexuals and venereal disease (which was the subject of a news release, a copy of which we forwarded to you). We believe that, in the interest of fighting this disease, the article should be re-published.

We hope you will be able to arrange to see our deputation in the near future.

2.6.5 Letter from NSW Minister for Health, Kevin Stuart, dated 5 August 1976

Thank you for your recent letter in which you asked for a meeting with me to discuss the question of publication by the Health Commission of NSW of an article on homosexuals and venereal disease.

At this stage, I am unable to set aside a time to meet you because of the very heavy schedule of commitments I am faced with as a result of my new appointment to this office.

2.6.6 Tribunal letter to NSW Minister for Health, Kevin Stuart, dated 4 October 1976

A panel of prominent people will compose the above tribunal. They will hear evidence of instances of discrimination (specific and general) from homosexual people on the Saturday. There will be counsel for each side in all cases presented. On the Sunday the tribunalists will hand down a report, with recommendations, based on the evidence.

The withdrawal of *Health in New South Wales*, volume 16, number 1, autumn 1976, but in particular the article 'A Serious Aspect of the Gay Life', by Stephen Ives, will be presented as evidence of discrimination against homosexual people at the above tribunal.

We would like to invite your department to submit a written statement stating reasons it believed pulping of the above issue not to be discriminatory.

2.6.7 Letter from NSW Minister for Health, Kevin Stuart

I refer to your communication of 4 October 1976 in which it was suggested that a written explanation of a decision made by the Health Commission of NSW, concerning its publication *Health in New South Wales* should be submitted to the forthcoming Tribunal on Homosexuals and Discrimination.

Careful consideration has been given to your request, but the view of the Health Commission, with which I concur, is that as publishers of the magazine it has the right to edit the contents of its publication without explanation to other organisations.

2.6.8 Today

The TWG wrote to the Health Department of NSW on 15 July 1991 as follows:

I hope you can help me with a query about how official attitudes towards the health care of homosexuals have changed since the 1970s.

In 1976 the NSW Health Commission journal published an article 'A Serious Aspect of the Gay Life; VD, Homosexuality and Social Attitudes' (*Health in New South Wales*, vol 16, 1, 8-11). This quite positive article met with the disapproval of the Health Commissioners and the then Minister for Health, and 25,000 copies of this issue of the journal were destroyed.

The case was one of numerous cases considered at the 1976 Tribunal on Homosexuals and Discrimination (the pertinent extract from proceedings is enclosed).

At present a research group is, as social history, tracing how official and social attitudes may have changed since then. We would be very grateful for any brief comments you may have on Health Department policies today towards the health care of homosexuals.

David Lowe, Director of the NSW Health Department's AIDS Bureau responded on 21 August 1991 as follows:

> I refer to your letter in regard to current Health Department policies towards the health care of homosexuals.
>
> In general terms, the Health Department is bound by the provisions of the Anti-Discrimination Act of 1977, which make it unlawful to discriminate in the provision of goods and services on the basis of sexual preference. Furthermore, Section 22 of the Health Administration Act of 1982 sets out a general confidentiality provision which applies to any information as part of operating within the public health system. These two Acts form a broad basis for the protection of the civil rights of homosexuals in the provision of health services. Complaints of discriminatory treatment can be addressed to the Department's Complaints Unit, or to the ADB.
>
> In the context of HIV/AIDS, I would suggest that we find a case study of the public health system operating at its best or worst. As a recently arisen infectious illness (the first to appear in an era of legislated civil rights) HIV infection has induced fear among some health care workers, particularly the ill informed, and this has also sometimes been accompanied by stigmatisation and discriminatory practices. Inevitably, the high proportion of homosexual men among the AIDS cases reported to date has led to the false impression among some people that AIDS is a 'gay disease'. The ADB is currently conducting an inquiry into HIV/AIDS related discrimination which should provide useful documentation of the practices and policies of health service providers in this regard. An ongoing process of staff training is being conducted by the Department to address theses issues, along with infection control procedures and policies. As a result the incidence of AIDS-related discrimination in health care settings in recent times has been reduced significantly.
>
> On the positive side, the urgency of HIV/AIDS as a public health problem has galvanised an effective response from the public health system. The National HIV/AIDS Strategy released in 1989 and endorsed by the States, acknowledged the significant positive role that community organisations working with homosexuals, prostitutes and IV drug users have to play in AIDS program delivery. At the same time, it endorsed the World Health Organisation Global Program on AIDS perspective that the effective control of AIDS and maximising civil rights go hand in hand.
>
> In practical terms in NSW this has led to a 'partnership' approach in which affected groups in the community have been both consulted and actively involved in the planning and delivery of many AIDS education, prevention, treatment and support programs. This approach, and the primacy of prevention as a public health strategy in the absence of a vaccine for HIV or cure for AIDS, has also led to the production and dissemination of a wide range of resources and programs which deal in explicit terms with sexual and drug use practices. Some of this material has been produced by the Department of Health directly, and some through funded organisations such as the AIDS Council of NSW. These programs and resources have attracted international commendation, and in general reflect a brave and principled bi-partisan stance adopted by both Commonwealth and State governments.
>
> I have included for your information a selection of resource documents which have been produced in response to HIV/AIDS in NSW, and I'm sure that you will agree that they provide tangible evidence of a significant shift in policy and practice since 1976, and the withdrawal of Vol. 16 No. 1 of *Health in New South Wales*.
>
> Thank you for your interest in this matter. I hope that these comments will be of use to your research project.

The NSW Department of Health's Health Information and Translation Services has since 1976 published a number of publications which show a more positive attitudes toward homosexual women and men.

Girls Growing Up: Relationships in Adolescence, published in June 1986, states that:

> During their teens, most girls begin to develop particularly close relationships with other girls and with boys. In some ways, it's time when you can discover the world together.
>
> It's worth thinking about what you might value in a friendship or relationship.
>
> • Do you like each other?
> • Do you have fun together?
> • What interests do you have in common?
> • Do you care about each other – about what happens and how you both feel at any time?
> • Can you listen to each other?
> • Can you talk to each other?
> • Do you both enjoy spending time with other friends of the same or the opposite sex?
> • Are you loyal to each other? Is the friendship more important than fitting in with other people's ideas?
>
> Wanting to be physically close comes naturally when people care about each other and are attracted to one another. Kissing, cuddling, stroking, holding, hugging and even teasing, can all be ways of showing friendship.
>
> Sometimes sexual feelings are a part of this. With some friends, sex may become part of the friendship. With others, sex won't be an issue.

The Health Commission of NSW, Division of Health Promotion published in March 1982 two booklets dealing with *Boys Growing Up*. In part 2, *A Guide to Relationships in Adolescence*, it states that:

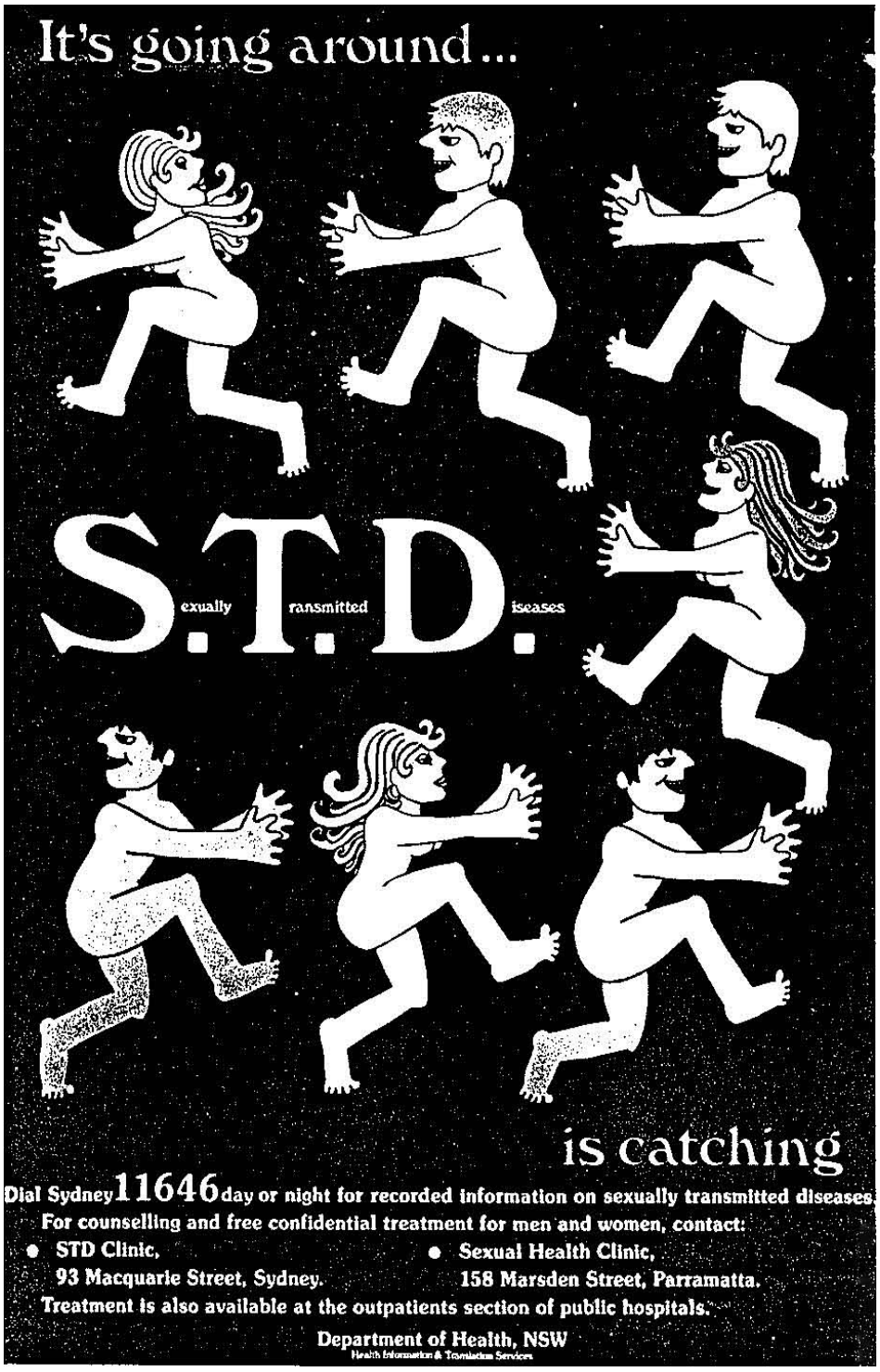
> During adolescence, your sexuality is developing. You might be sexually attracted to other boys or men – this is normal, and doesn't necessarily mean that all your future sexual relationships will be with other males. Some boys who feel attracted to each other decide to have sex together, others don't. Some realise that they are attracted to other males and not to females – they are homosexual, or gay. Others are attracted to both male and female – they are bisexual. Most are attracted to females – they are heterosexual. Don't label yourself – the label probably won't stick anyway.
>
> If you think you might be gay, the attitudes of many people can create difficulty for you. Homosexual acts are at present illegal in NSW. You may need to talk to someone – the Gay Counselling Service [Gay and Lesbian Counselling Service] (Sydney (02) 211 1177) [319 2799] is available for this purpose.

The Sexually Transmitted Diseases's prevention poster (see page 66), which was produced in November 1987 by the NSW Department of Health, now also includes two men chasing each other.

Included with the above letter were included the following brochures and comics:

- Help stop AIDS: Questions young people ask about AIDS.
- Help stop AIDS: Anyone can get HIV.
- Don't Dump Fits: The safe disposal of needles and syringes.
- AIDS/HIV What is AIDS?, What is HIV?, Needles and Syringes, Sex, Oral Sex, Mother to Baby, You Can't get AIDS from … – specifically directed at members of the deaf community.
- AIDS Virus Test – specifically designed for low-literacy members of the community.
- AIDS, Sex – be safe – again specifically for low literacy.
- Over 18 – Streetwize comics on various situations young people get into.

2.6.8.1 Current NSW Department of Health STD Poster [42]



[42] There were four posters in this series. The first was directed to Venereal Diseases; when the term Sexually Transmitted Diseases was adopted, the poster was altered from 'Its going around VD' to 'Its going around STD'. The figures, often referred to as the Dancing People, were alternately male and female. A frieze design was also produced, for use in public transport buses. The Health Commission and the public transport authorities then agreed to introduce a variation, with two male figures in succession. The frieze was not similarly varied.

… can you, a homosexual, possibly perform such and such a duty in the efficient manner in which we heterosexuals can?

2.7 Interview of Homosexual by Postmaster General Department
(Now Australia Post)

2.7.1 Presentation to the Tribunal on Homosexuals and Discrimination on 27 November 1976.

2.7.2 Statutory Declaration by Peter Bonsall-Boone, Exhibit 26, dated 22 November 1976 and witnessed by Peter Trebilco JP.

2.7.3 Today – TWG letter to State Manager, Australia Post, 24 November 1990; Letter from G Livermore for General Manager, Australia Post, dated 4 December 1990.

2.7.1 Presentation to Tribunal

Mathews: And I now call on Peter Bonsall-Boone to read an interview.

Bonsall-Boone: The subject of this was my subsequent employment with the then Postmaster General's Department following my sacking from the church. Reads Exhibit 26.

Mathews: Thank you very much.

2.7.2 Statutory Declaration by Peter Bonsall-Boone

EXHIBIT 26

Statement by: Peter Bonsall-Boone
To: Tribunal on Homosexuals and 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 New South Wales on 31 October 1972. (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.

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? [43]

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.

And I make this statement conscientiously believing the same to be true, under the provisions of the Oaths Act 1900. Declared at Balmain. This 22 day of November 1976.

2.7.3 Today

The TWG wrote on 24 November 1990 to the State Manager of Australia Post, the following:

In November, 1976, a Tribunal on Homosexuality and Discrimination heard evidence on a range of issues where discrimination against homosexual men and women was perceived.

After 14 years, a wide range of the issues raised before the Tribunal have been rectified – I mention the NSW Anti Discrimination legislation as one example. It is the intention of a number of those who were responsible for the setting up of the Tribunal to now contrast all the matters raised in 1976.

With his express consent, I refer in particular to the case of Mr Peter Bonsall-Boone, since two matters arise from this incident.

On 23 February, 1973, Mr Bonsall-Boone was interviewed by the District Postal Manager, Metropolitan No 6 District, with a view to employment as a clerk in a suburban Post Office. He reported to Darlinghurst Post Office, and completed an application form, at the request of the Acting Postmaster.

One section of the application form required information as to any prior criminal convictions. Mr Bonsall-Boone provided details of two convictions, in 1960.

The Acting Postmaster recognised Mr Bonsall-Boone, from a television interview on the ABC series, 'Chequerboard'.

He was not employed, as it was thought wise to protect him from the "taunts and ridicule of workers and members of the public".

I would appreciate your advice as to whether Australia Post's recruitment policies are such that a similar case would produce a similar reaction?

Australia Post's Equal Opportunity Section responded 4 December 1990 as follows:

Your letter, dated 24 November 1990, regarding Australia Post's recruitment policies in relation to the employment of homosexual men and women, has been received and the following information is provided.

In 1977 the then Australian Postal Commission endorsed a policy of equal opportunity which prohibited all forms of discrimination in employment, including sexual preference. Since that time a Sexual Harassment Policy has been adopted (in 1982) and we are required to comply with the Federal laws dealing with discrimination in employment. A widespread campaign is currently under way to introduce a Harassment Policy and complaints process dealing with harassment rather than limiting the Corporation to

[43] "… telegram delivery officers" at this time, were invariably teenage males.

a policy on sexual harassment.

With regard to the matter of prior criminal convictions, Australia Post policies reinforce the position that employment cannot be denied because of a criminal record unless the nature of the record is such that it poses a real threat to the security and safety of our service operations and Australia Post Staff and customers.

I hope this satisfies your request. Should you require further information please contact Mr Gerard Livermore, EEO Coordinator, Personnel Department on the above phone number or in writing.

… particularly in secluded toilet areas … they soon become defaced and mutilated …

2.8 Actions of the New South Wales Public Transport Commission

2.8.1 Letter from CAMP NSW to Mr J. A. Wierzbicki, Marketing Services Manager, NSW Transport Commission, dated 7 September 1976.

2.8.2 Letter from Dr A.M.Z. Walker, Senior Medical Officer, Sydney Venereal Diseases Clinic, dated 9 September 1976.

2.8.3 "Gays Need A Blood Test …" poster.

2.8.4 Letter from J.A. Wierzbicki, Marketing Services Manager, Public Transport Commission of NSW, to Michael Glass, dated 13 September 1976.

2.8.5 Letter from CAMP NSW to Mr J.A. Wierzbicki, Marketing Services Manager, Public Transport Commission of NSW, dated 5 October 1976.

2.8.6 Letter from Public Transport Commission of NSW, to Michael Glass, dated 18 October 1976.

2.8.7 Letter from the Tribunal on Homosexual and Discrimination to Peter Cox, NSW Minister for Transport and Highways, dated 1 November 1976.

2.8.8 Statement of alleged discrimination by the Public Transport Commission of NSW, dated 30 October 1976, Exhibit 13.

2.8.9 Presentation to the Tribunal on Homosexuals and Discrimination on 27 November 1976.

2.8.10 Letter from Peter Cox, NSW Minister for Transport and Highways, dated 22 December 1976.

2.8.11 Today – TWG letters to State Transit and City Rail: a division of State Rail, 15 July 1991; Letter from City Rail, 31 July 1991; Letter from State Transit 7 August 1991.

2.8.1 Letter from CAMP NSW to Mr J A Wierzbicki, Marketing Services Manager, dated 7 September 1976:

Following the conversations between Mr David Solomon, Dr Walker of the Government V.D. Clinic and me concerning the attached poster, I would like officially to obtain the permission of the Public Transport Commission to put these notices in the men's toilets of railway stations in the Sydney Metropolitan Area.

In doing so I would like to point out that the notice does not mention any other organisation than the Government VD Clinic, that nowadays syphilis is most likely to be picked up by homosexual acts, and that a significant proportion of those who are likely to have homosexual contacts are also married. These facts can also be verified by Dr Walker of the Clinic.

In the light of these facts, the sign that we propose to have in your toilets would perform a valuable public service to the whole of the community. I therefore trust that you will give the request prompt and favourable consideration.

2.8.2 Letter from Dr A M Z Walker, Senior Medical Officer, Venereal Diseases Clinic, Sydney, 9 September 1976

To Whom It May Concern

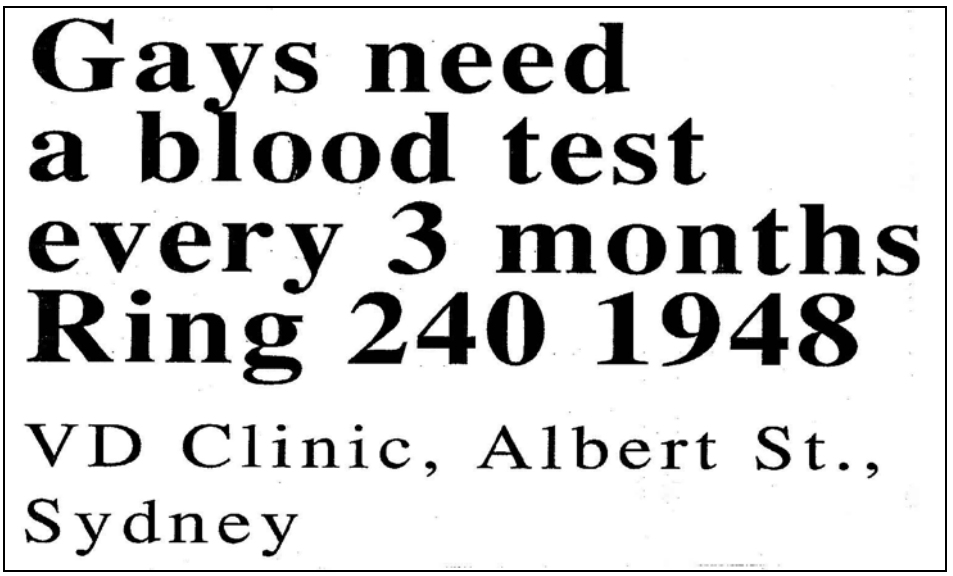
This is to certify that the information on this poster which reads:

"Gays need a blood test every 3 months
Ring 240 1948
V.D. Clinic,, Albert St.,
Sydney"

is correct.

Mr Michael Glass from CAMP NSW is responsible for the format of the poster. In my opinion he has done an excellent job.

2.8.3 Gays Need a Blood Test … – Poster [44]



2.8.4 Letter from Public Transport Commission of NSW, to Michael Glass, dated 13 September 1976:

Our reference MSS.JAW.DI

Further to your letter of 7 September, 1976 requesting permission of the Public Transport Commission

[44] See pages 228, 320 for full details of poster.

to put notices in the Commission's toilets. I suggest that, in the first instance, you should channel this request through the Department of Health. We would need to have that Department's written agreement before we could consider your request.

2.8.5 Letter from CAMP NSW to Mr J A Wierzbicki, Public Transport Commission of NSW, dated 5 October 1976

Your Reference: MSS.JAW.DI

Thank you for your letter, 13 September 1976. Enclosed you will find an official letter from Dr A M Z Walker, Senior Medical Officer of the Venereal Diseases Clinic, Health Commission of NSW.

I trust that with this documentation you will now be able to give prompt and favourable consideration to our request.

2.8.6 Letter from Public Transport Commission of NSW to Michael Glass, dated 18 October 1976:

Our reference 137647

Referring to your letter of 5 October and confirming telephone discussion; the Commission has given further consideration to your proposal but is not prepared to approve the display of posters as requested.

The exhibition of posters of any type is being discouraged, particularly in secluded toilet areas as we find that they soon become defaced and mutilated, notwithstanding any assurance given that regular replacements will be made.

It is regretted we are unable to assist you in your current campaign.

2.8.7 Tribunal Letter to Peter Cox, Minister for Transport and Highways, dated 1 November 1976:

Reference 137647 MSS.ISC.DI

A panel of prominent people will compose the above tribunal. They will hear evidence of instances of discrimination (specific and general) from homosexual people on the Saturday. There will be counsel for each side in all cases presented. On the Sunday the tribunalists will hand down a report, with recommendations, based on the evidence.

The Public Transport Commission's refusal to display Venereal Disease warning notices in the public men's toilets of railway stations in the Sydney Metropolitan Area will be presented as evidence of discrimination against homosexual people at the above tribunal.

We would like to invite your department or the commission to submit a written statement outlining your reasons for believing the refusal not to be discriminatory. At a later stage arrangements might be made to present your views orally on the actual day of hearing.

copy: Mr J.A. Wierzbicki, Marketing Services Manager, Public Transport Commission

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2.8.8 Statement of Alleged Discrimination [45]

EXHIBIT 13

We feel that the refusal by the Public Transport Commission to allow venereal disease warning notices to be put in the men's toilets in the metropolitan railway stations as a case of discrimination for the following reason:

[45] Statement re Alleged Discrimination by the Public Transport Commission, and the NSW Health Commission, dated 30 October 1976.

The Public Transport Commission is currently supporting a campaign by the NSW Health Commission to combat venereal disease transmission between heterosexual people. The commission's support for the campaign can be found in nearly every bus and train in the form of coloured posters.

Our efforts in controlling venereal disease amongst homosexuals has up till now not received any positive backing by the NSW Health Commission with the exception of the V.D. Clinic. In fact we believe that the staff of the Health Commission did share our concern for the epidemic proportions of venereal disease amongst homosexuals, by designing a poster referring to homosexuals, to be displayed like the present one on public transport. We believe that the Health Commission staff was instructed to destroy the designed poster and abandon the idea of doing anything for the homosexual community.

Further evidence of discrimination can be found in Exhibit 2 (see **2.6.1** page 58). The NSW Health Commission Journal *Health in New South Wales* carried a splendid article on venereal disease, but the Commission decided to pulp 25,000 copies of its journal, because of "… one or two sentences which tended to promote homosexuality as an alternative life-style."

[Our] efforts are continually frustrated by the above Commissions [who wish] to keep homosexuals in the second or third grade citizenship.

2.8.9 Presentation to Tribunal

Mathews: And Peter de Waal to refer to actions of the Council of the City of Sydney (see **7.5** page 227) and the Public Transport Commission in refusing to allow the distribution of posters.

de Waal: I [would] like to present Exhibit 12 and 13 to the tribunal. Twelve deals with the Council of the City of Sydney (see page 227) and 13 deals with the Public Transport Commission, although in essence they are very much the same matter, so I will read out a combined statement (reads **2.8.8** page 73).

Mathews: Thank you. I tender Exhibits 12 and 13 which set out the whole correspondence with those organisations, and also contain copies of the poster. And just for general information, that is the poster involved (displays poster).

2.8.10 Letter from Peter Cox, Minister for Transport and Highways, dated 22 December 1976:

T.75/1670

You will recall approaching me about the question of representation by the Public Transport Commission at the Tribunal which met on 27 and 28 November.

My enquiries have shown that the placement of certain notices in toilets on railway stations throughout the metropolitan area had been reviewed by the Commission, which adopted the view that only signs authorised and prepared by the Health Commission of NSW should be considered for display. As this had already been conveyed to Mr M Glass of CAMP NSW, the Commission refrained from submitting any written statement to the Tribunal.

2.8.11 Today

The TWG wrote to the State Transit Authority on 15 July 1991 stating that:

I hope you can help me with a query about the policies of the State Transit Authority.

In 1976 the former NSW Public Transport Commission refused a request to place posters (copy enclosed) aimed at combating sexually transmitted disease among gay men, while running such posters

aimed at heterosexuals. The matter was raised at the 1976 Tribunal on Homosexuals and Discrimination (the relevant extract of proceedings is also enclosed).

At present a research group is, as social history, tracing how official and social attitudes may have changed since then. Would the State Transit Authority sanction such discrimination today? Any comments you may have would appreciated.

Michael J Donovan, General Manager, Corporate and Community Affairs of State Transit responded on 7 August 1991 as follows:

I am responding to your letter of 15 July to State Transit seeking information on official and social attitudes concerning advertisements on public transport which relate sexual transmitted diseases among gay men. We understand that this is the topic of a social history project associated with your Department.

In brief, State Transit became a Statutory Authority in 1981, as the Urban Transit Authority, and back in 1976, as you correctly identified, it was part of the NSW Public Transport Commission.

Historically, Government buses have been carrying advertising since the mid 1930s.

As a general guide, State Transit follows the Advertising Federation of Australia codes of ethics and the standards of the FACTS Commercial Acceptance Division (Federation of Australian Commercial Television Stations). However, the area of sexuality is a contentious social issue with strongly held views on various sides. In an area of such sensitivity, State Transit's policy is necessarily reactive, responding to the views of our customers, the taxpayers of NSW, and to Government direction.

You may not be aware for example, that last year State Transit proposed to phase out alcohol advertising on our services in response to community concerns. The Government considered the proposal and concluded that it was inappropriate for a single government instrumentality to initiate policy on such a broad social issue. State Transit is therefore reducing the level, but not eliminating alcohol advertising.

State Transit's advertising contract provides the Authority with the right of veto over advertising submitted for display on buses and ferries. Nevertheless, we are not always able to anticipate public concerns.

For example, from the information attached, you see that last year [this material was **not** enclosed], State Transit had to defend advertisements for a brand of women's lingerie. Interestingly enough, shortly after we ran a series of underwear ads for men. There were no complaints over the male underwear ads. Because of the hostile reaction to the lingerie ads, we had to decline running the next series of ads.

At one level, we are exposed to the same community pressure as other owners of similar media, for example, roadside billboards. The argument here is that the wide community cannot choose to turn off, not to listen to or not read the advertising material. On-bus advertising, like billboards, can be seen by any person at any time with no restrictions. Particularly, our buses are often hired by schools for excursions and are also used each day on special school services. On another level, State Transit buses and ferries are administered by public funds. The community has a sense of ownership of public property and this attitude subjects us to high level of scrutiny.

I believe that there is a significant difference in attitudes in 1990/91 from those in 1976 and this is reflected in the content of State Transit's advertising. In the last 15 years, there has been a greater acceptance of different sexual perferences [*sic*] and lifestyles by the community. While there may still be a lot to be achieved in breaking down the barriers of prejudice, a greater degree of freedom is not only tolerated but perceived as acceptable.

The 1976 ads related to gays and VD testing. As you would be aware, the issue has now been made more complex by the effect on the community of the AIDS virus. The NSW Department of Health has a policy of open information on AIDS and other sexually transmitted diseases for all sexual categories. It is our opinion that the 1976 ad would now be acceptable for exposure on our buses, but that we might nevertheless face criticism from special interest groups in our society.

The TWG also wrote to State Rail on 15 July 1991 as follows:

I hope you can help me with a query about the policies of the State Transit Authority.

In 1976 the former NSW Public Transport Commission refused a request to place posters (copy

enclosed) aimed at combating sexually transmitted disease among gay men, while running such posters aimed at heterosexuals. The matter was raised at the 1976 Tribunal on Homosexuals and Discrimination (the relevant extract of proceedings is also enclosed).

At present a research group is, as social history, tracing how official and social attitudes may have changed since then. Would the State Transit Authority sanction such discrimination today? Any comments you may have would be appreciated.

Stuart Sharpa, A/Manager Executive Support Unit, City Rail responded on 31 July 1991 stated:

SM 8571

I am replying to your letter regarding CityRail's advertising policy.

Let me assure you that CityRail would not refuse to exhibit posters on the basis of sexual discrimination. However, because of the problems created by vandalism which are encountered when posters are displayed in secluded areas such as toilets, the exhibition of any type of poster in these areas is refrained from.

I must also inform you that as CityRail now operates on a business basis our advertising signage business has been transfered to the company Pearl and Dean. All approaches from charity and community groups must now be referred to Pearl and Dean to avoid any conflict with paying exhibitors. Approval to exhibit all posters must also be obtained from the respective Line Managers.

I trust this information will be of assistance.

… not conducive to the 'good morale of the Police force'.

2.9 Sacking of Western Australian Policewoman
2.9.1 Cross examination by the Tribunal on Homosexuals and Discrimination on 27 November 1976. 2.9.2 Discrimination statement of Judy, Exhibit 34. 2.9.3 Today – TWG letters to West Australian Police Union of Workers, 23 January, 27 March, 7 June and 7 August 1991; TWG letter to WA Police Commissioner, 25 November 1990; Letter from Western Australia Police Department, Chief Superintendent (Training and Recruitment) 17 December 1990.

2.9.1 Presentation to Tribunal

Mathews: The next matter relates to the sacking of a policewomen in Western Australia. You are reading that, are you?

Kennedy: No I am not, Brigitte Seega is.

Mathews: Well perhaps if Brigitte Seega would come and read that.

Seega: Reads Exhibit 34 (see page 77).

Mathews: Thank you.

2.9.2 Discrimination Statement

EXHIBIT 34

Discrimination – the Case of Judy

Judy, aged 23, was a member of the West Australian Women's Police Force. She is lesbian, but this fact was not known to her superiors until recently. In November 1975 Judy was asked to investigate a case of female delinquency in a girl aged 16. Judy met the girl, Jane, carried out the necessary formalities and the case was then handled by the Child Welfare Department.

Six months later, Judy met Jane at a party for lesbians and within a few weeks they started an affair. Another lesbian, presumably jealous of the relationship, notified the Superintendent of Women's Police, that Judy was living with a minor. Judy **was** living with Jane at this stage, but with the full knowledge and confidence of the Welfare Department. In fact, the statement had been made that "Jane had improved tremendously since she had been living in the lesbian relationship with Judy."

The Superintendent of Women's Police called Judy into her office, and in the presence of another senior woman police officer, requested that Judy resign. They maintained that since Jane was 'under-age', Judy

was behaving in a manner not conducive to the 'good morale of the Police force'. (The WA Police Code has a section on 'good conduct' which is sufficiently vague to include almost any behaviour).

If Judy did not resign, she was told that action would be taken. Foolishly, Judy sent in her resignation.

When she told her other friends in CAMP she realised that she had done the wrong thing and sought the help of CAMP in trying to rectify the situation.

A delegation from CAMP met with the Secretary of the WA Police Union on two occasions. The Secretary was reasonably sympathetic and took the matter to the Commissioner of Police. The latter refused to withdraw the resignation. The Police Union refused to take it any further. CAMP was prepared to take further action but on the request of Judy, decided to let the matter drop.

Judy has since found other employment but of course was not able to take with her a reference from the Police Force.

Graham A. Douglas
(for CAMP [WA])

2.9.3 Today

The TWG wrote on 25 November 1990 to the Western Australian Police Commissioner requesting that:

> In November 1976 a Tribunal on Homosexuals and Discrimination heard evidence on a range of issues where discrimination against homosexual women and men was perceived.
>
> The case of Judy, a lesbian and a member of the West Australian Women's Police at the time, was presented to the Tribunal.
>
> The Superintendent of Women's Police, in the presence of another senior female police officer, requested Judy to resign from the services because she was a lesbian and living in a lesbian relationship. Judy was informed that she was behaving in a manner not conducive to the "good morale of the Police Force". This resignation request was apparently based on the West Australian Police Code which had/has a section on "good conduct" included and is sufficiently vague to include almost any behaviour.
>
> After 14 years a wide range of the issues raised before the 1976 Tribunal have been rectified – I mention the NSW Anti-Discrimination legislation as one example. It is the intention of a number of those who were responsible for the setting up of the Tribunal to now contrast all the matters raised in 1976.
>
> I would appreciate your advice about the current content of the West Australian Police Code and the policy and practice regarding employment of openly lesbian and gay members of your Police Force.

The Chief Superintendent, (Training and Recruitment) responded on behalf of the Western Australian Police Commissioner on 17 December 1990 as follows:

> REF: 06699 90 P3 :AJP (3R)
>
> In response to your letter of November 25, 1990 I advise that the Western Australia Police Force is bound by the objectives of the State Equal Opportunity Act. Therefore, for all employment purposes, the question of a police officer's sexuality is not an issue, nor is it considered an issue.
>
> Because each case must be dealt with on its individual merits, it is not possible to give a definition of every likely circumstance which would constitute a breach of regulation 601 of the Police Force Regulations.
>
> This regulation requires police officers to not act in any manner that is:
>
> (i) prejudicial to the discipline of the force;

(ii) likely to bring discredit on the force; or
(iii) is unbecoming of a member of the force.

Any police officer who is disciplined for a breach of the Police Force Regulations has a right of appeal, thus ensuring a fair and just process.

Letters were written by the TWG to the Secretary of the West Australian Police Union of Workers during January 1991, March 1991 (see below) June 1991 and again during August 1991. The June letter also included: "We are looking forward to a speedy reply. However, we will assume that your organisation has no Equal Employment Policy or one which is not enforced if no response is forthcoming from you in the near future." To date no response has been received and the TWG's assumption, that the union has no EEO policy regarding the employment of openly lesbian and gay members of the police force, stands.

In November 1976 a Tribunal on Homosexuals and Discrimination heard evidence on a range of issues where discrimination against homosexual women and men was perceived.

The case of Judy, a lesbian and a member of the West Australian Women's Police at the time, was presented to the Tribunal.

The Superintendent of Women's Police, in the presence of another senior female police officer, requested Judy to resign because she was a lesbian and living in a lesbian relationship. Judy was informed that she was behaving in a manner not conducive to the 'good morale of the Police Force'. This resignation request was apparently based on the West Australian Police Code which had/has a section on 'good conduct' included and is sufficiently vague to include almost any behaviour.

It appears that the Secretary of West Australian Police Union was reasonably sympathetic and took the matter to the Commissioner of Police without success.

After 14 years a wide range of the issues raised before the 1976 Tribunal have been rectified – I mention the NSW Anti-Discrimination legislation as one example. It is the intention of a number of those who were responsible for the setting up of the Tribunal to now contrast all the matters raised in 1976.

I would appreciate your advice about the current policy and practice of the West Australian Police Union of Workers regarding employment of openly lesbian and gay members of the Police Force.

---

3. Homosexual Families

Tribunalists:
Dr Jim Cairns
Barry Egan
Senator Arthur Gietzelt

Counsel assisting:
Helen Coonan
Jane Mathews

Witnesses:
Mike Clohesy
Peter Trebilco

… homosexual couples cannot ever regularise that union …

3.1 Qantas Airways
3.1.1 Tribunal on Homosexuals and Discrimination letter to Sir Lennox Hewitt, Chairman, Qantas Airways Limited, dated 18 October 1976. 3.1.2 Letter from C.L. Hewitt, Chairman, Qantas Airways Limited, dated 22 October 1976. 3.1.3 Statutory Declaration by John David Greenway, dated 17 November 1976. 3.1.4 Statement by John Greenway regarding Qantas Airlines discrimination. 3.1.5 Possible counter argument by Qantas. 3.1.6 Qantas Airways Limited's *Official Bulletin*, Staff Travel Rebates on Company's Services, March 1974, Exhibit 14. 3.1.7 Cross examination by the Tribunal on Homosexuals and Discrimination on 27 November 1976. 3.1.8 Today – TWG letter to Qantas Airways Ltd, 24 November 1990; Letter from Qantas Airways Ltd, 6 December 1990; TWG letter to Equal Opportunity Tribunal, New Zealand, 4 May 1991; Letter from Department of Justice, Tribunals Division, New Zealand, 22 May 1991; TWG's 25 April and 4 June 1991 letters to Air New Zealand [46] (* 7 May 1991); British Airways (* 7 June 1991); Continental Airlines (* 12 June 1991); KLM Airlines (* 6 June 1991); Pan Am Airways (* 13 June 1991); Singapore Airlines (* 7 June 1991); Thai International.

3.1.1 Tribunal Letter

The Tribunal Collective wrote to Sir Lennox Hewitt, Chairman Qantas Airways Limited on 18 October 1976 as follows:

> A panel of prominent people will compose the above Tribunal. They will hear evidence of instances of discrimination (specific and general) from homosexual people on the Saturday. There will be counsel for each side in all cases presented. On the Sunday the Tribunalists will hand down a report, with recommendations, based on the evidence.
>
> The policies and regulations set out in Qantas Airways Limited's *Official Bulletin* 4-01, serial 41, issued March 1974, Staff Travel Rebates on Company's Services will be presented to the Tribunal as evidence of discrimination against homosexuals.

[46] * Denotes response received from the company concerned on the date stated.

We would like to invite Qantas to submit a written statement outlining its reasons for believing the policy not to be discriminatory. At a latter stage arrangements might be made to present Qantas views orally on the actual day of hearing.

3.1.2 Letter from Qantas Chairman

C L Hewitt, Chairman, Qantas Airways Limited responded on 22 October 1976 to the Tribunal letter as follows:

I acknowledge receipt of your letter informing me of discussions to take place on 27-28 November and of the intention there to present part of the Qantas *Official Bulletin*. The provision by the Company for staff travel accords with industry practice and the relevant IATA provisions.

3.1.3 Statutory Declaration

Statutory Declaration

I, John Daniel GREENWAY, Professional Engineer, of 1 Milsop Street Bexley in the State of NSW do solemnly and sincerely declare as follows:

1. I am the person referred to as Charlie Q in the document marked QAL and further identified by the holograph initials CQ and by the signature of the Justice of the Peace before whom this declaration is made.

2. I affirm that the contents of the aforementioned document are a true and accurate record of those rules of Qantas Airways Ltd, dealing with Staff Travel Rebates.

3. I further affirm that the opinions I express in the aforementioned document represent my feelings of annoyance and of being the object of discriminatory regulations.

And I make this solemn declaration conscientiously believing the same to be true and by virtue of the provisions of the Oaths Act of 1900-1953.

Subscribed and declared at Sydney
this Seventh day of November
one thousand nine hundred seventy six
before me
Peter Trebilco JP

3.1.4 Statement of Discrimination Against Qantas

Statement by: Charlie Q
To: Tribunal on Homosexuals and Discrimination
Identification code: QAL

1. Qantas Airways Ltd in their *Official Bulletin*, Staff travel rebates on Company's Services (ref. 4-01, serial 41, issued March 1974) a copy of which is attached to this statement, and which is identified by the holograph initials CQ and those of the Justice of the Peace before whom the accompanying Statutory Declaration was made, makes provision for two classes of people:

1.1 those who are married;

1.2 those who are single.

2. A married member of staff can travel complete with the whole family as often as she or he wishes; also the spouse and/or children can travel unaccompanied on rebated travel without limit.

3. The single employee is given some privileges not accorded to married employees, that is, **one** trip **once** a year for **one** parent **or** brother **or** sister (unless both parents are retired in which case both may travel).

4. Homosexual employees who are partners in a relationship fall between these categories:
4.1 their relationship does not have legal status to allow the partner to enjoy the privileges offered to the spouses of married employees,
4.2 when they go on holidays they may not wish to go with parents or siblings; but in order to go with the partner, full fare must be paid for the partner!

5. The single, heterosexual employee can regularise and publicise a relationship, and immediately becomes eligible for such Travel Rebates; this course of action is never available for homosexual relationships.

3.1.5 Counter Arguments Given Against Qantas

Qantas Airways Ltd

Counter – argument against reasons given by Qantas in a letter by the Chairman, Sir Lennox Hewitt.

IATA Regulations require that charges be made for alcoholic drinks and headsets in the Economy Class of travel.

However, because it provides the company with a commercial advantage to do so, Qantas has filed a formal notice of withdrawal from this Regulation. This move was announced by the Chairman, Sir Lennox Hewitt, early September 1976.

The conclusion is obvious: Qantas is not obliged to abide by such IATA Regulations as do not suit the Company's purposes. That Qantas chooses to retain the Regulation pertaining to Staff Travel must therefore brand the Airline as **discriminatory**!

CQ

3.1.6 Qantas Airways Limited Official Bulletin

EXHIBIT 14

Qantas Airways Limited **Ref: 4-01**
OFFICIAL BULLETIN **Serial 41**

Issued Mar 74

Subject: Staff Travel Rebates on Company's Services

Policy/Practice

1. Travel on the Company's services, but subject to overriding commercial considerations, shall be available to employees, retired employees and their eligible dependents, parents, brothers or sisters at rebated rates for holiday and recreational purposes.

2. The regulations definitions and general conditions of the Staff Rebate Scheme are as follows.

Regulations

Rebate Concessions

1. Staff and Dependents

Staff and their eligible dependents shall be granted travel at the rebate and reservation status set out below:–

Rebated Trips

Service	90% Rebate, Space Available	50% Rebate, Firm
From 1 to under 5 years.	Space available at flight sector departure.	No entitlement.
From 4 to under 10 years.	Space available at flight departure.	Subject, where anticipated commercial requirements permit, to confirmation 14 days before flight departure.
From 10 to under 15 years.	Space available subject where anticipated commercial requirements permit, to confirmation 7 days before flight departure.	As above.
15 years and over.	Space available subject where anticipated commercial requirements permit, to confirmation 14 days before flight departure.	As above.

Free Trips

Additional to rebated trips, one free trip on a firm booking basis subject, where anticipated commercial requirements permit, to confirmation 28 days before flight departure, shall be granted to:–

Technical Aircrew – after 10 years' service and each 5 years' service thereafter.

Flight Stewards – after 12 and half years' service and each 5 years' service thereafter.

Other Staff – after 15 years' service and each 5 years' service thereafter.

2. Parents, Brothers and Sisters of Single Staff with at Least 5 Years' Service

Rebated Trips

One parent or both if retired or dependent on the employee, or one brother or one sister shall be allowed one trip annually at either 90% rebate space available, or 50% rebate firm booking, at the employee's reservation status, provided the trip's purpose is to spend a holiday with the employee. (Editors note: No such restrictions are placed on wife and/or children of married staff). Travel may be taken separately from the employee when the eligible relative lives in another country to the employee and are [*sic*] [is] travelling to the employee's home.

Free Trips

Conditions also apply to an employee's free trip entitlement accrued after 1 January, 1970.

3. Parents of Married Staff with at least 10 Years' Service

Parents of a married employee with at least 10 years' service shall be allowed, upon becoming dependent or upon retirement, and each 5 years thereafter, one trip at 50% rebate firm booking, or 90% rebate space available at the employee's reservation status. Travel may be undertaken independently of the employee.

4. Re-employed Retired or Retrenched Staff

Retired staff, other than those covered in Paragraph 5 or retrenched staff who are subsequently re-employed shall be eligible for:–

During first 12 months of re-employment

Continuation of travel concessions accrued on cessation of former employment period.

After 12 months' service

Normal concessions on Company services.

Upon Retirement or Resignation from current employment

The greater of:

concessions accrued on cessation of former employment,
or
concessions accrued on cessation of current service.

5. Retired Staff and their Dependents

Provided the retired employee has not taken up employment with another airline, travel shall be allowed:
90% rebate space available, or 50% rebate firm booking, according to the employee's service at retirement as follows:
From 1 to under 10 years' service – one trip within 12 months after retirement;
10 or more years' service – unlimited travel.
Untaken free trips in credit may be taken at any time. These trips are granted on a firm booking basis, subject, where anticipated commercial requirements permit, to confirmation 28 days before flight departure.
The above conditions also apply to the employee's spouse and dependent children. (Editors note: There are no provisions here for the partner/lover of single employees).

Retired single staff may travel with one parent (or both, if retired or dependent on employee) or one brother or one sister on rebated travel or free trips (if the free trip has accrued since 1 January, 1970 as follows:–
From 5 to under 10 years' service – one trip;
10 or more years' service – one trip annually.
Where an employee is retired due to ill health and is unable to continue Company employment, but is permanently unable to work in another occupation outside the Company, one trip within 12 months after retirement at the rebate and reservation status applying to the last year of service. Such a trip be substituted with a free trip if the employee has such a trip in credit.

6. Widows and Dependents of Deceased Male Staff or of Deceased Male Retired Staff

Until a widow's remarriage and provided she does not take up employment with another airline, travel will be allowed at:
90% rebate space available, or 50% rebate firm booking, according to her husband's service as follows:
From 1 to under 10 years's service – one trip within 12 months of husband's death.

10 or more years' service – unlimited travel.

Untaken accrued free trips may be taken at any time. These trips are on a firm booking basis, subject, where anticipated commercial requirements permit, to confirmation 28 days before flight departure.

7. Staff Stationed in Manila

Additional to the normal concessions set down above, Manila staff with at least 3 years' service and their dependents are allowed one free space available return trip annually, but non-cumulative, to Hong Kong. When single staff have at least 5 years' service they may take one parent or one brother or one sister on this trip.

This concession shall not apply where travel extends beyond Manila/Hong Kong return, when normal rebate and conditions shall apply for the whole journey.

8. Staff Stationed in USA and Canada

Additional to the normal concessions set down above, USA and Canada staff, their dependents and parents shall be allowed free space available travel within the United States and Canada, according to the employee's service as follows.

Employees

After 3 months' service – unlimited travel.

Spouse and Dependent Children

After 3 months' service by employee – 3 trips each annually;
After 5 years' service by employee – 4 trips each annually;
After 10 years' service by employee – 6 trips each annually.

Parents

After 9 months' service by employee – 1 trip annually.

Parents may travel separately from the employee when they live in another State and are travelling to the employee's home to spend a holiday with the employee.

This concession shall not apply where travel extends beyond Honolulu westbound when normal rebate and conditions shall apply for the whole journey.

9. Terminated Staff

An employee who resigns may use concessions, on Company services for himself alone, up to 30 days after resignation. In all other cases, concessions are not available after termination.

10. Transfered Staff – Flight Staff to Ground Staff and Vice Versa

When a flight staff employee transfers to a ground staff position, his free trip entitlements shall be recalculated on the same basis as if he had been ground staff employee since appointment. Any free trips already taken, or accrued to be taken, shall be debited against the recalculated entitlement. Future accrual of a free trip shall be on the ground staff basis.

If a ground staff employee transfers to a flight staff position, the reverse shall apply.

Definitions

For the purpose of these regulations the following interpretations apply:–

'dependents'	means employees' or retired employees, spouses and/or employees' children who, at the commencement of an outward journey, are unmarried and under 21, or, under 24 if undergoing full time education in a recognised University or Technical College.
'single staff'	means single employees, or widowed or divorced employees without children eligible to travel, who have elected to be regarded as single employees. (Editors note: There is no provision here for same-sex relationships).
'retired staff'	means employees who retired on or after their normal retirement date or on an approved early retirement date including the date on which totally incapacitated employees, who are permanently unable to work, retire.
'retrenched staff'	means employees who have terminated under the Company's retrenchment conditions.
'retired parents'	means both parents are living, the father must be at least 60, retired from his normal occupation and not engaged full time in any business or employment, **AND** the mother, regardless of age, must not be engaged full time in any business or employment. when only the father is living, he must be aged 60 years or more, retired from his normal occupation and not engaged full time in any business or employment. when only the mother is living, she must not be engaged full time in any business or employment and her age, or that of her husband had he lived, must be 60 or more.

3.1.7 Cross Examination

Mathews: And Peter Trebilco is here to refer to discriminatory matter relating to Qantas Airways Ltd, Exhibit 14 and its policies relating to staff.

Trebilco: If the Tribunal is agreeable we would combine the Qantas matter, because although Qantas is body corporate, it is a government instrumentality and its policies are largely controlled by government policy, with the subsequent Exhibits which are:

- Exhibit 10 – Australian Public Service Regulations (see **3.2** page 97);
- Exhibit 10A – Letter from the Chairman Australian Public Service Board (see **3.2.2** page 96);
- Exhibit 23 – NSW Public Service Act and Regulations 1902 (see **3.3** page 102);
- Exhibit 20 – Australian Income Tax Assessment Act 1936-1975 (see **3.4.3** page 107);
- Exhibit 20A – Commissioner of Taxation Letter (see **3.4.2** page 106);
- Exhibit 18 – Australian Superannuation Act 1976 (see **3.5** page 110);
- Exhibit 19 – NSW Superannuation Act 1916-1972 (see **3.6.3** page 124);
- Exhibit 35 – NSW Stamp Duties Act 1920 (see **3.7.1** page 132).

In fact it is the complete block labelled Homosexual Families in the program. And I think, rather than reading each of the individual statements and the considerable number of extracts, if the Tribunal is happy, Michael and I would just like to talk very broadly to the tenor that runs through all these which says very simply that a single person, and the moment you come into the question of Stamp Duties Acts, Superannuation Act and things of that sort, a single person is discriminated against if they remain single. If, however, they decide that they want to regularise a heterosexual union by going through a form of marriage, then immediately they start getting the benefit of a large number of nice things. In the case of Qantas, some quite remarkable reductions in fares for the spouse or for other close blood relatives. The point we make about the

Qantas discrimination is that a heterosexual man or woman does have the legal alternative of regularising that union; homosexual couples cannot ever regularise that union and therefore could never benefit from that particular reduction in travel cost and as I see they are very considerable. They get as high as a 90% reduction. And when we move onto all the other Acts, we will find that there is absolutely no way in law that a benefit accruing either through superannuation or through one's own endeavours can be transmitted without considerable expense to any other person except one's spouse and I point out that in the superannuation Acts that invariably means wife; a working wife with a dependent husband is as discriminated against. In the Stamp Duties Act, wives again are the people who receive the benefit but also dependent children and certain other blood relatives are given the benefit, but once again the relationship must be regularised; it must be a marriage at law. In point of fact, the Commissioner of Taxation points out that de facto relationships have to be specifically looked at by the Commissioner for any benefit to flow to that remaining person of the union. But at no stage does the Commissioner indicate that a de facto relationship between homosexuals would even be possible. I think that covers the ground we would like to discuss.

Clohesy: Just to expand a little, particularly in relation to the Australian Public Service Regulations. All the matters we are discussing relate to financial benefits. But I would like to stress the point that the financial benefits are not merely the married officer who is the only person who receives the benefits, but the families, and that is specifically the wives and children of those officers. So the benefits extend beyond the officer her or himself. For instance, in relation to the officer themselves, there are certain allowances. And I thought I [would] just read one example which seems to be appropriate to the circumstances: "An officer who in accordance with his duty is required to camp out or is engaged in a camping party shall be paid the allowance in accordance with this regulation." There are certain allowances for those circumstances. There are allowances then for the removal of furniture, removal of a family from one location to another if the public servant is changed in location. They do receive benefits for transfering the family, family being defined as wives and children. There is an allowance in the Australian Public Service Regulations for relatives, to visit an officer who is taken ill in a place away from home; relative again is defined in the nuclear family sense.

Trebilco: And the last item is Exhibit 23, the Public Service Act of 1902 of NSW, I would particularly like to draw the Tribunalists attention to section 61 and 69E of the Act. These deal with the problem of double indemnity which plagues all public servants. If one is convicted of a felony or a large number of misdemeanours, one can also be punished as a public servant by the Public Service Board. But the problem is compounded for homosexuals, male homosexuals, in that if they were to indulge as a heterosexual in fornication or even adultery, they would not in any way be in breach of the civil or criminal law, but if a homosexual indulges in any form of homosexual expression, he has immediately breached the law and is guilty of felony. Anybody who knows that he has done this is also guilty of a felony by compounding, and so consequently those two sections of the Public Service Act of NSW would lie, I suggest, even more heavily on homosexuals than they do even on heterosexuals, because there is a whole additional range of offences that male homosexuals and female homosexuals, I fancy as far as misdemeanours are concerned, can commit in expressing their ordinary sexual preference and their own human sexuality, which areas are not available to heterosexuals.

Mathews: Getting back to the type of discrimination involved in the Qantas case namely …?

Coonan: Excuse me, just before you go ahead, there have been quite a few replies from these bodies and I think that it might be of some benefit if they were read. The first one relates to Qantas, and Qantas replied as follows (reads Qantas reply – see **3.1.2** page 83). That was all they said. There has been a reply from the Public Service Board in Canberra as follows: (reads letter from the Public Service Board up to and including paragraph 4 – see **3.2.2** page 96). And they have also invited a representative to contact Ms Wilenski, to discuss the matter. There has been a reply from the commissioner of Taxation (reads letter from the Commissioner of Taxation – see **3.4.2** page 106). There has also been a reply from the Commissioner for Superannuation, that is the Federal Commissioner (reads letter from the Commissioner for Superannuation – see **3.5.2** page 110). There has also been a reply for the State Superannuation Board (reads letter from the State Superannuation Board – see **3.6.2** page 124).

Trebilco: May I answer the point made about Qantas. The chairman points out that Qantas is bound by the IATA regulations, and I draw the Tribunal's attention to the fact that if he is bound or Qantas is seen to be bound by these regulations, they are presumably to be bound by all the regulations and in the case of alcoholic drinks and head-sets in economy travel, IATA regulations specifies that charges must be made. However, because it provides the company Qantas with a commercial advantage to do so, Qantas has filed a formal notice of withdrawal from this regulation. This move was announced by the chairman Sir Lennox Hewitt early in September 1976. The conclusion is obvious: if Qantas wants to abide by some regulations and not by others, that indicates that they can be discriminatory if they see fit. They can withdraw from a regulation if they want to and they have not done it in the particular case we raised.

Clohesy: I would like to make one quick comment in relation to the two Canberra replies. First of all, the Public Service Board, which states that it is not aware of any cases being brought to their attention stating that regulations have been applied in a discriminatory way against homosexual people. The point, of course, is that the regulations would not be applied because homosexuals are specifically excluded from the wording of the regulations. The regulations refer to married officers, wives and their children so there is no reason for a homosexual person to apply. They also commend themselves for removing discriminatory interpretation or application on the grounds of sex or marital status. While we would applaud that, we would point out that homosexuals are excluded, since we fit neither the sex nor the marital status category. The State government has chosen to use the word 'homosexual' in its Anti-Discrimination Bill, currently deferred by Parliament. Other legislators have used the term 'sexual orientation', but whichever is used, we fit neither sex nor marital status. In relation to the Commissioner of Taxation, they point out the availability of concessions is limited to spouse and always has been. They say these restrictions are some of many which the legislature has found necessary to place on the allowance of the concessions. I would wonder what "… has found necessary …" means in that context. And before any of the people present who are living in a homosexual relationship rush off to claim one of the people in the relationship as a housekeeper, I would like to draw their attention to the actual provisions of the Act and the words for "certain specified dependents", of course, are the crux of the matter. The only housekeepers which can be claimed as dependents are those caring for a child of the taxpayer less than 16 years of age, a dependent student less than 16 years of age, the spouse of the taxpayer, so homosexuals, in very rare circumstances, would fit any of those provisions. The student one would most apply to homosexual relationships. There are a number of relationships in which one or more of the partners are students, and if the Act was widened to include dependants who are students without an age bar, then many homosexual relationships would be able to claim dependency. We are not saying that benefits should be available where there is no dependency, but where there is dependency, there should be no discrimination.

Mathews: Just one issue, I suppose rather than question, much of this discrimination particularly in the area such as Qantas is not in fact against homosexuality per se, it is against anybody who is not living in a marriage relationship, so that de facto couples would equally, heterosexual de facto couples, would equally suffer.

Clohesy: The Commission of Taxation draws attention to that fact, of course, hoping that would detract from our argument. But, of course, it strengthens our argument. The basic reason for our discrimination is that society is only prepared to accept the nuclear family as the only legitimate life-style, but what we are arguing is that any life-style, any relationship should be accepted as equally valid, equally fulfilling. There should be no discrimination.

Coonan: I am particularly interested in the policy behind these various pieces of legislation. Do you consider that the exclusion of recognition of a relationship between two persons of one sex as being a bona fide domestic relationship, call it marriage or whatever, is just simply an oversight on the part of the legislators? Or do you think that community sensibilities were such that when legislation was passed that standards, or there would not have been support, enough support, to include homosexual relationships in the definition?

Trebilco: I think we could go back even earlier. I think a large number of these Acts date from the time when women at law were chattels of their husbands.

Coonan: Yes.

Trebilco: And needed to be protected, quite literally protected, they would have been totally destitute if these particular provisions had not been laid down. But it is interesting that in superannuation acts, for instance, the whole of the superannuation does not flow automatically to the widow. She gets a percentage of it which is fascinating, so because she is now widowed, she does have the level of need presumably and I would think that when this particular standard was set in the late nineteenth century and the early twentieth century homosexuality was being steadfastly ignored by everybody. I fancy that would be the reason.

Clohesy: If I can just add some words on superannuation, because there is a distinct discrimination in the provisions there. It is true that the spouse only receives a percentage of the superannuation paid, however she, and it is only she, receives that throughout the remainder of her life – that could be fifty or sixty years. However, in any other circumstance, the remaining superannuation benefits, if the contributor dies, are paid in a lump sum immediately on death. Now they are paid to anyone the contributor specifies but they are paid in a lump sum so there is no continuing benefit if there is a dependant left and there is no interest accruing as there is with benefits paid to widows.

Coonan: Just following on from your thought there, is it not an assumption behind this legislation that two persons of the same sex living together in a domestic bona fide basis, whatever, probably will not be as dependent as say a woman rearing children in a marriage? In other words probably two people who because of their union will not produce children and probably will not have those children as dependants can still stay in the work force, will not need the same deductions as a family.

Trebilco: Well I think you used the word presumption and I think that is exactly what it is. I do not think that the legislature has ever had cause to think about this. Their model is that of the dependent wife with a small family of children.

Coonan: And is it your view that there are certain homosexual relationships that have, if not equal, certainly a very significant, need to receive equal concessions and deductions?

Trebilco: Yes, I would say that. If these concessions and deductions are available, a large number of homosexual relationships could become much more valid and they would also remove this rather strange requirement that our society still seems to think is necessary, that one of the two people must be the breadwinner all the time. And the other one must never be the breadwinner ever and that seems to deny our society a vast number of useful skills, benefits, and creativity.

Coonan: One final question. Do you think that public awareness is now of homosexuality and perhaps a little less fear of what homosexuality means now means that there could be sufficient support for legislation recognising homosexual relationships as bona fide domestic relationships?

Trebilco: I cannot foresee whether that is the case in the community at large or not. I am still afeard that the leaders of the community are adopting other than up-to-date attitudes.

Coonan: Do you think that the legislature could lead public opinion in this respect, rather than endorse social attitudes?

Trebilco: I am quite sure that if the legislature were to grasp what they see as the nettle I think they would find it rather an attractive flower. And they would find much more support and very little antagonism indeed against any change of this sort.

Gietzelt: I think the point that is made about when the legislation was drawn up many years ago, this was not an issue and, of course, there are other forms of, in a sense discrimination. But I am not trying to elevate this form of discrimination in superannuation. But what happens in respect of a member of parliament, for

example, who is unmarried. He is still obliged to pay out an proportion of his salary in excess of 6-7% for superannuation. If he is married, or lives with his mother for example, and ceases to be a member of parliament, particularly by death, if he is involved in an ordinary heterosexual relationship then his widow, his spouse is entitled to draw a pension during her life time. But a member of parliament who is unmarried is not able to nominate a dependant to participate in the superannuation scheme. I wonder whether either of you would like to comment on the suggestion, when we did have this raised with us in the parliament because of a particular case, whether each person who pays superannuation should have the right to nominate a dependant, whether that would overcome the problem? Now that raises the question of permanency in relationships and things of that matter, but we would like to have your views whether by nominating a dependent, whether that would overcome most of the problems that you are faced with and whether, in fact, permanency would be sufficient for them to justify being able to participate in all of the benefits that would flow from a relationship and a superannuation payment.

Clohesy: I certainly think that is the way to overcome the problem. In fact, two years ago CAMP NSW suggested to the then Attorney General that a family register be set up, in which people who were living in relationships and had dependants could register their names simply for the purpose of claiming benefits of this kind. I do not think that permanency should come into it at all. If the people feel themselves to be in a relationship and there is a genuine dependency then the benefits should flow. I think the only question should be, is there real dependency. And not the assumed dependency that we have had with women, as Peter said, who have been assumed to be chattels. I think that would be a simple administrative arrangement which would cover the whole question.

Egan: Would you put into that bracket aged persons who would be living together for companionship and reasons of economy and you put them all in that one register?

Clohesy: Sure, yes.

Cairns: I hope you are right about converting nettles into flowers, but can I have an opinion from your own experience, (we are old enough to have one), on the changing attitudes?

Trebilco: I think attitudes always change if there is any constant process of education going on. A lot of education is usually accidental, and much of it is probably undesirable, but I think sexuality is being much more honestly looked at in our community than it was five, ten years ago. No longer, I understand, do television stations receive complaints from disturbed parents of the fact that there is a two or three year old little baby being bathed on a television commercial. Now ten years ago this was quite common for commercial stations to get that sort of complaint. They no longer come in, so I see that, for a variety of reasons, society is more able to live with human sexuality. Now when they accept human sexuality as being a very ordinary part of human beings, I think homosexuality will cease to be the bogey that it has been in the past. I think that is so.

Cairns: You think the sexual changes, the sexuality changes over the last decade or two then have some meaning?

Trebilco: Oh yes I am quite sure of that. I think they have created a great, a much greater honesty amongst human beings.

Cairns: One other point, we saw from an earlier witness the significance of a militant minority apparently. In the area of your experience, how do you feel the impact of these militant minorities is changing, if at all?

Trebilco: Well I think they have had an absolutely vital role in what is called consciousness raising, which is sometimes an overused word, but that's what I think most of the militant minority groups do, in that they force the population, the community at large to look at the standards the community has been adopting, fairly uncritically I think. I do not think any minority expects people to change their point of view overnight, would necessarily want people to change their life style. I think what most minority groups would ask that the

community looks at the standards it has been adopting very critically and is prepared to change those if there is a valid reason to do so.

Cairns: I meant the other way, like the Festival of Light. And the way their influence apparently was exercised. How do you feel the militant minorities working against change? Have they an effect today compared to the past?

Trebilco: I think anybody who tries to stop change has an incredibly difficult task. Once change starts it may be very slow but it tends also to be very ponderous. I think that the Festival of Light represents a perfectly valid point of view within the community, and that these people having decided that is the standard of behaviour they would adopt for themselves, have every right to do so. They have no right to force other people to accept their standards, any more than CAMP NSW would expect people to accept our standards.

Clohesy: I think the most disturbing thing in this state is that several prominent members of both leading political parties are members of the Festival of Light and stand up for the Festival of Light in public displays. That, to me, is extremely disturbing. And in fact before the previous elections we had the leader of one of the parties placing his party firmly behind the Festival of Light and the principles upon which it is grounded.

Gietzelt: But despite that, change is taking place.

Trebilco: Yes.

Gietzelt: Would you care to comment where do you feel, what avenues are best able to bring about that change. A militant minority can certainly set out to educate the community. Do you find any section of the media more receptive to this type of encouragement than others? For example, would you say that the television channels played a more significant part than the daily newspapers, or would you say that the ABC plays a more important part than the private stations? Any way to evaluate where the influence is exerted and benefits that flow from it?

Clohesy: We had hoped to have a statement on the media prepared for the Tribunal, but we were not able to do it. But if I to rank them in priority, in terms of the coverage and sensible coverage that the homosexual movement gets, then I would say that the ABC would be far on top which is why we are gravely disturbed by the current threats to it. It would be followed by commercial television, followed by the newspapers, followed by commercial radio. The last three being far below the ABC. So far as education is concerned, I am coming increasingly to the view that what the movement needs are full time people. These are very rare amongst the homosexual groups, simply for reasons of funding, there is just no funding available for it. And while all our work is done on a part time basis voluntarily, we cannot hope to manage the power and strength of the institutions which are opposing us, and which have massive money behind them.

Mathews: Well, thank you very much indeed. I notice that it is just after twenty past one, we are meant to adjourn for lunch at one. We have still got a series of miscellaneous cases. What I suggest we do is that we proceed until half past one and then we break then at whatever point we happen to be.

3.1.8 Today

The TWG wrote to the Managing Director, Qantas Airways Ltd Qantas on 24 November 1990 as follows:

> In November, 1976, a Tribunal on Homosexuality and Discrimination heard evidence on a range of issues where discrimination against homosexual men and women was perceived.
>
> After 14 years, a wide range of the issues raised before the Tribunal have been rectified – I mention the NSW Anti Discrimination Legislation as one example. It is the intention of a number of those who were responsible for the setting up of the Tribunal to now contrast all the matters raised in 1976.

Official Bulletin, Staff Travel Rebates on Company's Services (ref 4-02, serial 41, March, 1974) made provisions for two classes of employee: married; and single. Single employees received some privileges not accorded to married staff, but no provision was made for the partners of 'single' employees who were in a relationship.

Could you please advise me of the Company's present policy for homosexual female and male employees, in the case outlined, and in other issues, such as superannuation benefits?

M G Whitehouse, Corporate Solicitor, Qantas Airways Limited responded as follows on 6 December 1990:

I have been instructed to reply to your letter of 24 November 1990 to "The Managing Director".

The benefits available to Qantas employees are based on management policy decisions, and the Company is not willing to enter into discussions with members of the public on such issues.

In 1976 'Charlie Q' (see page 83) alleged that Qantas discriminated against homosexual employees by offering concessional travel only to the following classes of people: **Married staff**, their parents, spouse and dependent children; **Single staff**, their parents, siblings and dependent children. (It appears that Qantas was willing to recognise for concessional travel heterosexual **de facto** partners).
Current (1991) policy appears not to have changed in this matter. Concessional travel remains available essentially as above. 'Married employee' is defined as "Legally married employee or an employee living in a Company approved de facto relationship with a person of the opposite sex." [47] Concessional travel for a 'Single employee' remains available to him/herself, parents, siblings and children. [48]

On 25 April 1991 and again on 4 June 1991 the TWG undertook a survey of seven international carriers to ascertain if single employees have the same concessional travel privileges as married employees. It should be noted that with the exception of Air New Zealand none of the companies responded to our first request for information.

AIRLINE	RESPONSE
Air New Zealand Ltd	"I can confirm that single employees of Air New Zealand [not written on official letterhead] are offered the same concessional travel privileges as married employees." It was also reported in the *Sydney Star Observer*, 25 January 1991, number 149 that: "Air New Zealand has been called before an Equal Opportunity Tribunal [in New Zealand] for not extending privileges to gay staff." The TWG followed this up with a request from the above mentioned New Zealand Tribunal for the outcome of that hearing. We were informed that: "I have searched the Tribunal's records for such a case … and have been unable to find one."
British Airways	"… I confirm that British Airways allow single staff to nominate three close relatives for travel purposes these can be changed every twelve months. Married staff are allowed to nominate their spouse and children under the age of 24 years. I also confirm British Airways recognise de facto relationships."

[47] See: *Qantas Corporate Policies and Procedures Manual*, Ref: 5A-2, Page: 3 of 30, Serial: 803, Replaces: 619, Date: 8 July 1988.

[48] *Qantas Corporate Policies and Procedures Manual* 5A-2, 5A-3, and *Entitlements – Current Staff – Annual Concessions*.

Continental Airlines	"… I am unable to advise at this time the information you require. The companies policies and procedures manual is at present being printed."
KLM Royal Dutch Airlines	"… we would like to confirm that all employees of KLM Royal Dutch Airlines, regardless of their status, are entitled to the normal airline discounts as laid down in IATA Resolution 788. KLM does acknowledge de-facto relationships …"
Pan Am World Airways Inc.	"… the information you seek should be addressed to Pan Am's Head Office at New York. You may rest assured that an Internationally renowned company, such as Pan Am, would more than adequately be involved in granting equal opportunities to all of its vast number of employees."
Singapore Airlines Limited	"… unfortunately such information is not available to persons outside the Company. Travel privileges and allowances are at the Company's discretion and not under any award, and are therefore confidential."
Thai Airways International Ltd . . .	No response received.

… an unmarried officer who is … a member of a camping party …

3.2 Australian Public Service Regulations
3.2.1 Tribunal on Homosexuals and Discrimination letter to Sir Alan Cooley, Chairman, Australian Public Service Board, dated 25 October 1976. 3.2.2 Letter from Australian Public Service Board, Exhibit 10A. 3.2.3 Australian Public Service Regulations, Exhibit 10. 3.2.4 Today – TWG letter to Department of Prime Minister and Cabinet, 26 November 1990; Letter from Department of Prime Minister and Cabinet, 22 January 1991; Letter from Public Service Commission (PSC), 23 January 1991; TWG letter to PSC, 10 April 1991; Letter from PSC, 22 March 1991; For cross examination by the Tribunal on Homosexuals and Discrimination (see **3.1.7** page 88).

3.2.1 Tribunal Letter

The Tribunal Collective wrote to Sir Alan Cooley, Chairman, Australian Public Service Board on 25 October 1976 as follows:

A panel of prominent people will compose the above Tribunal. They will hear evidence of instances of discrimination (specific and general) from homosexual people on the Saturday. There will be counsel for each side in all cases presented. On the Sunday the Tribunalists will hand down a report, with recommendations, based on the evidence.

The following Australian Public Service Regulations will be presented as evidence of discrimination against homosexual people at the above Tribunal: 62(1)(c); 80A; 87B(1); 89(1); 89 (2) and (4) and (7); 90A(1)(a); 93; 95C(1)(c); 97; 97A(1); 98(1) and (2) and (3) and (4) and (5); 98AAA(3)(b) and(c) and(d) and(e); 98AA(1) and(1A) and(3); 98A(1)(b); 98AC; 101; 103A; 119(1); 119A; 119B; 130.

We would like to invite your Board to submit a written statement outlining its reasons for believing the above regulations not to be discriminatory. At a later stage arrangements might be made to present your Board's views orally on the actual day of hearing.

copy: Mr A A Street, Minister Assisting the Prime Minister in Public Service Matters.

3.2.2 Letter from R N McLeod, Acting Secretary, Australian Public Service Board, 23 November 1976

EXHIBIT 10A

I have received your letter of 25 October 1976, addressed to the Chairman, about the Tribunal on

'Homosexuals and Discrimination', 27-28 November 1976.

You have invited the Board to submit a written statement outlining its reasons for believing certain Australian Public Service Regulations not to be discriminatory.

You have referred to certain Australian Public Service Regulations which will be presented as evidence of discrimination against homosexual people at the Tribunal. This Office is not aware of any cases being brought to notice where it has been claimed that the regulations in questions have been applied in a way that discriminates against homosexual people.

The Board considers the concept of equal employment opportunity is integral to the personnel function, encompassing recruitment, selection, staff development and employment conditions. Some regulations, therefore at this stage have been amended or repealed to remove the possibility of discriminatory interpretation or application on the grounds of sex or marital status; further changes are currently being considered, including changes to regulations to which you have drawn attention. If you wish your views to be taken into account in the current consideration of changes to the regulations, you may wish to write to the Board about changes you consider necessary and the form such amendments should take.

If in the meantime you would like to discuss the Board's policies, you may wish to contact Ms. Wilenski, Equal Employment Opportunity Section, Public Service Board, Canberra.

3.2.3 Australian Public Service Regulations

EXHIBIT 10

62.-(1.)(c)	District allowance in any case where during furlough an officer remains in the district in respect of which allowance is payable or, in the case of a married officer, his family during his absence from the district, remains in that district.
80A.	For the purpose of payment of travelling allowance, a married officer or employee shall be deemed to include any unmarried officer or employee or a widower who is maintaining a home or supporting dependent relatives in circumstances which, in the opinion of the Board justify his inclusion.
87B.-(1.)	Where a married male officer who has not attained the age of twenty-one years is in receipt of an actual salary at the rate less than the minimum rate of actual salary payable to an adult officer occupying the office of Labourer or, if a higher minimum rate of actual salary is payable under a Determination of the Public Service Arbitrator to an adult officer occupying that office, the salary of such a married officer is less than that higher minimum rate, that officer shall be paid an allowance of an amount equal to the difference between the rate of actual salary to him and that minimum rate of actual salary or that higher minimum rate of salary, as the case requires.
89.-(1.)	An officer who, in accordance with his duty, is required to camp out or is employed in a camping party, shall be paid an allowance in accordance with this regulation. (2.)(a)(i) in the case of a married officer at a rate of $5.00 per day; or (2.)(a)(ii) in the case of an unmarried officer at a rate of $2.75 per day. (4.) Where an unmarried officer who is employed as a member of a camping party, pays an amount to retain lodging at the place at which he resides when not required out, the Chief Officer may authorise the payment to him of such amount as the Chief Officer is reasonable in the circumstances. (7.) For the purpose of this regulation unmarried includes widowed and divorced, and an unmarried officer who is maintaining a home or supporting dependent relatives in circumstances that, in the opinion of the Board, justify his being deemed a married officer shall be deemed to be a married officer.
90A.-(1.)(a)	An officer is entitled under regulation 119 of these Regulations to the actual cost of

conveyance of himself or of himself and his family from one place to another.

93. Where a person is appointed to the Service, whether or not he has previously been an officer or employee, and the place where he is required to perform his duties of his office is not in the city or town in which he was residing at the time of his appointment, the Chief Officer may authorise payment to the person of an amount equal to the cost of conveyance of the person and, if he is married, of his wife and children to that place.

95C.-(1.) Subject to this regulation, the Chief Officer may grant an allowance to an officer or employee stationed at a lighthouse in respect of each of his children attending a State or other school approved by the Chief Officer if–
(c) except in such special cases as the Chief Officer determines, the mother of the child remains at the lighthouse.

97.-(1.) Where a married officer is stationed at an office where the quarters provided are temporarily not available for occupancy, or where an officer, upon transfer, cannot enter into occupancy of quarters or private residence through unavoidable delay in transmission of furniture and household effects, and the officer is therefore obliged to reside for the time being with his family at an hotel or other house of accommodation, the Chief Officer may grant the officer an allowance equal to the difference between ordinary household expenditure and cost of board and lodging, but not exceeding half the cost of board and lodging for himself and family, unless the Board, having regard to the special circumstances of the case, otherwise approves.
(2.) In the case of a married officer transfered …
(3.) Where an unmarried officer who has been transfered or promoted to an office resides, upon commencing to perform the duties of the office, in a locality other than the locality in which he resided … the Board may … grant … an allowance, in respect of the expenses incurred.

97A.-(1.) Any officer classified as Postmaster who upon taking up duty in that capacity is not provided by the Department with residential quarters, and who is compelled to provide a house for himself and family, shall be paid in addition to salary an allowance at the rate of $48.00 per annum.

98.-(2.) A married officer whose wife and children reside with him at his station may be granted an amount equal to the amount by which the cost of the return fares reasonably incurred for travel between his station and the nearest capital city or destination of lesser distance, by his wife and his children (if any) who are under the age of eighteen years or who, being dependent on him, are certified by a duly qualified medical practitioner to be permanent invalids, exceed $10.00.
(3.) A married officer may be granted the cost of the return fares reasonably incurred by the officer for travel an amount equal to the amount by which between his station and the nearest capital city or destination of lesser distance, exceeds $10.00.
(4.) An unmarried officer may be granted the cost of the return fares reasonably incurred by the officer for travel an amount to the amount by which between his station and the nearest capital city or destination of lesser distance, exceeds $15.00.
(5.) An officer who selects or whose wife and children select to travel a greater distance than the distance between his station and the nearest capital city may be granted an amount equal to the amount which he may have been granted …

98AAA.(3.)(b) Where a child of the officer is receiving secondary education at a school at a place outside the prescribed isolated district and, as a result, lives away from the parents' home;
(c) the officer or his wife is during the school holidays that commence in the month of

December in a year away from the prescribed isolated district and authority has been given under regulation 98 of these Regulations for the reimbursement to the officer of an amount in respect of the officer's or his wife's fares for a journey to the nearest capital city or destination of lesser distance and return; and
(d) the child travels, during the school holidays, from the place at which his school is situated to the place at which the officer or his wife is during the school holidays.

98AA.-(1.)(a) an unmarried officer who has attained the age of twenty one years; or
(b) an unmarried officer who is under the age of twenty one years and is not in receipt of salary at a rate prescribed to an officer under that age;
(c) travels, while on recreation leave, from Canberra to the home of his parent or guardian … may be reimbursed the amount … to and from the locality in which the home of his parent or guardian is situated.

98A.-(1.)(b) Where illness of, or accident to–
(i) the officer;
(ii) his wife; or
(iii) his children … who are under the age of eighteen years or who, being dependent on him necessitates that person's removal for medical attention or a visit of a medical practitioner, The Chief Officer may authorise reimbursement to the officer of the amount by which the cost of transport for that purpose exceeds $6.00.

98AC.-(b) As a result of the officer's illness, a close relative travels to the city or town where the officer is ill from another town …
(d)… is liable to reimburse the close relative

101.-(2.) If a married officer maintains his family, he shall be granted the district allowance prescribed as payable to a married officer whether or not his family resides with him in the locality in respect of which district allowance is payable.
(3.) For the purpose of this regulation
(a) an officer who–
(i) is a widower or a widow supporting dependent children under the age of eighteen …
(ii) is maintaining a home or supporting dependent children in circumstances which, in the opinion of the Board, justify his being deemed a married officer,

103A.-(1.)(a) An allowance in the case of a married officer or employee-at the rate of $550.00 per annum; and
(b) in the case of an unmarried officer or employee-at a rate of $270.00 per annum, is payable to an officer or employee who is stationed at, and resides in, a place within a radius of 80 kilometres from the Post Office at Woomera

119.-(1.) When officers are transfered – the actual cost of conveyance of such officers, together with their wives and children, and of removal of furniture and household effects, … shall be paid by the Department.

119A.-(1.) In the case of any officer who, at the date of his compulsory transfer with his Department to Canberra, has reached the age of sixty years and who retires or is retired from the Service within five years from that date, there shall be payable to the officer the cost of the conveyance of himself and his family, … between Canberra and his former home station.

119B.-(1.) Where the family of a deceased person who was an officer resided with him in the locality in which, immediately before his death or retirement, he performed duties, the Board may, … authorise payment to his widow or to a member of his family … of the expenses incurred in

the conveyance of herself and her family … and furniture and household effects … to another place.

130. Selection for temporary employment shall be made, as far as possible, in the order of registration of applicants for the work in which the employment is required, subject to preference amongst applicants in the following order:–
(a) Returned soldier who are married, or who, having been married, is supporting a child of his marriage who is under the age of fourteen years.

3.2.4 Today

The TWG wrote to the [Australian] Public Service Commission on 26 November 1990 as follows:

> In November, 1976, a Tribunal on Homosexuality and Discrimination heard evidence on a range of issues where discrimination against homosexual men and women was perceived.
> After 14 years, a wide range of the issues raised before the Tribunal have been rectified – I mention the NSW Anti Discrimination Legislation as one example. It is the intention of a number of those who were responsible for the setting up of the Tribunal to now contrast all the matters raised in 1976.
> At the time of the Tribunal's hearing, the Australian public Service Regulations contained a number of sections that were claimed to discriminate against female and male homosexual officers and employees.
> Particular note was taken of :
>
> > Regulation 62(1)(c); 80A; 87B(1); 89(1); 89 (2) and(4) and(7); 90A(1)(a); 93; 95C(1)(c); 97; 97A(1); 98(1) and(2) and(3) and(4) and(5); 98AAA(3)(b) and(c) and(d) and(e); 98AA(1) and(1A) and(3); 98A(1)(b); 98AC; 101; 103A; 119(1); 119A; 119B; 130.
>
> These 11 deal with allowances for 'married' officers, and their spouses.
> I would appreciate your comments as to whether these regulations have been varied, and the present status of the partner of female and male homosexuals?

Warwick Baxter, Legal Services Unit, Public Service Commission replied on 22 March 1991 as follows:

> I Refer to your letter of 26 November 1990 to Mr M Codd, Secretary, Department of the Prime Minister and Cabinet concerning various Public Service Regulations which may discriminate against homosexual officers and employees. You asked for the comments on the current status of the regulations. With the exception of Regulations 93 and 97 the regulations you mention (see 3.2.3) have been repealed, although I have no information as to why they were repealed. The remaining regulations deal with reimbursement of fares for officers travelling by public transport home and then returning to duty in certain situations where overtime is worked, and motor vehicle allowance for travelling to a place of temporary duty, respectively. Neither of these regulations is dependent on the officer having a spouse, therefore the question of discrimination would not seem to arise.

Commonwealth Public Service Regulations, made under the *Public Service Act*, 1922.

Rep. = Repealed; SR = Statutory Rule	**Rep. = Repealed; SR = Statutory Rule**
Reg 62 Rep. and substituted re Interpretation of Regs 63 and 64, SR 208 of 1985.	Reg 98 SR 55 of 1983 rep.
Reg 80A SR 57 of 1983 rep.	Reg 98AAA SR 392 of 1982 rep.
Reg 87B SR 7 of 1985 rep.	Reg 98AA SR 57 of 1983 rep.
Reg 89 SR 30 of 1982 rep.	Reg 98A SR 392 of 1982 rep.
	Reg 98AC SR 119 of 1983 rep.

Reg 90A SR 112 of 1983 rep.
Reg 93 SR 112 of 1983; added re Fares SR 297 of 1983.
Reg 95C SR 119 of 1983 rep.
Reg 97 SR 112 of 1983 rep; added re Motor Vehicle Allowances, SR 297 of 1983.
Reg 97A SR 300 of 1976 rep.
Reg 101 SR 79 of 1981 rep.
Reg 103A SR 30 of 1982 rep.
Reg 119 SR 157 of 1987 rep.
Reg 119A SR 112 of 1983 rep.
Reg 119B SR 112 of 1983 rep.
Reg 130 SR 61 of 1983 rep.

… if they were to indulge as a heterosexual in fornication or even adultery, they would not in any way be in breach of the civil or criminal law, but if a homosexual indulges in any form of homosexual expression, he has immediately breached the law and is guilty of felony.

3.3 New South Wales Public Service Act and Regulations
3.3.1 Tribunal on Homosexuals and Discrimination letter to Sir Harold Dickson, Chairman, NSW Public Service Board, dated 17 November 1976. 3.3.2 Alleged discrimination by the NSW Public Service Board, Exhibit 23. 3.3.3 NSW Public Service Act and Regulations. 3.3.4 Today – TWG letter to NSW Office of Public Management, 16 April 1991; Letter from Office of Public Management, 2 May 1991. For cross examination by the Tribunal on Homosexuals and Discrimination (see **3.1.7** page 88).

3.3.1 Tribunal Letter

The Tribunal Collective wrote to Sir Harold Dickson, Chairman, [NSW] Public Service Board the following letter on 17 November 1976:

> The Hon Jim Cairns; Barry Egan; Senator Arthur Gietzelt; Ms Bridget Gilling, will be Tribunalists at the above Tribunal. They will hear evidence of instances of discrimination (specific and general) from homosexual people on the Saturday. Ms Helen Coonan, solicitor; and Ms Jane Mathews, barrister will be counsel for each side in all cases presented. On the Sunday the Tribunalists will hand down a report, with recommendations, based on the evidence.
>
> Section 61(1) of the NSW Public Service Act, 1902 as amended; and Regulations 35(1); 57; 59; 62; 71; 72; 73 under the same Act, will be presented as evidence of discrimination against homosexual people employed in the NSW Public Service.
>
> We would like to invite your Board to submit a statement outlining its reasons for believing the above section and regulations not to be discriminatory. We would like to apologise for the very short notice, but the delay has been beyond our control.

3.3.2 Discrimination by the NSW Public Service Act

EXHIBIT 23 [49]
Overview

1. *Public Service Act* 1902.

[49] Alleged Discrimination by the NSW Public Service Board through the Public Service Act and Regulations.

Section 61(1) to be convicted of a felony, and to be sentenced is punishment enough. And section 61(1) refers to 'infamous offence' without providing a definition of 'infamous'. So, it is likely that a conviction for a misdemeanour, if it were homosexual in nature, could be deemed to be infamous. In either event, the PSA (Public Service Association) permits the Board to reduce the Officer in grade, salary, or to fine him, or, with the Governor's approval, to dismiss him, or seek his resignation.

This section has given rise to a number of appeals based on 'autrefois convict', without success. It seems particularly discriminating, since adultery is not infamous, nor is heterosexual fornication, in private.

Further to 'infamous conduct'; this seems to be the only clause in which these words appear; elsewhere felony is linked with misdemeanour (see 69E(g) for example).

2. Regulations Under the Public Service Act.

Reg. 35(1) – the exemptions in (2) are interesting. The same argument as in Sec. 61(1) of the Act – 'criminal or quasi-criminal are now the terms'.

Reg. 57. 'Married Officer' is the term, and married includes widowers and widows with dependent children. Single officer with dependent children in a house he maintains may claim a married officer's allowance.

Reg. 59. (Deals with the Western District) "… for conveyance of himself and/or his family."

Reg. 62. Different allowances for relieving officer (away from their headquarters): single and married rates.

Reg. 71/72. An additional allowance for wives, furniture etc. Single men get $400.00; married $1200.00.

Reg. 73. Railway passes for everyone, including dependent relatives.

3.3.3 New South Wales Public Service Act and Regulations

Act

Section

61.(1) If any officer is convicted of any felony or other infamous offence the Board may, according to the nature of the offence impose one or more of the following punishments, namely, reduce such officer to lower grade in the Public Service, or to a lower salary, or fine him, or with the approval of the Governor may dismiss such officer from the Public Service or require him to resign.

69E(g) If he is convicted in NSW of a felony or of a misdemeanour punishable by imprisonment for twelve months or longer, or if he is convicted elsewhere than in NSW of an offence which, if committed in NSW, would be a felony or misdemeanour so punishable.

Regulations

35.(1) If any officer is charged before any court with, or is convicted of any criminal or quasi criminal offence, whether punishable by summary conviction or not, the fact shall be immediately reported …

57. Officers who are permanently employed in and reside at places situated upon or the west of … may be granted … a living allowance as compensation for climatic conditions … in accordance

with the following scale: … Single Officer, Married Officer … The term married shall extend to widowers or widows with dependent child or children.

59. … any officer proceeding on recreation leave … from his headquarters … are situated in that portion of the State lying west of the 144th meridian of longitude … will be paid … (i) an additional allowance of $2.50 per night each for himself, his wife and dependent children …

62. Relieving officers … who are required … to take up duty away from their headquarters … shall be paid travelling expenses … at the rate of $5.50 per day in the case of single men and $6.25 per day in the case of married men.

71. The Permanent Head may pay allowance, … to a married officer, or to an unmarried officer who maintains dependent relatives in his home, who is being transfered at the expense of the Government …

72. … an officer transfered from one locality to another may be paid reasonable expenses in respect of the removal of furniture and effects not exceeding a maximum cubic content of 1,200 cubic feet in the case of a married officer and of 400 cubic feet in the case for a single officer …

Removal expenses allowed … shall include the cost of insuring furniture and effects … for a maximum sum of $6,000 in the case of a married officer and $4,000 in the case of a unmarried officer.

73. Railway passes shall be granted to officers in the Service and to the members of their families – that is to say, husband, wife, children, and dependent relatives permanently residing with them.

3.3.4 Today

The TWG wrote to the Office of Public Management, NSW Premier's Department, on 16 April 1991 as follows:

In November 1976 the Tribunal on Homosexuals and Discrimination heard evidence on a range of issues where discrimination against homosexual women and men was perceived.

The New South Wales Public Service Act, 1902 as amended, and Regulations were presented to the Tribunal believing parts to be discriminatory against homosexual women and men.

We drew the Tribunal's particular attention to the relevant section and regulations of the Act.

- Section 61(1) deals with conviction of a felony. It also refers to '**infamous conduct**', without providing a definition of infamous. It is therefore very likely that a conviction for a misdemeanour, if it were homosexual in nature, could be deemed to be infamous. Adultery and heterosexual fornication in private are **not** regarded as infamous conduct.

- Regulation 35(1) The fact should be immediately reported if any officer is convicted of any criminal or **quasi criminal** (undetected homosexual) offence, whether punishable or not.

- Regulation 57 'Married Officer' is mentioned in this regulation. This term includes widowers and widows with dependent children. There is no provision in this regulation for any other form of relationships.

- Regulation 59(b) States that: "An officer's 'family' shall be deemed to include only his wife, and dependent children who are under the age of eighteen years."

- Regulation 62 There are different allowances for relieving officers (away from their headquarters) single and married rates.

- Regulations 71 and 72 Provide for an additional allowance for wives, furniture, etc. For example a single officer get a maximum of 400 cubic feet and a married officer gets 1200 cubic feet financial allowance for removal of furniture.

- Regulation 73 Deals with railway passes for members of families including husband, wife, children, and dependent relatives, but not for any other form of 'family'.

After 15 years, a number of the issues raised before the Tribunal have been rectified, and I mention the NSW Anti-Discrimination legislation as one example. It is the present intention of a number of those who were responsible for the setting up of the Tribunal to compare the situation in 1991 with matters raised in 1976.

Could you please inform us if the perceived discrimination outlined above is presently still part of the New South Wales Public Sector Management Act and Regulations?

On 2 May 1991 Dr Blair L Hunt, General Manager of the Office of Public Management responded:

Thank you for your letter of 16 April 1991. There have been a number of legislative and regulatory changes since the Tribunal on Homosexuals and Discrimination heard evidence of discriminatory practices in 1976. In particular the [NSW] *Public Service Act* 1902 was replaced by the *Public Service Act* 1979 and more recently by the *Public Sector Management Act* 1988.

In response to your request for information on the *Public Sector Management Act* 1988 and *Regulations* I wish to advise the following.

Section 61 of the *Public Service Act* 1902 has been replaced by **Section 76** (p. 46) of the *Public Sector Management Act* 1988. This allows a Department Head to punish an officer who is convicted of a serious offence. In NSW a serious offence is defined as one that results in a conviction of a year or more. If the conviction is outside NSW, the officer may be punished if a conviction in NSW would result in the same penalty.

In NSW homosexual acts between consenting adults are not serious offences. They are not subject to the *Crimes Act*.

Regulation 35(1) has been replaced by **Regulation 31**. (pp. 13-14) An officer is required to report a charge or conviction for a serious offence to his/her Head of Department.

Regulation 57 has been replaced by **Regulation 37(3)**. (p. 18) All public servants receive the same allowance which increases on the basis of set criteria relating to degrees of geographic remoteness. Two rates have been determined, one for officers with dependants and one for officers without dependants.

Regulation 59(b) has been replaced by **Regulation 38**. The regulation refers only to public servants. The Public Employment Industrial Relations Authority, which is empowered to determine allowances, has set separate rates for public servants with and without dependents. The definition of dependents is broad. (See attachment).

Regulation 62 has been replaced by **Regulations 39 and 40**. Public servants are paid an allowance which is prescribed by the *Travelling Compensation Award*. The award establishes a single rate and does not refer to dependants.

Regulation 71 (Accommodation allowances to transfered officers), 72 (Allowances for removal, etc.) and *Regulation 73 (Railway Passes)* have not been replaced in the legislation or regulations. They are covered in Clauses 4, 5, 6, 7 and 8 of the *Transferred Officers Compensation Award*.

… concessions … represent the extent to which the legislature has … found it practicable to give taxation relief … particularly the family man …

3.4 Australian Income Tax Assessment Act
3.4.1 Tribunal Letter to the Commissioner of Taxation, dated 16 November 1976. 3.4.2 Letter from J.P. McDermott, Senior Assistant Commissioner of Taxation, dated 24 November 1976, Exhibit 20A. 3.4.3 Income Tax Assessment Act 1936-1975, Exhibit 20. 3.4.4 Today – TWG letter to Deputy Commissioner for Taxation, 19 October 1990; Letter from the Australian Taxation Office, 1 November 1990. For cross examination by the Tribunal on Homosexuals and Discrimination (see **3.1.7** page 88).

3.4.1 Tribunal Letter

The Tribunal Collective wrote to the Commissioner for Taxation, Australian Taxation Office the following letter on 16 November 1976:

> The Hon Jim Cairns; Mr Barry Egan; Senator Gietzelt; Ms Bridget Gilling, will be Tribunalists at the above Tribunal. They will hear evidence of instances of discrimination (specific and general) from homosexual people on the Saturday. Ms Helen Coonan, solicitor and Ms Jane Mathews, barrister will be counsel for each side in all cases presented. On the Sunday the Tribunalists will hand down a report, with recommendations, based on the evidence.
>
> Sections 159J; 159L; 159P; 159S; 251R(1A) of the Income Tax Assessment Act 1936-1975, will be presented as evidence of discrimination against homosexual people at the above Tribunal.
>
> We would like to invite your Office to submit a statement outlining its reasons for believing the above sections not to be discriminatory. We would like to apologise for the very short notice, but the delay has been beyond our control.

3.4.2 Letter from J P McDermott, Senior Assistant Commissioner, 24 November 1976

EXHIBIT 20A
Reference 4 76/4021

> I refer to your letter of 16 November 1976 inviting a statement outlining the reasons why it is considered that certain sections of the Income Tax Assessment Act do not discriminate against homosexual people.
>
> I should point out firstly that it is the function of the Commissioner of Taxation to administer the taxation laws as enacted by Parliament. The terms of those laws are matters for the legislature to determine and it would not, therefore, be proper for the Commissioner to offer comments along the lines you seek.

Nevertheless, the following observations may be of assistance.

The income tax rebates provided by sections 159J, 159L, 159P, 159Q, and 159S are, of course, concessions. In broad terms, they represent the extent to which the legislature has so far found it practicable to give taxation relief to taxpayers, particularly the family man, in the areas covered by the sections.

There has, for obvious reasons, always been some limit to the availability of these concessions. For example, so far as appears relevant to your enquiry, the law has always confined the dependant allowance to the spouse, that is, the legally married partner, of the taxpayer. Similarly, with medical expenses and funeral expenses these have, again so far as appears relevant, been confined to those paid by the taxpayer on behalf of his spouse or deceased spouse.

These restrictions are some of many which the legislature has found necessary to place on the allowance of the concessions. Homosexual couples are, of course, not the only ones affected by the restrictions mentioned; a man and woman living in a de facto relationship being another obvious example. Furthermore, it will be recognised that the homosexual couple who both work would not, as a rule, be disadvantaged in comparison with the legally married couple who both also work in so far as the dependant rebate is concerned. In the latter case, the separate net income test would normally disbar the allowance of the spouse rebate.

The concession provided by section 159L (the housekeeper rebate) is allowable to a taxpayer in respect of a person who is wholly engaged in keeping house for the taxpayer and in caring for certain specified dependants. Provided that these requirements are met, the fact that the taxpayer and the housekeeper may be living in a homosexual or, for that matter, a de facto relationship would not disbar the allowance of the housekeeper rebate.

Section 159S was repealed at the same time that section 251R was introduced into the Assessment Act. Subsection (1A) of the latter section, to which you refer, describes the circumstances in which a dependant wife or husband, as the case may be, is to be treated as such for the purpose of imposing the health insurance levy. The description is merely a statement of those circumstances and nothing more.

It would seem appropriate to mention that a homosexual couple may be better off by being treated separately for health insurance levy purpose. Depending on individual circumstances, the levy presently payable by the couple could well be as much as half that otherwise payable. Similarly, a homosexual couple may enjoy a greater benefit under the housing loan interest provisions (sections 82KA to 82KG) of the Income Tax Assessment Act than other couples. In the case of a husband and wife, for example, it is necessary to combine their incomes in calculating whether, or to what extent, the interest paid in respect of their residence is allowable as a deduction.

3.4.3 Income Tax Assessment Act

EXHIBIT 20

Income Tax Assessment Act 1936-1975

159J (1) Where, during the year of income, a taxpayer contributes to the maintenance of a person (in this section referred to as a dependant) … is entitled … to a rebate of tax …

159L (1) Where, during the year of income, a person (in this section referred to as a housekeeper) … caring for (a) a child of the taxpayer less than 16 years of age; (b) a dependant … (c) the spouse of the taxpayer is entitled … to a rebate of tax …

159P (1) An amount paid by the taxpayer … as medical expenses in respect of himself, or … a dependant … be treated as a rebatable amount …
(4) In this section dependant means (a) the spouse of the taxpayer; (b) a child of the taxpayer less than 21 years of age; or (c) a person in respect of whom the taxpayer is entitled to a rebate …

159Q (1) An amount … paid … for funeral, burial or cremation expenses arising out of the death of a dependant … be treated as a rebatable amount …

(4)… dependant has the same meaning as in section 159P.

159S An amount … paid by the taxpayer … to a medical or hospital benefits fund for the personal benefit of the taxpayer or his spouse or child shall … be treated as a rebatable amount …

251R (1A) For the purpose of this Part and of any Act imposing levy– (a) a woman shall be taken to have been the dependent wife of a man … at that time, she was legally married … and (b) a man shall be taken to have been the dependent husband of a woman … at that time, he was legally married … (1B) Where, during any period, a man and a woman have lived together as husband and wife on a bona fide domestic basis although they were not legally married to each other, this Part and any Act imposing levy have effect in relation to that period as if those persons were legally married …

3.4.4 Today

On 19 October 1990 the TWG wrote to the Deputy Commissioner for Taxation stating that:

In November, 1976, a Tribunal on Homosexuality and Discrimination heard evidence on a range of issues where discrimination against homosexual men and women was perceived.

The Income Tax Assessment Act, 1936 contained sections 159J, 159L, 159P, 159S and 251R(1A). These sections excluded homosexuals from being able to claim dependency for their partners; this, of course, excluded some rebates.

After 14 years, a wide range of the issues raised before the Tribunal have been rectified – I mention the NSW Anti Discrimination Legislation as one example. It is the intention of a number of those who were responsible for the setting up of the Tribunal to now contrast all the matters raised in 1976.

I would appreciate your advice about the current provisions for rebates for income tax payers, and the rights and entitlements of their same-sex partners.

The Deputy Commissioner of Taxation, D J Cortese, responded on 1 November 1990 as follows:

Reference ADVR/4
Income Tax: Definition of Spouse

I refer to your letter of 19 October 1990 concerning the current provisions for rebates for income tax payers, and the rights and entitlements of their same sex partners.

The Income Tax Assessment Act when referring to sections 159J, 159L, 159P, 159S and 251R(1A) defines spouse and defacto relationships as: "Where, during any period, a man and a woman have lived together as husband and wife on a bona fide domestic basis although they were not legally married to each other applies in relation to each of them as if they were legally married to each other during that period". The pivotal basis on which this definition lies in the term "legally married". If and when same sex partners can enjoy the status of being legally married in the terms of civil law then the appropriate rebates will probably be conferred on them. Until such time, the rebates will only be allowable to people who can qualify for this status.

I trust this explanation satisfies your enquiry.

Spouse … means a person … legally married to the deceased person …

3.5 Australian Superannuation Act 1976

3.5.1 Tribunal letter to the Commissioner for Superannuation, dated 16 November 1976.

3.5.2 Letter from the Commissioner for Superannuation, dated 23 November 1976.

3.5.3 Australian Superannuation Act 1976, Exhibit 18.

3.5.4 Today – TWG letter to Commissioner for Superannuation, 18 October 1990; Letter from Commissioner for Superannuation, 24 October 1990; TWG letter to DOF, 24 November 1990; Letters from DOF, 6 December and 21 December 1990; TWG letters to DOF, 4 May, 25 July 1991; TWG Letter to Senate Select Committee on Superannuation (SSCS), 25 July; TWG submission to SSCS, 28 August 1991; TWG letters to Office of Status of Women and Sex Discrimination Commissioner, 29 August 1991; Letter from SSCS 5 September 1991; Letter from HREOC, 25 September 1991; TWG Letter to DOF, 4 December 1991; Letter from DOF, 20 December 1991; TWG letter to HREOC, 24 January 1992; TWG letter to SSCS, 24 January 1992; Letter from SSCS, 3 February 1992; Letter from SSCS, 4 March 1992; TWG letter to HREOC, 8 March 1992; TWG letter to the Federal Attorney General, 22 April 1992; TWG letter to HREOC, 22 April 1992; Letter from HREOC, 30 April 1992; TWG letter to Federal Attorney General, 17 July 1992; Letter from the Federal Attorney General, 27 August 1992.

For cross examination by the Tribunal on Homosexuals and Discrimination (see **3.1.7** page 88).

3.5.1 Tribunal Letter

The Tribunal Collective wrote to the [Australian] Commissioner for Superannuation on 16 November 1976 as follows:

> The Hon Jim Cairns; Mr Barry Egan; Senator Arthur Gietzelt; Ms Bridget Gilling, will be Tribunalists at the above Tribunal. They will hear evidence of instances of discrimination (specific and general) from homosexual people on the Saturday. Ms Helen Coonan, solicitor and Ms Jane Mathews, barrister will be counsel for each side in all cases presented. On the Sunday the Tribunalists will hand down a report, with recommendations, based on the evidence.
>
> Sections 3; 81-96; 111, of the Superannuation Act 1976, will be presented as evidence of discrimination against homosexual people at the above Tribunal.
>
> We would like to invite your Board to submit a statement outlining its reasons for believing the above sections not to be discriminatory. We would like to apologise for the very short notice, but the delay has been beyond our control.

3.5.2 Letter from B A Lorenz for the Commissioner for Superannuation

Ref: G 26804

I refer to your letter of 16 November 1976 concerning an invitation to submit a statement concerning discrimination in sections 3, 81-96 and 111 of the Superannuation Act 1976.

2. The Commissioner for Superannuation is responsible for the administration of the Superannuation Act as passed by the Parliament; but any change in the legislation is a matter for the consideration of the Government of the day and the Parliament.

3.5.3 Australian Superannuation Act 1976

EXHIBIT 18

Section

3. spouse, in relation to a person who has died and was, at the time of his death, an eligible employee or a retirement pensioner, means–

(a) a person who was legally married to the deceased person at the time of the person's death and who, at that time, was living with the person on a permanent and bona fide domestic basis; (b) a person who was legally married to the deceased person at the time of the person's death but who was not living with the person on a permanent and bona fide domestic basis …

(c) a person who was not legally married to the deceased person at the time of the person's death but who, for a continuous period of not less than 3 years immediately preceding the person's death, had ordinarily lived with the person as the person's husband or wife … on a permanent and bona fide domestic basis.

81. (1) Where an eligible employee who dies before attaining his maximum retiring age is survived by a spouse, then, … the spouse is entitled …

82. (1) This section applies to the spouse of a deceased eligible employee who …

83. (1) The spouse of a deceased eligible employee who becomes entitled to spouse's benefits …

84. (1) The spouse of a deceased eligible employee (being an eligible employee whose period of prospective service is less than 8 years) who becomes entitled to spouse's benefits …

85. (1) This section applies to the spouse of a deceased eligible employee (being an eligible employee whose period of contributory service is not less than 8 years) who …

86. (1) The spouse of a deceased eligible employee (being an eligible employee whose period of contributory service is not less than 8 years) who becomes entitled to spouse's benefit …

87. (1) The spouse of a deceased eligible employee (being an eligible employee whose period of contributory service is less than 15, but not less than 8, years) who becomes entitled to spouse's benefit …

88. (1) Where the spouse of a deceased eligible employee (being an eligible employee whose period of contributory service is less than 8 years) is entitled to lump sum benefit …

89. (1) Where an eligible employee who dies on or after attaining his maximum retiring age is survived by a spouse, the spouse is entitled to …

90. (1) Where the spouse of a deceased eligible employee is entitled to spouse's standard pension …

91. (1) Where the spouse of a deceased eligible employee is entitled to spouse's additional pension …

92. (1) The spouse of a deceased eligible employee who becomes entitled to spouse's additional pension …

93. (1) Where a pensioner to whom age retirement pension or early retirement pension is payable dies and is survived by a spouse, the spouse is entitled …

94. (1) Where the spouse of a deceased pensioner is entitled to spouse's standard pension …

95. Where the spouse of a deceased pensioner is entitled to spouse's additional pension …

96. (1) Where the spouse of a deceased pensioner is entitled to spouse's pension …

111. (1) Where–
(a) a person ceases to be an eligible employee by reason of death; and
(b)benefit is not payable in respect of the person under Part VI, a lump sum benefit of an amount equal to the person's accumulated contributions shall be paid out of the Fund to his personal representatives or to such person (if any) as the Commissioner determines.

3.5.4 Today's Superannuation Scheme

The TWG wrote on 18 October 1990 to the Commissioner for Superannuation as follows:

> In November, 1976, a Tribunal on Homosexuality and Discrimination heard evidence on a range of issues where discrimination against homosexual men and women was perceived.
>
> One area of evidence covered the provisions of the Australian Superannuation Act, 1976, in particular, the terms of sections 3, 81 to 98 and 111.
>
> Section 3 defined eligibility as applying to persons being legally married, and to persons living in permanent and bona fide domestic relationships.
>
> Homosexuals cannot be married, as the marriage Act defines that condition; permanence or relationship is not spelled out.
>
> After 14 years, a wide range of the issues raised before the Tribunal have been rectified – I mention the NSW Anti Discrimination Legislation as one example. It is the intention of a number of those who were responsible for the setting up of the Tribunal to now contrast all the matters raised in 1976.
>
> I would appreciate your advice about the current provisions for superannuants, and the rights and entitlements of their same-sex partners.

P J Gunther, for G N Vanthoff the Commissioner for Superannuation responded in his 24 October 1990 letter as follows:

> I refer to your letter of 18 Oct 1990 to me on the subject of rights and entitlements of same-sex partners under the Superannuation Act 1976 (the Act).
>
> 2. The eligibility for reversionary benefits to partners of members of the Scheme covered by the Act depends on the threshold question of whether a partner can meet the definition of spouse in section 3 of the Act, a copy of which section is attached for your information.
>
> 3. The understanding of my Office, based on legal advice, is that the structure of that definition is such that a same-sex partner of a member cannot qualify as a spouse of the member.
>
> 4. If you wish to pursue any matters relating to the policy behind the legislation, you would need to take those matters up with Social Security Division of the Commonwealth Department of Finance, which has the responsibility for advising the Minister for Finance on the policy and legislation in respect of superannuation for Commonwealth employees. My Office's responsibility is for administration of the legislation.

The TWG wrote on 24 November 1990 to Regional Director, Department of Finance stating in part:

> In November, 1976, a Tribunal on Homosexuality and Discrimination heard evidence on a range of issues where discrimination against homosexual men and women was perceived.
>
> After 14 years, a wide range of the issues raised before the Tribunal have been rectified – I mention the NSW Anti Discrimination Legislation as one example. It is the intention of a number of those who were responsible for the setting up of the Tribunal to now contrast all the matters raised in 1976.
>
> One matter that was put to the Tribunal were residual benefits under the Superannuation Act, 1976. I enclose a copy of a letter from the Commissioner for Superannuation, and would value your comments on the contents of paragraph 4. of the letter.

A Forner, Regional Director, Department of Finance responded on 6 December 1990 as follows:

> I refer to your letter of 24 November 1990 with which you enclosed a copy of a letter dated 24 October 1990 from the Commissioner for Superannuation Canberra.
>
> In the letter, the Commissioner for Superannuation referred to the Commonwealth Department of Finance Social Security Division handling the policy under the Superannuation Act legislation. I presume your letter to me was intended for the Social Security Division which is located in the Department of Finance Head Office Canberra. Accordingly, I have referred your letter and attachment to it for direct reply to you.

Peter Downes, Assistant Director, Public Sector Superannuation Section of the Department of Finance responded on 21 December 1990 as follows:

> Reference: 89/1134
>
> Thank you for your letter of 24 November, 1990 concerning the rights and entitlements of same-sex partners under the Superannuation Act 1976.
>
> The impact of the definition of spouse in all Commonwealth sector superannuation schemes is currently under consideration by the Sex Discrimination Act working party. [50] The results of this review have not yet been finalised.
>
> Under the current legislation a same-sex partner of a member cannot qualify as a 'spouse' of the member for superannuation purposes.
>
> However, opting to take the payments of superannuation benefits as a lump sum allows the member to use the lump sum in any way he or she wishes.
>
> In the Commonwealth Superannuation Scheme (1976 Act) only the member-financed benefit can be taken as a lump sum on age retirement. Under the Public Sector Superannuation scheme (1990 Act) both the employer-financed and the member-financed benefit can be taken as a lump sum on age retirement.
>
> The Public Sector Superannuation scheme also provides that, in the event of the death in service of a member, where there are no dependants, a lump sum will be payable to the member's estate. The member can, via their will, direct payment of their superannuation benefits to whomever they choose.

The TWG wrote to Peter Downes, Assistant Director, Public Sector Superannuation Section of the Department of Finance on 4 May 1991 as follows:

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[50] The Tribunal Working Group wrote to Peter Downes, Assistant Director, Public Sector Superannuation Section of the Federal Department of Finance in Canberra on three occasions (4 May, 25 July and 4 December 1991). On 20 December 1991 we received a response from the new director Paul Burn. The Working Group also wrote to the Sex Discrimination Commissioner of the Human Rights and Equal Opportunity Commission (29 August 1991) requesting information as to when the Sex Discrimination Act working party's report would be available. The Human Rights and Equal Opportunity Commission informed the Working Group on 25 September 1991 … "that the working party review is as yet incomplete but that a draft report is in preparation." And "… that the Department of Finance will be responding … in detail in due course."

Thank you for letter dated 21 December 1990 which was addressed to Peter Trebilco at Waterloo. Peter has requested me to make the following inquiry regarding the content of your letter which states that: "The impact of the definition of spouse in all Commonwealth sector superannuation schemes is currently under consideration by the *Sex Discrimination Act* working party."

Could you please inform me what the outcome of the above mentioned investigation is.

On the 15 July 1991 the TWG wrote to Richard Gilbert, Secretary of the Senate Select Committee on Superannuation as follows:

I noticed in the Sydney Morning Herald the other day the terms of reference for the Senate Select Committee's inquiry in to Superannuation.

Could you please inform me if the terms of reference include matters relating to the **definition of spouse.**

Looking forward to your early response.

On 25 July 1991 the TWG wrote to Senator Nick Sherry, (Probable) Chairperson of the Senate Select Committee on Superannuation requesting:

The senior clerk of committees informs me that you probably will be the chairperson of the Senate Select Committee on Superannuation.

It is for that reason that I direct the following question to you.

Could you please inform me if the terms of reference of the forthcoming superannuation enquiry include matters relating to the **definition of spouse**.

On 25 July 1991 the TWG wrote again to Peter Downes, Assistant Director, Public Sector Superannuation Section of the Department of Finance:

Attached please find a copy of a letter which was posted to you in early May.

We are still awaiting a reply.

Could you please indicate when we could expect a response?

During the period of the TWG's investigation the Senate convened a Select Committee on Superannuation. On 28 August 1991 the group submitted the following:

The Tribunal on Homosexuals and Discrimination (November 1976) received evidence on the restrictions on superannuation entitlements to homosexual males and females.

The main problem stemmed from the definition of 'spouse' that appeared in all Superannuation Acts.

In your committee's published terms of reference, this issue does not appear, specifically.

We respectfully submit that, unless the sexist definition is removed, and replaced by such terms as partner or companion, homosexual women and men will continue to be seriously discriminated against.

On 29 August 1991 the TWG wrote to Quentin Bryce the Federal Sex Discrimination Commissioner and Helen L'Orange, Director, Office of the Status Women in the Department of Prime Minister and Cabinet regarding the 'Sex Discrimination Working Party':

Attached please find correspondence with Peter Downes, Assistant Director, Public Superannuation Section in the Department of Finance.

In particularly I draw your attention to the **second paragraph in his letter dated 21 December 1990**.

As you will notice I have been trying to ascertain what the outcomes of the review of that working party

are?

Could you please assist me with this task.

On the 5 September 1991, Richard Gilbert, Secretary of the Senate Select Committee on Superannuation wrote as follows:

Inquiry into Superannuation

Thank you for your submission of 28 August 1991 to the Committee's inquiry into the above matter.

You should note that all submissions to Senate inquiries become Committee documents upon receipt by the Committee. The Committee resolved at the outset of its inquiry that, subject to any contrary order, it would publish all submissions made to it. You are therefore free to distribute your submission to any person or organisation. The submission itself will still be protected by Parliamentary Privilege.

The Committee will consider carefully all matters raised in your submission. I will contact you again should the Committee wish you to enlarge on the matters which you have raised. This will generally be done by way of an appearance before the Committee during its schedule of public hearings which will commence in February 1992.

The Acting Secretary, Bill Chapman, Human Rights and Equal Opportunity Commission responded on 25 September 1991 as follows:

I refer to your letter of 29 August addressed to the Sex Discrimination Commissioner.

My understanding is that the working party is as yet incomplete but that a draft report is in preparation. I further understand that the Department of Finance will be responding to you in detail in due course.

On 4 December 1991 the TWG wrote again to Peter Downes, Assistant Director, Public Sector Superannuation Section of the Department of Finance:

I refer to our letters of 4 May 1991, 25 July 1991 and copy of the letter I received from the Human Rights and Equal Opportunity Commission dated 25 September 1991 attached.

Could you please inform me when the 'Sex Discrimination Act working party's' draft report will be available.

Eventually, a year later, a response was received on 20 December 1991 from Paul Burn, Director, Public Sector Superannuation Section of the Federal Department of Finance which stated as follows:

I refer to your fax of 4 December 1991 and earlier correspondence. As a result of a number of staff changes, Peter Downes and Therese Smith are no longer with the Public Sector Superannuation Section. I apologise for the delay in responding to your earlier letters.

You earlier sought information on the outcome of the review of the impact of the definition of spouse in Commonwealth sector superannuation schemes … under consideration by the Sex Discrimination Act working party that was mentioned in Mr Downes letter to Mr Trebilco of 21 December 1990.

At the time that reply was sent to you the Sex Discrimination Amendment Act 1991 (SDA Act) had not been passed by Parliament. The passage of that Act has taken quite some time and its final form was uncertain as the Bill for the Act was subject to a number of changes.

A Bill for the Act was initially introduced into Parliament in May 1989, but lapsed in February 1990 with the proroguing of Parliament prior to the general election.

The Bill resulted from a report by the Human Rights Commission on the general exemption provided in the Sex Discrimination Act 1984 (SD Act) to all superannuation or provident funds and schemes for discrimination on the grounds of sex and marital status. As a result of that report the Government decided to replace the general exemption with certain more limited exemptions relating to particular

superannuation practices.

The Sex Discrimination Amendment Bill was re-introduced into the House of Representatives in March 1991 and after some debate the Bill was amended by the Government.

The amended Bill was introduced in the Senate on 18 April 1991 and later referred to the Senate Standing Committee on Legal and Constitutional Affairs for closer examination. The Bill was further amended by the Senate to provide for the operation of certain provisions to be reviewed by the Attorney-General before 1 June 1996.

The Bill with these amendments was passed by the House of Representatives on June 1991 and received Royal Assent on 25 June 1991.

The provisions of the general exemption previously contained in section 41 of the SD Act and the main amendments to it made by the SDA are summarised in the Attachment (see page 115) to this letter.

The examination of the impact of the definition of "spouse" by the Sex Discrimination Act working party has also been delayed. Nevertheless, the examination is now being undertaken into the changes that will be required to Commonwealth superannuation schemes as a result of the amendments that have been made by the SDA Act.

The SDA Act has not altered the meaning of spouse. As indicated in the earlier advice to you from the Retirement Benefits Office, the structure of the definition of spouse in the Superannuation Act 1976 is such that a same-sex partner of a member of the Commonwealth Superannuation Scheme (CSS) can not qualify as a "spouse" of the member.

The definition of "spouse" in the Rules of the Public Sector Superannuation Scheme (PSS) is very closely modelled on the definition in the CSS.

The SDA Act amendments have also not altered the definition of "de facto spouse" contained in the SD Act. That term is defined in relation to a person, as meaning a person of the opposite sex to the first mentioned person who lives with the first mentioned person as the husband or wife of that person on a bona fide domestic basis although not legally married to that person.

Consequently, the examination of the impact of the definition of "spouse" in relation to the changes resulting from the SDA Act will not extend to same-sex partners.

It may help if I perhaps add to the comments included in the reply of 21 December 1990 to Mr Trebilco concerning the benefits that are available in the CSS and the PSS.

As indicated, the CSS provides for age retirement benefits mainly in the form of an employer-financed pension and an employee-financed lump sum. Nevertheless, the lump sum benefits are generally substantial for longer-serving members.

The lump sum benefits can therefore be used to provide for partners who are formally recognised under the legislation in the same way that they can be used to provide for those dependants of a member who are not recognised as eligible dependants for reversionary benefit purposes.

That is, the lump sums provide flexibility for investment for income producing purposes. Alternatively, as you may know, they can be used to purchase an annuity from an insurance company or other financial institution. The availability of annuities has grown rapidly in recent years and they are now available with or without guarantees and with or without indexation. Annuities from reputable institutions can provide a steady source of income in retirement for persons who would not otherwise have access to a superannuation pension.

Similar options are available in relation to benefits from the PSS. That scheme has the added flexibility of enabling a member to take all his or her retirement benefit as a lump sum or to take at least half as a lump sum and the balance as a pension.

I hope this information will be of assistance to you.

Attachment

Summary of the Provisions of the Sex Discrimination Act 1974 Relating to the General Exemption of Superannuation Funds and the Effects of the Sex Discrimination Amendment Act 1991.

The *Sex Discrimination Act* 1974 (SD Act) prohibited discrimination on grounds of sex, marital status or pregnancy. However, section 41 of the Act provided a general exemption for terms and conditions relating to superannuation or provident funds or schemes for discrimination on the grounds of sex or marital status.

The section also provided a more specific exemption for discrimination on the grounds of sex with respect to the terms of an annuity, a life insurance policy or other insurance policies where the discrimination was:
(a) based on actuarial or statistical data from a source on which it was reasonable to reply; and
(b) reasonable having regard to the matter of the data and any other relevant factors.

The *Sex Discrimination Amendment Act* 1991 (SDA Act) amended those exemptions to provide discrimination in relation to a superannuation fund is not unlawful if:

1. the discrimination is on the ground of the person's sex or marital status; and
2. the discrimination arises only because:
   (a) the superannuation fund conditions include a provision that:
      (i) is based on actuarial or statistical data from a source on which it is reasonable to rely; and
      (ii) is reasonable having regard to those data and other relevant factors;
   (b) in the case of a member who has no spouse (whether legal or de facto) or has no child – the superannuation fund conditions:
      (i) do not provide superannuation benefits in the event of the member's death; or
      (ii) provide for less generous benefits in the event of the member's death; or
      (iii) do not provide superannuation benefits to someone other than the member in the event of the member's physical or mental incapacity; or
      (iv) provide for less generous superannuation benefits to someone other than the member in the event of the member's physical or mental incapacity;
   (c) the superannuation fund conditions include a provision that relates to:
      (i) the vesting in members or other persons of benefits arising directly or indirectly from amounts contributed to the fund; or
      (ii) the preservation of benefits from amounts contributed to the fund; or
      (iii) the portability of benefits arising directly or indirectly from amounts contributed to another superannuation fund; if the inclusion of that provision results in only direct discrimination against the person on the ground of sex or marital status;
   (d) the superannuation fund conditions include a provision that confers particular benefits, or more generous benefits only on a person:
      (i) who was a member of a superannuation fund immediately before the commencement of the section of the Act; and
      (ii) the discrimination is on the ground of the member's sex or marital status and is in the superannuation fund conditions; and
      (iii) the person derives, or would apart from the discrimination, derive, benefits because the member is or was a member of the superannuation fund and the discrimination is on the ground of the member's sex or marital status and is in the superannuation fund conditions.

On 24 January 1992 the TWG submitted to the Senate Select Committee on Superannuation the following:

I would like to present to you an excellent and detailed actuarial report (see Appendix F, page 391) prepared by Roger Sawkins FIA (UK), FIAA on:

(a) areas of discrimination against same-sex relationships;

(b) costs of removal of this discrimination in the NSW State Superannuation Fund.

Mr Sawkins reports that discrimination exists in that 'spouse's benefits' are restricted to de jure and de facto relationships between persons of opposite gender. This discrimination would be removed by treating same-sex relationships in the same way that opposite-sex ones are.

This report was specifically prepared for the Tribunal Working Group and refers to the [New South Wales] State Authorities Superannuation Fund. However, the working group is of the opinion that most of Mr Sawkin's report applies equally to the Commonwealth Superannuation Scheme and hence applicable to your Inquiry into Superannuation.

Would you please bring this report to the attention of all committee members

---

The TWG also wrote on the 24 January 1992 to the Human Rights and Equal Opportunity Commission as follows:

This Working Group is made up of four people who were associated with the organisation of the 1976 Tribunal on Homosexuals and Discrimination. The Tribunalists were: Dr Jim Cairns, Ms Bridget Gilling, Senator Arthur Gietzelt and Mr Barry Egan. They were assisted by two counsel, Ms Helen Coonan and Ms Jane Mathews.

We decided to compare and contrast social, legal, political and economic attitudes to lesbian and gay males issues, then and now.

Two of the matters considered by the Tribunal were: The Australian Superannuation Act 1976 and The New South Wales Superannuation Act 1916-1972. Both acts were found to be discriminatory against homosexual women and men living in relationships.

We would like to present to you an excellent and detailed actuarial report prepared by **Roger Sawkins FIA (UK), FIAA** on:

(a) areas of discrimination against same-sex relationships;

(b) costs of removal of this discrimination in the NSW State Superannuation Fund.

Mr Sawkins reports that discrimination exists in that 'spouse's benefits' are restricted to de jure and de facto relationships between persons of opposite gender. This discrimination would be removed by treating same-sex relationships in the same way that opposite-sex ones are.

This report was specifically prepared for the Tribunal Working Group and refers to the [New South Wales] State Authorities Superannuation Fund. However, the working group is of the opinion that most Mr Sawkins's report applies equally to the Commonwealth Superannuation Scheme and hence applicable to the Human Rights and Equal Opportunity Commission.

We hope that you will find this report useful and look forward to your comments. We also would be pleased if you could inform the working group about the Commission's endeavours regarding superannuation matters for same-sex relationships.

On the 3 February 1992 Richard Gilbert, Secretary, Senate Select Committee on Superannuation wrote as follows:

Inquiry into Superannuation

Thank you for your supplementary submission of 30 January 1992 to the Committee's inquiry into the above matter …

Peter Trebilco and Roger Sawkins gave oral evidence to the Senate Select Committee on Superannuation at its 21 February 1992 hearing [51] in Sydney.

Sawkins: Mr Roger William, Actuarial Consultant, Tribunal Working Group, PO Box 6, Balmain, New South Wales 2041, and

Trebilco: Mr Peter, Co-author, Tribunal Working Group, PO Box 6, Balmain New South Wales 2041, were called to appear before the Committee.

Chairman: Welcome. I remind you that parliamentary privilege resolutions allow you to make application to the Committee to have all or part of your evidence heard in camera. Under the same resolutions witnesses also

[51] Senate Select Committee on Superannuation, Transcript, Sydney, 21 February 1992, pp. 1136-41.

have the right to object to certain questions. Would you like to make a brief opening statement? If you would like to amend your submission, please let us know.

Trebilco: I have no requirement that any of my evidence be heard in camera. In 1976, an organisation called CAMP NSW – which is now called Gay and Lesbian Counselling Service of New South Wales – held a Tribunal on homosexuals and discrimination. It was the first discrimination Tribunal held anywhere in Australia. A vast amount of evidence was submitted to that Tribunal, some of which we want to talk about today. A number of us who had been connected with the 1976 activity decided that we would now go back and find out what had happened to those people and what had happened to government policy and things of that sort. We are currently putting together a very extensive report about that.

Superannuation is one area in which we detected absolutely no change at all. As our submission pointed out, the problem seems to revolve around the definition in the Commonwealth Marriage Act about what marriage is and what a spouse is, and the common law definitions of de facto and de jure partners. In Australia at the moment you are only able to enter into that type of relationship with a person of the opposite gender. Because none of the formal superannuation organisations recognise partners of the same gender, it means that the person who is paying superannuation cannot give any of that interest to their significant independent partner.

That was the first point I wanted to stress. The second point, which Roger will talk about, is the question of what is the potential cost to a superannuation fund of extending the partnership and interdependent relationship. We would also like to raise one subsidiary item which we did not address in our submission and that is the question of superannuation funds which are linked to life insurance policies, and the requirement that most life companies have for HIV-AIDS inquiries for medical examination.

Sawkins: The information is in the submission. The only point I wanted to make is that I think there was a question in there about whether the $60m in relation to the New South Wales fund, which was the particular fund that I was looking at, was a significant amount or not. In relation to that fund, it is certainly not a significant amount, nor would it be significant as far as the contributions required are concerned.

There have also, I think, been suggestions that opening up the definition to same-sex relationships would open it up in other ways to relationships of other kinds such as people who are looking after an elderly relative. I do not see that that is necessarily so and, even if it were, I do not think that the cost of that would be significant. It would be even less, and considerably less, than the cost that is looked at in these costings for same-sex relationships.

Chairman: We had a discussion with representatives of the New South Wales Government about this and they raised the issue of retrospective application. I did raise the point about de facto relationships having been recognised in effect retrospectively because they are outside what is regarded as the traditional marriage arrangements. Do you have any comment about that sort of principle?

Sawkins: Retrospectivity is not really a problem. I think that in the superannuation area, one would normally recognise the relationship for the members and pensioners at that particular point in time. So that on a subsequent death if somebody had a relationship which qualified they would automatically qualify for the benefit. That would be similar to the situation which occurred in recognition of de facto opposite sex relationships. I do not think that there is any question of going back to people who have died in the past and trying to find whether they had same sex partners.

Chairman: Let us assume that the Federal Government has the power to legislate in this area – there are some problems with this – to allow a homosexual partner to receive their money, would that not strike a difficult situation? For example, in my home state of Tasmania, as you might be aware, homosexual relationships are still illegal. Therefore, could that sort of information be used in support of a prosecution for homosexual activity where it is still illegal?

Sawkins: The prosecution would have to prove sexual activity. The recognition of the relationship does not necessarily indicate sexual activity, any more than being married indicates sexual activity. A prosecution would also have to produce witnesses to that and I do not know that Tasmania has ever prosecuted people who

are in a bona fide domestic relationship.

Chairman: Not for a long time, as I understand it.

Sawkins: It has not done so in other States. There were some prosecutions in Queensland, in relation to people who were in a bona fide relationship, but I think that was more a political exercise than anything else.

Trebilco: When you mention homosexual, I think you were thinking of male to male.

Chairman: Yes.

Trebilco: I think that you must be constantly alert to the problem of women who are living in one-to-one relationships.

Senator West: How do you define bona fide?

Sawkins: I would suggest that one uses the same sorts of definitions that one uses for a de facto opposite-sex relationship. I agree that is not answering the question, and that it is difficult in those as well but I do not see any reason to use any different rules and regulations to those for opposite sex de facto relationships.

Trebilco: The regulations of the Immigration Act talk about interdependence and require at least six months evidence of that. It also requires some proof that it continues for a further 18 months, a period of two years all told. That seems to be sufficient for their purposes and I cannot see why that would not be sufficient for any other purpose. There is no way of proving that a de jure relationship is permanent either.

Chairman: Has a copy of the report that you prepared been made available to the New South Wales Government?

Trebilco: Yes, it has. We received a letter from the Minister about a fortnight ago in which he advanced the view that it was beyond the financial capacities of the present fund.

Chairman: But I would assume that you would be making this sort of submission in respect of a national approach as distinct from a State by State approach?

Trebilco: Relying on the fact that the Commonwealth law can always override State laws.

Chairman: Where it has power.

Trebilco: Yes, where it has power.

Chairman: There is a problem there with the whole issue of superannuation.

Sawkins: Yes, that is right. I do not think that the Commonwealth law will change the New South Wales superannuation scheme. The people of New South Wales obviously need to do that at some stage. They could do that without Commonwealth law.

Trebilco: They could under the anti-discrimination legislation.

Chairman: There is an argument under a number of the powers in respect of payment of pensions, for instance, taxation powers, and those sort of things. I am not a constitutional lawyer and do not really want to get involved in that area terribly much.

Sawkins: It is not something that can be done by an across-the-board sweeping amendment. There are a lot of private superannuation funds which, because they pay pensions, have similar situations. You obviously cannot

force them to do it any more than you can force them to provide pensions for widows.

I would like to raise one other point in relation to superannuation and the medical evidence which is obtained from people in cases where the death and disability insurance is provided by life insurance companies. As with ordinary life insurance, there is a requirement to answer a series of questions in relation to HIV or potential HIV risks. The first of those questions is usually: "Have you had male to male sex?". Sometimes the question is: "Have you had male to male sex since 1980 or have you ever had male to male sex?". The other questions relate to things such as drug use and at the end there is usually the question: "Have any of your partners ever had any of the above?".

These days where HIV infection is not restricted to male to male sex that is clearly discriminatory. It means that I, as someone who has male to male sex, have to answer that question, "Yes, I have". I am then subject to a whole series of questionnaires in relation to my sexual activities and I may be restricted in my cover for death and disability. If I were in a heterosexual relationship I would say "no" to that question and there would be no question of any further questionnaires or any restriction of my cover in relation to HIV.

That Questionnaire was originally fixed in the days when HIV transmission was almost wholly homosexual, male to male. These days that is no longer so. It is no longer restricted to anal sex either and those provisions, in our submission, are quite discriminatory.

Trebilco: They come back to the question of superannuation.

Chairman: Have you raised that with the Anti-Discrimination Board?

Trebilco: Yes. The AIDS Council of New South Wales has had a very good relationship with Steve Mark and his officers about this. He negotiated slowly and fairly painfully with the Government.

Sawkins: One of the difficulties being that insurance, of course, is exempt from the anti-discrimination legislation. It is for good reason in a lot of ways but it does not mean to say that the inquiries that it is entitled to make should be discriminatory if there are no reasons for that.

Chairman: Thank you for appearing before the Committee.

On 8 March 1992 the TWG wrote to the Human Rights and Equal Opportunity Commission as follows:

> I [would] like to refer you to our letter dated 24 January 1992 regarding the Commission's endeavours on superannuation matters for same-sex relationships.
>
> For your information I have enclosed a copy of a letter, dated 18 January 1992, which the Tribunal Working Group wrote to the Hon John Fahey, Minister for Industrial Relations and Minister for Further Education Training and Employment on this matter.
>
> Also for your information is enclosed a copy of the minister's response to the issues we raised in the above letter.

The TWG wrote to Michael Duffy, Federal Attorney General on 22 April 1992 as follows:

> In November 1976 the **Tribunal on Homosexuals and Discrimination** heard evidence on a range of issues where discrimination against homosexual women and men was perceived.
>
> The Tribunalists were:
>
> Dr Jim Cairns, MP, formerly Deputy Prime Minister and Federal Treasurer;
> Ms Bridget Gilling, Vice President, Council of Social Service of New South Wales;
> Mr Barry Egan, National Secretary, Shop Distributive and Allied Trades Employees Association and Secretary, Australian Workers Union;
> Senator Arthur Gietzelt.

The Counsel assisting were Ms Helen Coonan, a solicitor, and Ms Jane Mathews, Barrister-at-law, previously Counsel Assisting the Royal Commission on Human Relationships and currently a Justice of the New South Wales Supreme Court.

After 16 years, a number of the issues raised before the Tribunal have been rectified, and I mention the NSW Anti-Discrimination legislation as one example. It is the present intention of the Tribunal Working Group, a number of those who were responsible for the setting up of the Tribunal, to compare the situation in 1992 with the 40 plus matters raised in 1976.

Two matters that were put to the Tribunal were residual benefits for same-sex relationships under the NSW and Federal Superannuation Acts. Superannuation is one area in which we have detected absolutely no change at all in the last sixteen years and revolves around the definition in the Commonwealth Marriage Act about what marriage is and what a spouse is, and the common law definitions of de facto and de jure partners. In Australia at the moment you are only able to enter into that type of relationship with a person of the opposite gender. Because none of the formal superannuation organisations recognise partners of the same gender, it means that the person who is paying superannuation cannot give any of that interest to their significant interdependent partner.

I want to raise the following questions with you:

1. What is the likelihood of bringing the Commonwealth Marriage Act in line with Migration 1991 Act, Section 79A(1) which recognises interdependency if it … (A) is genuine; and (B) has existed for a period of at least 6 months (or such lesser period as the Minister specifies) immediately before the application is made; and (C) will continue?

2. Alternatively what is the possibility of developing and introducing a Federal law which would provide for a voluntary system where people in same-sex relationships could elect to register their interdependent relationship which would deem these registered couples equal to 'married' and 'de facto' couples as presently provided in law?

I look forward to your early and favourable reply.

On the 22 April 1992 the TWG also wrote again to the Human Rights and Equal Opportunity Commission reminding it of the following:

I refer you to our letter dated 24 January 1992 (copy attached) in which the Tribunal Working Group presented to the Commission a detailed actuarial report on areas of discrimination in superannuation against same-sex relationships. At the same time we requested information about the Commission's endeavours regarding superannuation matters for same-sex relationships.

Could you please inform us when we are likely to receive a response to our letter?

The Human Rights and Equal Opportunity Commission Acting Secretary, Bill Chapman, responded on 30 April 1992, stating in part:

In your letter you request information about the Commission's endeavours regarding superannuation and discrimination against people in same-sex relationships. To date, the majority of the Commission's activities in the field of superannuation and insurance have been directed to the issue of discrimination against women and people with disabilities. The Commission has produced reports on superannuation and insurance and the Sex Discrimination Act.

The TWG wrote again on 17 July 1992 to Michael Duffy, Federal Attorney General to remind him of the following:

Attached please a copy of a letter which we wrote to you on 22 April 1992.

As yet we have not received an acknowledgment to our letter or a response to the questions we raised.

Joan Sheedy, Senior Government Counsel of the Human Rights Branch at the Federal Attorney General's Department responded on 27 August 1992 as follows:

> The Attorney-General has asked me to reply on his behalf to your letter of 22 April 1992 concerning superannuation benefits for scheme members in same sex relationships. I regret the delay in replying.
>
> The Human Rights and Equal Opportunity Commission has functions in respect of discrimination in employment on a number of grounds, including sexual preference. As superannuation is a benefit of employment, you may wish to contact the Commission, which can investigate acts or practices which may constitute discrimination, attempt to conciliate and, where conciliation is inappropriate or ineffective, report to the Government.
>
> The Government is also in the process of establishing a National Advisory Committee on Discrimination in Employment and Occupation which will advise the Government on the development of policies to promote equality in employment. I will ensure that your suggestions as to possible solutions to the superannuation issue are referred to that Committee once it is established.
>
> As to your more general questions regarding possible changes to the law concerning same-sex relationships, there is currently no proposal to amend *Marriage Act* 1961 to provide for the recognition of same-sex marriages or for the development of a body of law for a voluntary system of registering same-sex relationships. Before such an amendment or body of law was developed, there would need to be evidence that such change was appropriate and had community support. There would need to be extensive community consultation before such a proposal could be put to the Attorney-General. To date, there has been no such consultation and it is not proposed to undertake any consultation at present.

… on the death of a pensioner pension shall be paid to his widow … during any period she is not married to any other person …

3.6 New South Wales Superannuation Act 1916-1972

3.6.1 Tribunal letter to President, State Superannuation Board, dated 16 November 1976.

3.6.2 Letter from F.W. Stewart, President, State Superannuation Board, dated 26 November 1976.

3.6.3 Superannuation Act 1916-1972, Exhibit 19.

3.6.4 Today – TWG letter to State Authorities Superannuation Board (SASB), 10 April 1991; Letter from SASB, 29 April 1991; TWG letters to NSW Superannuation Office and the Hon John Fahey, 4 May; ADB response, May 1991; Letter from the Hon John Fahey, 24 May 1991; TWG letter to Roger Sawkins, 7 June 1991; Letter from NSW Superannuation Office, 19 June 1991; Letter from Roger Sawkins, 22 June 1991; TWG letters to the Hon John Fahey, 30 June and 8 August 1991; TWG letter to SASB, 29 August 1991; Letter from SASB, 11 September 1991; TWG letter to Roger Sawkins, 17 September 1991; Letter from Roger Sawkins, 23 September 1991; Letter from the Hon John Fahey, 8 October 1991; Letter from Roger Sawkins, 26 October 1991; TWG letter to Roger Sawkins, 24 November 1991; Report from Roger Sawkins, 4 December 1991; TWG letters to the Hon John Fahey, ADB, SASB, 18 January 1992; TWG letter to Clover Moore, 28 January 1992; Letter from the Hon John Fahey, 11 February 1992; Letter from Clover Moore, 14 February 1992; TWG letter to ADB, 8 March 1992; TWG letter to Clover Moore, 8 March 1992.

For cross examination by the Tribunal on Homosexuals and Discrimination (see **3.1.7** page 88).

See Appendix F ‘Discrimination and the NSW State Superannuation Board – An Actuarial Report’ (page 391).

3.6.1 Tribunal Letter

The Tribunal Collective wrote to the President, [NSW] State Superannuation Board on 16 November 1976 as follows:

> The Hon Jim Cairns; Mr Barry Egan; Senator Arthur Gietzelt; Ms Bridget Gilling, will be Tribunalists at the above Tribunal. The will hear evidence of instances of discrimination (specific and general) from homosexual people on the Saturday. Ms Helen Coonan, solicitor and Ms Jane Mathews, barrister will be counsel for each side in all cases presented. On the Sunday the Tribunalists will hand down a report, with recommendations, based on the evidence.
>
> Sections 30; 31; 32A; 32B; 33; 38A; 39; 40; 41 of the Superannuation Act 1916-1972, will be presented

as evidence of discrimination against homosexual people at the above Tribunal.

We would like to invite your Board to submit a statement outlining its reasons for believing the above sections not to be discriminatory. We would like to apologise for the very short notice, but the delay has been beyond our control.

3.6.2 Letter from F W Stewart, President, NSW State Superannuation Board, dated 26 November 1976

Receipt is acknowledged of your communication dated 16 November 1976.

The contents of that letter have been noted but I regret that at this time, the Board proposes to make no comment on the matters set out therein.

3.6.3 Superannuation Act, 1916-1972

EXHIBIT 19

Section:

30. (1) On the death of a contributor (aged, in the case of a contributor for limited benefits, sixty years or more) pension shall … be paid to his widow as follows … (a) during any period while she is not married … (b) in respect of each of her or such contributor's children … who are under eighteen years of age …

31. (1) Subject to section 47, on the death of a pensioner pension shall be payable to his widow … (a) during any period she is not married to any other person …

32A. (1) Where a male employee dies before his retirement and is not married at the time of his death he shall, unless he leaves a child or children in respect of whom pension is payable under this Act or would … be deemed to have resigned, immediately before his death … and to have elected … moneys payable … to his personal representatives …

32B. Where, after retirement, a person who was a contributor dies before the day on which pension would, but for his death, be payable … and does not leave a widow entitled to payment of pension under this Act, section 32A (above) applies in respect of that person …

33. (1) On the death of a man contributor or of a man pensioner, if his wife be dead or divorced, and if he leave children of himself or of his wife under the age of eighteen years, there shall … be paid to the guardian of such children … a pension …

38A. (1) (b) The period of contributory service of a contributor upon his retrenchment, resignation, dismissal or discharge from the service of his employer is the next preceding period that commenced–

(i) when he last became an employee; or

(ii) if he had last become a contributor pursuant to subsection (1B) of section 11 on the date from which his contributions then became due for payment; or

(iii) if, since he last became an employee or last so became a contributor, he had been on leave of absence pursuant to section 48, when he was re-employed by an employer after that leave of absence.

Section 38A refers also to 37(1) – Retrenchment – (a) Lump sum in determination of all rights given by this Act to himself and his family (b) Pension contributions payable are in respect of him.

39A. (1) Where any pensioner deserts his wife, such wife may from time to time apply to any stipendiary magistrate, and on proof of such desertion such magistrate may order the payment during such period as he thinks desirable of pension

40. (1) Where any pensioner is in prison for any period in excess of one month – (a) his wife may be paid during any such period of imprisonment pension for herself and in respect of any children of the pensioner or herself … (b) if his wife be dead or divorced pension may be paid in respect of any children of

himself or his wife …
41. (1) Where any woman pensioner is in prison for any period in excess of one month the Board may suspend payment of pension during such period of imprisonment or may pay the pension or part thereof to such person as the Board may determine on the pensioner's behalf and any balance of such pension shall be paid to the pensioner.

3.6.4 Today

The ADB informed the TWG that superannuation funds are still a 'big problem' for the Board because they will not agree to people deeding their superannuation benefits to a designated person. The Board is still looking at this matter.

The TWG wrote on 10 April 1991 to Walter Archer, Acting President of the State Authorities Superannuation Board as follows:

In November 1976 the Tribunal on Homosexuals and Discrimination heard evidence on a range of issues where discrimination against homosexual women and men was perceived.

The New South Wales Superannuation Act, 1916: Sections 30; 31; 32A; 32B; 32C; 33; 39; 40; and 41 were presented to the above Tribunal believing them to be discriminatory against homosexual women and men.

We drew the Tribunal's particular attention to certain parts of the content of the above sections believing them to substantiate our claim of homosexual discrimination:

- 30(1) On the death of a contributor … pension shall … be paid to his widow …
- 31(1) On the death of a pensioner pension shall be paid to his widow …
- 32A(1) Where a male employee dies before his retirement and is not married … be deemed to have resigned, immediately before his death …
- 32B Where, after retirement … a contributor dies … and does not leave a widow … be deemed to have resigned, immediately before his death.
- 32C Where a male employee dies before his retirement leaving his wife … and such wife dies without having remarried …
- 33 On the death of a man contributor … if his wife be dead or divorced …
- 39(1) Where any pensioner deserts his wife … a magistrate may order the payment … of pension.
- 40(1) Where any pensioner is in prison … his wife may be paid during any such period …
- 41(1) Where any woman pensioner is in prison … the Board may suspend payment of pension …

After 15 years, a number of the issues raised before the Tribunal have been rectified, and I mention the NSW Anti-Discrimination legislation as one example. It is the present intention of a number of those who were responsible for the setting up of the Tribunal to compare the situation in 1991 with matters raised in 1976.

Could you please inform us if the present superannuation legislation contains the same discriminatory provisions?

Mr Archer, Acting President of the State Authorities Superannuation Board responded on 29 April 1991 that:

I refer to your letter about various sections of the Superannuation Act 1916, as in force in November 1976, which your Group considered were discriminatory against homosexual men and women. Those sections of the legislation related to widows' and childrens' benefits. You have asked for information on the current provisions of the relevant NSW superannuation legislation.

Public-sector superannuation in NSW has undergone significant change since 1976, including extension of spouse benefits to include widowers and de facto spouses. The State Superannuation Fund

(SSF), being the Fund established under the Superannuation Act 1916, was closed to new members on 30 June 1985 and a new scheme, the State Public Service Superannuation Fund (SPSSF), commenced on 1 July 1985. The SPSSF provided only lump sum benefits – no pensions or reversionary benefits were payable – but that Fund was closed on 31 March 1988 and all remaining members were transfered [to] the State Authorities Superannuation Scheme (SASS), which commenced on 1 April 1988 and is the current scheme which provides superannuation cover, on an optional basis, to most public-sector employees, including those employed in local government. An outline of the major changes in superannuation, relative to your enquiry, follows:

State Superannuation Fund

- In 1978 the Fund's governing legislation was amended to provide pensions to widowers of deceased female Fund members, subject to the widower satisfying eligibility criteria which included a 'dependency' test. The legislation was subsequently amended to do away with that test.

- As mentioned above, SSF was closed to new members on 30 June 1985. Amendments to the legislation in that year included new definitions of "widow" and "widower", and extension of the reversionary benefits to include de facto spouse in certain circumstances. Consequential amendments were, of course, made to related sections of the Act (e.g. sections 32A, 32C, 47) and a new Division 3A was added which provides for the payment of preserved benefits entitlements to eligible spouses and children.

State Public Service Superannuation Fund

- This Fund replaced the SSF in respect of people who became employees after 30 June 1985. Membership of the Fund was optional; lump sum benefits only were paid. It was closed on 31 March 1988 and all members were transfered to a new scheme, The State Authorities Superannuation Scheme (SASS), which commenced on 1 April 1988.

SASS

Legislation: the State Authorities Superannuation Act 1987.

This is the current scheme for nearly all NSW public-sector employees. Membership is optional and benefits are paid in lump sum form only. On the death of a contributor, the benefit is paid to the surviving spouse or (where there is no spouse) to the deceased's personal representatives or to his/her estate. "Spouse" is defined [52] in section 3(1) of the Act.

'Basic Benefit' Scheme

Legislation: the State Authorities (Non-Contributory) Superannuation Act, 1987.

As from 1 April 1988, a 3% 'productivity benefit' became payable to all employees in the form of superannuation. The 'Basic Benefit' scheme came into operation on that date. It is a lump sum scheme, wholly paid for by employer organisations. Where an employee dies, the benefit is paid in the same way as for SASS (i.e. to the surviving spouse or the deceased's personal representative; or to his/her estate). The definition of "spouse" is the same as in the SASS legislation.

Each of the on-going Schemes described above are 'complying schemes' in terms of the Commonwealth Superannuation Schemes Act 1987 and the Regulations there-to. The Schemes also meet the requirements

[52] "Spouse", in relation to a deceased contributor, means–

(a) if the deceased contributor was survived by a widow or widower– the widow or widower, as the case may be, of the contributor; or

(b) if the deceased contributor was survived by a widow or widower–

  (i) where the contributor was a man and, at the time of his death, he was living with a woman as her husband on a bona fide domestic basis–the woman with whom he was so living; or

  (ii) where the contributor was a woman and, at the time of her death, she was living with a man as his wife on a bona fide domestic basis–the man with whom she was so living;

of anti-discrimination legislation.

The State Authorities Superannuation Board administers the SSF, SASS, and the 'Basic Benefit' schemes pursuant to the Superannuation Administration Act, 1987. Should your Group wish to raise any questions about NSW public-sector superannuation policy issues, or about possible changes to the legislation, these should be directed to either: the Secretary, NSW Superannuation Office or to The Hon J.J. Fahey M.P., Minister for Industrial relations and Further Education Training and Employment.

On 4 May 1991 the TWG followed up the above suggestion and wrote identical letters to John Fahey, Minister responsible for superannuation and the Secretary of the NSW Superannuation Office:

In November 1976 a Tribunal on Homosexuals and Discrimination heard evidence on a range of issues where discrimination against homosexual women and men was perceived.

After 15 years, a number of the issues raised before the Tribunal have been rectified, and I mention the NSW Anti-Discrimination legislation as one example. It is the present intention of a number of those who were responsible for the setting up of the Tribunal to compare the situation in 1991 with matters raised in 1976.

One matter that was put to the Tribunal were residual benefits under the NSW Superannuation Act, 1916. I enclose a copy of a letter from the Acting President of the State Authorities Superannuation Board and would value your comments on the contents of the last paragraph of the letter.

John Fahey, Minister for Industrial Relations and Minister for Further Education, Training and Employment responded on 24 May 1991 as follows:

91/856 SO 831

I refer again to your letter of 4 May 1991 concerning changes to public sector superannuation since 1976, particularly regarding discrimination against homosexual women and men.

As indicated in the reply received from the State Authorities Board, a number of changes have occurred in the superannuation arrangements for the public sector since 1976. Most significantly, the closure to new members of the State Superannuation Fund (SSF) in 1985 has meant a change to the style and nature of superannuation for public servants, moving from a compulsory, pension scheme to the voluntary, lump sum benefits currently available under the State Authorities Superannuation Scheme (SASS).

SASS was specifically designed to provide more modern and flexible benefits for its members and to accommodate contemporary social concepts in its provisions. The lump sum nature of the scheme makes it possible to eliminate many discriminatory features often found in schemes.

In the last 15 years, government has strongly demonstrated its commitment to the principles of anti-discrimination in superannuation, going beyond the requirements of both Commonwealth and State discrimination legislation in the area. Details of such measures were provided by the SASB in their recent letter to you.

On the matter of 'residual' or reversionary benefits in the SSF, which you mention in your letter, representations have been made to the Government requesting extension of the spouse benefit provisions to allow payment to spouses of the same sex. Currently the governing legislation of the SSF, the Superannuation Act 1916 allows spouse benefits, paid in pension form to de jure or de facto spouses of the opposite sex who meet the requirements specified in the Act.

As you are no doubt aware, the SSF has a very complex benefit structure designed on a number of actuarial principles.

In considering the extension of spouse benefits, or indeed any other changes within the scheme, a detailed assessment is required to ensure that the cost of providing the benefit can be met by all contributors – employees and employers – and that no inequitable imbalance is created.

Various aspects of the SSF are currently under review and I have asked that the matters you and others have raised be considered as part of that review.

I am advised that there is apparently little statistical or empirical data available relative to homosexual contributions and their partners, and that the lack of such information has hampered the

actuarial consideration of benefit extension. Any data your organisation may have, and which would assist in assessing insurance costs, would be welcomed [emphasis added].

Finally, it should be pointed out that not all male-female de facto or de jure partnerships qualify for benefits under the rules of the scheme. Extension of SSF spouse benefits in any direction has been extremely limited, generally being ruled out for cost and actuarial reasons.

I trust I have clarified the present position for you.

The above matter was taken up with Roger Sawkins, Fellow of the Institute of Actuaries (UK) and Fellow of the Institute of Actuaries of Australia, who has many years of actuarial experience both in the public and private sector. He was contacted on 7 June 1991 and he was provided with a copy of John Fahey's 24 May 1991 letter. The TWG wrote in part:

One of the areas of discrimination we presented in 1976 was State Superannuation. It appears that some changes have been made but the remaining difficulty for bureaucracies is to come to terms with a different definition of spouse. From your vast experience with actuarial work do you feel that it would be possible to treat every person that takes out superannuation as 'married' and thereby overcome this difficulty and base calculations on that? And when superannuees (is there such word – my computer tells me not) mature adjust the figures according to the number that are divorced, widowed and no longer in a relationship. In other words at the time of maturity adjust the figures according to those who have no (alternative interpretation) spouse any more?

I also would like you to have a look at paragraphs 8 and 9 of the attached copy and let me know if there are any suggestions you could possibly make so that we can respond in an informed way.

Roger Sawkins's response of 22 June 1991, in part, is as follows:

… I think you are being fed jargonistic gobbledygook … to suggest that 'there is apparently little statistical or empirical data available … [which] … has hampered the actuarial consideration of benefit extension' is just another way of saying 'no poofters please'.

I assume that the SSF benefits are normally in pension form, that is to say that on death in service a pension is payable to the widow(er) of a member. In such cases it would be normal for the actuary in costing the scheme to assume a proportion of members have an eligible spouse at death (normally around 90-95% of males) and to then make an assumption about the age of the spouse (normally a 3-4- year age difference). In a large scheme these assumptions might be tested from time to time by a survey of the membership.

Since only one spouse's pension can be paid, this means that any extension to homosexual couples relates to less than 10% of the deaths of male members (and probably much the same for female). It is standard actuarial practice that where you are unsure about the statistical information you make an educated guess and then test the experience as it emerges. This applies particularly where the experience is only a small part of the total liabilities of the scheme (and is therefore insignificant in the total cost).

Such would be the case here; if it were me I would change the assumed proportion of males with a spouse to, say, 98% rather than 95% (and some similar change for females) and leave it at that until the members died and benefits started to be claimed, in which case the actual proportion will emerge. If I wanted to be really fussy (and public service actuaries often are!) I might make an assumption about the age difference in the case of the 3% – say that they were on average 5 years younger (this is conservative).

As you can imagine, 3% or so of the liabilities on death in service for a scheme such as the SSF is insignificant in the whole picture and to my mind could easily be incorporated.

The difficulty as far as the SSF is concerned is 'proving' the relationship was de facto. However, this is no more difficult (at least for someone who is prepared to look a gay or lesbian person in the eye) than it is for heterosexual couples.

I am not sure what the SSF benefit design is for death after retirement. Is the benefit again an automatic dependent's pension, or does the member have to make an election at retirement? If the latter it is even easier since the calculation is made on the facts at the time, which will then be known (i.e. age and sex of

spouse). If not, a similar assumption to that above would be needed.

The letter [see above 24 May 1991] talks of the new SASS scheme, and my guess is that this scheme has benefits in lump sum form, perhaps with the option to convert to a pension at retirement. This is seen as 'non-discriminatory' in that a lump sum is paid on **all** deaths and hence there is no question of different benefits for those with and without a spouse (I assume – if there is, then the same considerations as the SSF apply). Again, the conversion option to a pension would normally be handled on the facts at the time.

(I put the words 'non-discriminatory' in quotes because I happen to believe that it is **not** non-discriminatory to provide the same lump sum benefit to all members. People's needs vary in retirement and on death and I believe that a scheme should recognise that (in the same way, for example, that Social Security benefits do). However, such a view tends to be rather out of fashion these days, mainly because the managers of schemes find it too difficult to be more equitable. Also there tends to be a move to stop authorities being intrusive in people's lives. Whilst this is understandable, it can lead to the reclusive rich member being paid a large but irrelevant benefit on death, and the widow and 5 children of another member receiving the same amount. What is equity?)

You will appreciate that I do not know the benefit designs of the two schemes and so cannot comment in more detail. However, I would be happy to produce an official 'actuarial report' on the subject for you if you wish. To do this I would need a copy of the last 5 years' Annual Reports of the Schemes, a full summary of the contribution and benefit conditions and a copy of the last Actuarial Valuation report.

The above documentation was requested from the Minister on two occasions 30 June and 8 August 1991. [53] Finally, John Fahey, Minister for Industrial Relations and Minister for Further Education, Training and Employment responded on 8 October 1991 as follows:

I refer to your letter of 30 June 1991 in which you request that certain documents be sent to you. I understand that the State Authorities Superannuation Scheme has already forwarded these documents to you.

You would be aware from my last letter [24 May 1991] (see page 127) that various aspects of the scheme have been under review. Following from this, my superannuation administration has advised that the SSF scheme does not discriminate on the basis of homosexuality. To the extent, however, that certain reversionary spouse benefits of the scheme are related to marital status at the time when benefits first become payable, homosexuals are in exactly the same position as any other person of single marital status. The Anti-Discrimination Act 1977 expressly exempts discrimination by superannuation schemes on these grounds.

In elaboration of this aspect of the SSF, I should add that even though a lump sum benefit option has been available since 1970, the SSF is basically designed to provide pension benefits for members and their spouses and dependent children. The cost and benefit structure of the scheme is based on a number of actuarial assumptions, including assumptions regarding life expectancies and marriage rates. Extending benefits in the scheme to a new category of persons would clearly add significantly to the cost of the scheme – a cost which must be borne by the Government and/or the other contributors. Given the State's present financial problems, such a change would impose an unacceptable cost burden on the government.

I trust that I have clarified the Government's position on this issue.

In his report, [54] Roger Sawkins, FIA (UK), FIAA, considered the areas of discrimination against same-sex relationships in the NSW State Superannuation fund. He reported that discrimination exists in that 'spouse's benefits' are restricted to de jure and de facto relationships between persons of opposite gender. The discrimination would be removed by treating same-sex relationships in the same way that opposite-sex ones are.

---

[53] Walter Archer, Acting President of the State Authorities Superannuation Board, was approached directly by letter on the 29 August 1991 requesting the required documentation for Mr Roger Sawkins to prepare an official actuarial report on this discriminatory matter. The requested documentation was received promptly on 11 September 1991 and forwarded to Roger Sawkins.

[54] See: Appendix F: (page 391) 'Discrimination and the New South Wales State Superannuation Board – An Actuarial Report', December 1991.

Mr Sawkins considered the most recent actuarial investigation of the Fund, and examined the possible cost of changing the spouse's benefits to include same-sex relationships. He states that his assumptions are reasonable, and concluded that the cost of such a change would increase the Fund's liabilities, as at 30 June, 1987, by about $60 million. He points out that this is an insignificant sum in relation to the Fund's overall liabilities. He is of the opinion that such a change would not require a change in contribution rates.

Roger Sawkins concludes by saying that 'I am disturbed that the Minister for Industrial Relations and for Further Education, Training and Employment, [John Fahey] in his letter of 8 October 1991 [see above] has made statements which are both wrong and grossly misleading [costly extensions of benefits to a new category of persons] on this subject. It seems he [the Minister] has been provided with extremely poor advice'.

The TWG wrote to John Fahey, Minister for Industrial Relations and Minister for Further Education, Training and Employment on 18 January 1992 as follows:

> I refer to your letters dated 24 May 1991 and 8 October 1991.
>
> I would like to present to you, for immediate implementation, a detailed actuarial report prepared by **Roger Sawkins FIA (UK), FIAA** on:
>
> (a) areas of discrimination against same-sex relationships;
>
> (b) costs of removal of this discrimination in the NSW State Superannuation Fund.
>
> Mr Sawkins reports that discrimination exists in that 'spouse's benefits' are restricted to de jure and de facto relationships between persons of opposite gender. This discrimination would be removed by treating same-sex relationships in the same way that opposite-sex ones are.
>
> Mr Sawkins considered the most recent actuarial investigation of the Fund, and examined the possible cost of changing the spouse's benefit to include same-sex relationships.
>
> He states that his assumptions are reasonable, and concluded that the cost of such a change would increase the Fund's liabilities, as at 30 June 1987, by about $60 million.
>
> He further points out that this is an **insignificant sum** in relation to the Fund's overall liabilities.
>
> Finally he is of the opinion that such a change would **not** require a change in contribution rates.
>
> The former seems contrary to what you state in your letter dated 8 October 1991:
>
> > Extending benefits in the scheme to a new category of persons would clearly add significantly to the cost of the scheme – a cost which must be borne by the Government and/or the other contributors. Given the State's present financial problems, such a change would impose an unacceptable cost burden on the Government.
>
> Mr Sawkins concludes that he is disturbed that you in your letter dated 8 October 1991 " … made statements which are both wrong and grossly misleading on this subject" of costly extensions of benefits to a new category of persons.
>
> Finally Mr Sawkins states that: "It seems he" [the Minister] "has been provided with extremely poor advice."
>
> I look forward to your very early implementation of this report.

Roger Sawkins's 'Discrimination and the New South Wales State Superannuation Board – An Actuarial Report' and the TWG's 18 January 1992 letter to the Minister was also forwarded on 28 January 1992 for information and action to the following:

- Steve Mark, President, ADB.
- W R Archer, Acting President, SASB.
- Clover Moore, Member for Bligh was forwarded a copy of the Sawkins report and requested to 'introduce appropriate legislation to remove this unnecessary discrimination against same sex relationships'.

- The HREOC was also forwarded a copy of the Sawkins report requesting to inform the TWG of 'the Commission's endeavours regarding superannuation matters for same-sex relationships'.

The Minister, John Fahey, responded on the 11 February 1992 as follows:

> I refer to your letter of 18 January 1992 relating to the report prepared by Mr Richard [*sic*] Sawkins.
>
> Mr Sawkins' report has been reviewed in detail by my superannuation administration. On the basis of this review, I am still unable to recommend changes to the SSF legislation to extend the spouse reversionary benefits to homosexual partners of SSF members.
>
> As stated in my previous correspondence to you, for the purpose of the SSF legislation, homosexual members of the SSF can only be regarded to be in the same position as any other SSF member of single marital status, and therefore are not entitled to spouse reversionary benefits for their partners.
>
> The restriction in the SSF of de jure and de facto spouse benefits to opposite sex partners reflects the prevailing definitions of spouse in such relationships, such as in the Commonwealth Sex Discrimination Act, the Family Law Act and the De Facto Relationships Act. These Acts refer to de jure and de facto relationships between opposite sex partners. A same-sex partnership is not legally recognised as a de facto relationship.
>
> Therefore, the SSF is not discriminatory in categorising persons who do not have a legally recognised de jure or de facto relationship as being of single status.
>
> Mr Sawkins' estimate of $60M as the cost of extending the spouse reversionary benefits to homosexual partners is difficult to consider as insignificant, especially since Mr Sawkins' estimate is based on assumptions which may prove to be understated in the future experience of the SSF. Even a slight understatement in these assumptions would lead to a significant increase in the cost of a scheme which is already generous in many ways, and which was closed in 1985 primarily for reasons of high cost.
>
> The cost would increase further if the spouse benefits were extended to other categories of SSF members of single status, such as to members who have financial responsibility for dependent relatives. If spouse reversionary benefits were extended to homosexual partners, the Government may be placed under pressure to extend the benefits to these other categories of single members.
>
> The extension of spouse reversionary benefits to potentially eligible SSF members of single status would therefore have an unpredictable effect on the final cost to the Government, well beyond the $60M estimated by Mr Sawkins. A major part of the increased cost will have to be met by additional funding from the Government and this is unacceptable, especially in the current economic climate.
>
> Quite apart from cost considerations, I am of the view that legislation governing a single superannuation scheme is not the appropriate vehicle for initiating fundamental social changes in the areas of discrimination or the definitions of marital relationships.
>
> I trust that the above clarifies my reasons for not recommending the extension of spouse reversionary benefits to homosexual partners of SSF members.

The HREOC responded to the 'Sawkins' report on 30 April 1992 as follows, in part:

> The Human Rights and Equal Opportunity Commission's jurisdiction regarding discrimination on the basis of sexual preference is restricted to discrimination in employment and occupation only.
>
> In your letter you requested information about the Commission's endeavours regarding superannuation and discrimination against people in same-sex relationships. To date, the majority of the Commission's activities in the field of superannuation and insurance have been directed to the issue of discrimination against women and people with disabilities.

… executed before and in consideration of marriage …

3.7 New South Wales Stamp Duties Act 1920
3.7.1 Stamp Duties Act, 1920, Exhibit 35. 3.7.2 Today – TWG letter to Commissioner for Stamp Duties, 16 April 1991; ADB response, May 1991; Letter from Commissioner of Stamp Duties, 16 May 1991. For cross examination by the Tribunal on Homosexuals and Discrimination (see **3.1.7** page 88).

3.7.1 Stamp Duties Act, 1920

EXHIBIT 35

Statement to: Tribunal on Homosexuals and Discrimination
Re: Stamp Duties Act 1920 (As Amended)

The relevant sections of the Act apply to gift and death duty.

Section 66(3)(ii)(b) Gift Duty.

This section deals with exemptions from paying gift duty. Included among the exemptions are instruments:

… executed before and in consideration of marriage by either party to marriage or executed after marriage by either party thereto in pursuance of a binding ante-nuptial contract.

Marriage, in NSW law, is only between man and woman, and only if celebrated according to law.

Section 101D(4A)(b), (4B)(a)(ii) Death Duty.

This section lists exemptions from death duty. It specifies that there will be special exemption allowance for widows and widowers.

Section 102(2)(F) and (Fa) Death Duty payable.

This section makes what seems to be the only reference to non-married relationships: however they are included as liable to pay duty, not to be exempt from it.

Section 112B

This section provides for abatement of the death duty payable by a dependent widow.

3.7.2 Today

The ADB advised that there are still problems with the NSW Stamp Duties Act, 1920 and is unable to do anything about it.

The TWG wrote on 16 April 1991 to J Purcell, Commissioner for Stamp Duties as follows:

> In November 1976 the Tribunal on Homosexuals and Discrimination heard evidence on a range of issues where discrimination against homosexual women and men was perceived.
>
> The New South Wales Stamp Duties Act, 1920 as amended, was presented to the Tribunal believing part of it to be discriminatory against homosexual women and men.
>
> We drew the Tribunal's particular attention to the relevant sections of the Act which apply to gift and death duty:
>
> - Section 66(3)(ii)(b) – Gift Duty. This section deals with exemptions from paying gift duty. Included among the exemptions are instruments: "executed before and in consideration of marriage by either party to marriage or executed after marriage by either party thereto in pursuance of a binding ante-nuptial contract." Marriage, in NSW law is only possible between man and woman, and only if celebrated according to law.
>
> - Section 101D(4A)(b), (4B)(a)(ii) – Death Duty. This section lists exemptions from death duty. It specifies that there will be special exemption allowance for widows and widowers.
>
> - Section 102(2)(F) and (Fa) – Death Duty. This section makes what seems to be the only reference to non-married relationships: however they are included as liable to pay duty, not to be exempt from it.
>
> - Section 112B This section provides for abatement of the death duty payable by a dependent widow.
>
> After 15 years, a number of the issues raised before the Tribunal have been rectified, and I mention the NSW Anti-Discrimination legislation as one example. It is the present intention of a number of those who were responsible for the setting up of the Tribunal to compare the situation in 1991 with matters raised in 1976.
>
> Could you please inform us if the perceived discrimination outlined above is presently still part of the NSW Stamp Duties Act?

The NSW Office of State Revenue (NSW Treasury) informed the TWG in its 16 May 1991 letter as follows:

> I refer to your correspondence seeking advice as to the current status of Sections 66(3)(ii)(b), 101D(4A)(b) and (4B)(a)(ii), 102(2)(F) and (Fa) and 112B of the Stamp Duties Act 1920, which have been perceived by your group as discriminatory towards homosexual men and women.
>
> As you are aware, these sections dealt with the assessment of death duty and sixth schedule duty (commonly known as gift duty). Both death duty and sixth schedule duty were abolished with effect from 31 December 1981 under the provisions of the Stamp Duties (Further Amendment) Act 1980.
>
> I trust that this information will satisfy your inquiries.

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4. Homosexuals in Education

Tribunalists:
Dr Jim Cairns
Barry Egan
Bridget Gilling
Senator Arthur Gietzelt

Counsel assisting:
Helen Coonan
Jane Mathews

Witnesses:
Mike Clohesy
Judith O'Callaghan
Robyn Plaister
Greg Weir

If people realised that every day they were meeting homosexuals … much of the problem would disappear.

4.1 Sacking of Michael Clohesy
4.1.1 Tribunal letter to the Very Rev Mgr. J.F. Slowey, Diocesan Director of Schools, dated 8 October 1976. 4.1.2 Statement by Michael Clohesy of the Alleged Discrimination by the Catholic School System, dated 10 October 1976, Exhibit 6. 4.1.3 Dismissal Letter. 4.1.4 Cross examination by the Tribunal on Homosexuals and Discrimination on 27 November 1976. 4.1.5 Today – ADB, May 1991; TWG letter to Catholic Education Office of NSW, 12 August 1991; Independent Teachers Association (ITA) *Newsmonth*; Letter from Brother Kelvin Canavan, Executive Director of Schools, Catholic Education Office, Sydney, 12 September 1991; TWG letter to Brother Kelvin Canavan, 11 November 1991.

4.1.1 Tribunal Letter

The Tribunal Collective wrote to the Very Rev Mgr. J.F. Slowey, Diocesan Director of Schools, on 8 October 1976, as follows:

> A panel of prominent people will compose the above Tribunal. They will hear evidence of instances of discrimination (specific and general) from homosexual people on the Saturday. There will be counsel for each side in all cases presented. On the Sunday the Tribunalists will hand down a report, with recommendations, based on the evidence.
>
> The dismissal of Michael Clohesy on 13 October 1975 from Marist Brothers' High School Eastwood as Teacher, will be presented as evidence of discrimination against a homosexual person at the above Tribunal.
>
> We would like to invite your department or the principal of Marist Brothers' Eastwood to submit a written statement stating reasons you believe the above dismissal not to be discriminatory. At a later stage it may be possible for you or the others to present your views orally on the actual day of hearing.
>
> copy: Brother Raymond Principal Marist Brothers' High School Eastwood.

4.1.2 Statement by Michael Clohesy

EXHIBIT 6

Statement by: Michael Anthony Clohesy

To: Tribunal on Homosexuals and Discrimination

On Saturday 20 September 1975, the homosexual movement, CAMP NSW, of which I was secretary, published its submission to the Royal Commission on Human Relationships under the title, *Homosexuals and Human Relationships*. On Monday 6 October 1975 CAMP NSW sent a news release to all Sydney media outlining the contents of the submission. As a direct result of that news release, Peter de Waal and I appeared on the television Channel 9 programme, A Current Affair, on Wednesday 8 October 1975. On the programme we discussed the submission and the three person relationship we have. It was stated on the programme that I was homosexual.

At this time I was a teacher of French, to all forms, at the Marist Brothers' High School Eastwood, a Catholic boys Secondary School, employed by the Catholic Education Office, Archdiocese of Sydney. I had been at the school since 19 May 1975; previous to that I had been employed by the Catholic Education Office at the Christian Brothers' High School Balmain.

As soon as I arrived at school on Thursday 9 October 1975, I went to see the Principal, Brother Raymond. He informed me that about six parents had contacted him immediately following the programme, on which I appeared, the previous night. They had strongly expressed their hostility to having a homosexual teacher in the school and demanded to know the position the Principal would take. As he had done on previous occasions, the Principal gave me at our meeting, unqualified praise for my work in the school, indicated support for the stand I had taken as a homosexual and said that he just wished the whole issue would die. However, he said that he sensed that pressure would be brought to bear by Church Authorities to dismiss me. We discussed at length the possible outcome and courses of action. By mutual agreement, in order to see what happened, I spent Thursday 9 and Friday 10 October 1975 at home.

At 9.30am on Monday 13 October 1975, the school secretary rang to ask me to meet the Principal at 11.30am. This I did; the Deputy Principal, Brother Paul Kelly, was also present at the meeting.

The Principal told me that he had been advised by the Catholic Education Office that he had to terminate my services at the school. He handed me a letter of dismissal (see **4.1.3** page 138), a copy of which is attached, and a cheque issued on 10 October 1975, by the Catholic Education Office referred to in the letter. Evidence that he was an unwilling party to the action taken is the fact that he was unaware of the contents of section 1 (b), clause 6 of the award mentioned in the letter of dismissal.

No official reason was given for my dismissal. However, statements have been given to the media which leave no doubt that my dismissal was because of my homosexuality and not because of any professional incompetence, which was not, is not and could not be in question.

A statement made through the Catholic Information Service to a Current Affair on 13 October 1975 made clear that I was sacked not for being homosexual, but for stating publicly that I was homosexual. That honesty could be undesirable trait in a teacher is difficult to believe.

A spokesman for the Catholic Church on the ABC radio programme, AM, on 15 October 1975 indicated that he supported the right of parents to demand my dismissal since they are entitled to expect a certain sort of influence on their children. However, I had been exerting an influence on the children for the past six months. I was, of course a homosexual during that time. That influence had received nothing but praise from the Principal and a number of parents. Why it could be envisaged that the influence would change simply because my homosexuality was known publicly is not understandable. In fact, it could be argued that my homosexuality being publicly known would place restrictions on any untoward behaviour I might be tempted to indulge in.

I was employed by the Catholic Education Office as a teacher. For it to take account of any factors other than my professional ability in considering my employment is an act of discrimination. I submit that the Catholic Education Office of the Archdiocese of Sydney has discriminated against me by dismissing me for declaring my homosexuality.

And I make this statement conscientiously believing the same to be true, under provisions of the Oaths Act 1900.

Declared at Sydney
This 10 October 1976
(signed Michael A. Clohesy)
(signed Peter Trebilco JP)
A Justice of the Peace for New South Wales

4.1.3 Dismissal Letter from Brother Raymond, Principal, Marist Brothers' High School, 13 October 1975

Your employment as a teacher with this school is hereby terminated in accordance with Subclause (1)(b) of Clause 6 Terms of Engagement of the Teachers (Non-Government School and Pre-Schools) (State) Award.

I enclose herewith cheque in the amount of $1524.86 which represents the sum total of your entitlements under the said Award.

The termination of your employment is effective as from the date of this notice.

4.1.4 Cross Examination

Mathews: We now start a section on Homosexuals in Education. To start, I will ask Mike Clohesy to come and tell us about his dismissal as a teacher from a school.

Clohesy: (reads Exhibit 6 – see **4.1.2** page 136).

Mathews: Just a couple of questions on that. Was it known to anybody at the school before you went on the ABC program, on the television program that you were a homosexual?

Clohesy: I had not told the principal but I believe that he knew. He knew that two other people in the school that I knew to be homosexual, he knew they were. I was friends of them and he knew they were, so it is my belief that he did know.

Mathews: Are they still at the school?

Clohesy: One of them is, the other has gone overseas.

Mathews: But neither of them were dismissed?

Clohesy: No.

Mathews: So that it was the public reaction which led to, or the public disclosure of your homosexuality which led to it? What was the parental reaction do you know?

Clohesy: To my knowledge very minimal. The only actual evidence I have were the six parents ringing up on the night of the program, and the following week, when some people from CAMP were handing out a statement at the school to the students explaining our side of the case, one parent rushed over to the two women handing out the statements and tried to grab them out of their hands. She was foiled in that attempt by the fact that her car started to run down the hill as she grabbed the papers.

Mathews: Did any of them contact you and try to support your stand?

Clohesy: Only one did, which was a very strong statement of support for me.

Coonan: Mike, in your case as in Peter's, (see **1.1** page 2) it seems the crucial point has not been your homosexuality but the knowledge of your homosexuality. If you had not received any publicity about being a homosexual and it became known to the school that you were, in fact, a homosexual, perhaps even known to some parents, what do you think the effect would have been then?

Clohesy: I believe there would not have been any reaction. I do not think that parental reaction had any influence in this case at all. And I would extrapolate from that to the general situation, that obviously some parents would create a fuss, but I do not believe it would have reached the situation of my dismissal.

Coonan: Do you think that this has been largely an action of the Catholic hierarchy as opposed to protest from parents and from local protests, put in that way.

Clohesy: It is totally a political question. It is a question of the power of the Catholic Church, not of my teaching ability, not of parental reaction.

Coonan: Can I put it to you that, and I really am playing devil's advocate here, that homosexuals may in too many cases emphasise the sexual aspect of their nature, as opposed to putting it into context with all other areas of human behaviour and I realise that it may be simply because of the sort of repression that operate in relation to sexual expression in a homosexual way that can arise. But are you in some respects your own worst enemies?

Clohesy: I would then put the question around the other way, and say that the people who place the emphasis on the sex are the heterosexuals and not the homosexuals. On the Current Affair program I did not once discuss my sexual activity; I did discuss the emotional relationship in which I am still a member.

Coonan: Yes, and did you anticipate your dismissal? Did you think you were in danger of losing your job?

Clohesy: No, I think I was and still am naive about that. I think I had sufficient faith in humanity to believe that would not happen and it was only after the program that it dawned on me that it was a distinct possibility. Even when I went to see the Principal, I was only going to see him as a matter of courtesy. I still had not anticipated what would happen.

Coonan: What advantages do you say that there are in being honest in the way that you have been honest and suffering the terrible consequences you did?

Clohesy: Well I think there is an inherent benefit in being honest, just for society in general. I think it is essential for homosexuals to be honest. I think the basic problem confronting the homosexual movement relating to the liberation of homosexuals is the inability of homosexuals to be honest about their sexuality, about their person. If homosexuals did have the freedom then many of the taboos, many of the fears would simply disappear. If people realised that every day they were meeting homosexuals but did not know it, then so much of the problem would disappear.

Coonan: Although you have got the problem then of what the effect of your honesty has. In other words, you have been dealing with the problems of how it is received, this honest information, you do not see that as more the problem than homosexuals being honest?

Clohesy: Obviously for a while that is going to be a problem. On the general scale, or the extreme scale of dismissal, so long as it is individual people who are coming out it is going to be a problem because there will be retaliatory measures that are possible. If, however, we can get numbers of homosexuals to do it, then there will not be the same problem. On the personal level, the personal reaction to one when people discover that you are homosexual, obviously that is going to be a problem for some time. But it is only going to be overcome by people confronting people with their sexuality.

Coonan: Finally Mike you do not see anything inconsistent in you being a known homosexual and being a very effective school teacher?

Clohesy: No, none at all.

Coonan: Thank you.

Egan: Did you seek legal redress, for your dismissal? Did you make an attempt to be reinstated?

Clohesy: Well that is a long and involved story but I will go into it. I contacted the Independent Teachers Association which was my union at the time. I was told by them after an extensive interview with the executive, in which, for instance, I was expected to accept blame for a poster called *Lesbian Nuns come out of your closets* which was displayed at a demonstration around the case, but at the end of that interrogation by the executive, they agreed that they would take up my case, provided that I accepted their barrister and solicitor and provided that I told no one that they were taking up the case. They did concede in the end that I could tell the two people that I lived with that they were going to take the case up. However, because it was the first time to CAMP's knowledge that the question of homosexual dismissal would have come to the Industrial Commission, we were not content to accept their barrister and solicitor, because we had no idea of their reaction to the situation. So for some time we tried to get independent legal aid through the Australian Legal Aid Office, and independently. Eventually we gave that course of action up, because for instance I was told by the Legal Aid Office that I had too much money. The only money I had being that which I had been given as severance pay. We were advised by our legal officers to try the union barristers and solicitors just to see what would happen. So I went back to them approximately six weeks after the case and said we will take your help. They said we are sorry but it is too late and they said they had just been in court that week and the judge had rapped them over the knuckles for bringing a reinstatement case too long after the actual dismissal. Not knowing any better at the time, we accepted that though at no stage had they mentioned the question of time in all the discussions we had with them. In March of this year we discovered that they did secure the reinstatement of a teacher dismissed from another catholic school, six months after her dismissal.

Egan: So your case never went to trial?

Clohesy: No.

Mathews: Any other questions?

Cairns: Yes. Mike, you have said that it is a matter of the political power of the Catholic Church when it becomes a matter of public knowledge. Could you tell us a bit more about that?

Clohesy: The Catholic Church has taken a certain stand morally on homosexuality. They sympathetically say it is fine to be a homosexual, but you must not practice your homosexuality. They take that stand, I believe, in the absence of any biblical evidence but that is beside the point. Having taken that stand and stuck to it, they cannot afford, for the sake of their own power, to have any aberration from that seen publically. And I think that it could apply to any of the stands on which they take a moral teaching. This one happens to be homosexuality, that they took a certain stand on homosexuality, there was a public confrontation and aberration of that stand and so they had to step in and maintain their power position.

Cairns: Now, there is another kind of person involved, apparently, the one who would not take a tolerant view of homosexuality as long as it was not known; another kind of person who immediately upon becoming aware of it strongly opposes it. Now do you agree or disagree that such a person has a right to object to anyone as a teacher whose needs, they would say morals, conflict violently with their own.

Clohesy: No. If they accept that right for themselves, if they accept the right of their own beliefs for themselves, then they must accept that other people have a right to their beliefs and they must accept plurality, which is our only argument. Fine, if there are teachers supporting their views in the system, fine, but there

should also be teachers reflecting other kinds of views, otherwise students are getting a limited chance to develop their personality.

Cairns: Right well now, you say that they do not have the right to object to a teacher who has views violently conflicting with their own, because in your opinion children, students, should have the advantage of different views.

Clohesy: Yes.

Mathews: Any other questions?

Gietzelt: Yes. Mike you mentioned that you felt persons should be honest I think that is the term you used. In fact, that is the principle that you feel was involved in your case. I gather from what you meant by that there is not enough people having the experience that you have had. That it is important in order to bring it before the public that more people are going through the traumas that you did, that is, clearing a proper position and facing the consequences of that. Would you give us some indication how you feel people should approach it when you look at the experience that you [had]. In other words, that you had your teaching career cut short and I gather it has affected your employment in that area subsequently, has it? Could you give us some information on that?

Clohesy: Well, I have not directly tried to gain employment in the Catholic Education Office. I think I made the fair assumption that there would be no chance of gaining it there, nor, I believe, in the rest of the independent system. The difficulty with testing the State system, apart now from my desire not to, is that I have no Diploma of Education and so I am not eligible for employment there.

Gietzelt: What about this question of wanting people to be honest? To what extent does this Tribunal have some responsibility to try and encourage people to go through the sort of experience that you obviously took, the experience you had, you took the steps that you took because you believed that it was essential to bring to public attention the problems of homosexuals, knowing full well the consequences. In what way do you think the Tribunal could assist in this area of encouragement?

Clohesy: Well, I think simply by encouraging it. By recognising that the fundamental issues for homosexuals is the ability to be open about themselves, to be able to talk about themselves. Then, I think, we have to distinguish between two levels – in the extreme case of dismissal, obviously there is certain legal protection that can be given to people, such as perhaps a redrafting of the Anti-Discrimination Bill that the government is presently putting up, but that kind of legislation obviously can only deal with the extreme cases where the employer is honest about the reason for dismissal. Now, in other cases, where the employer, for instance is not able, is not prepared to be honest about the reason for dismissing someone, not promoting someone, and just in the general reactions and rejection which people are going to get from peers and friends and work colleagues if they say they are homosexual, there is not much directly that can be done there, except to continually say to homosexuals that it is just essential for us to be able to be real people. You cannot be a real person, you cannot be you, if half of your lifetime you are hiding what is an essential and integral part of yourself and it is very difficult to raise the consciousness of homosexual people because there is so much to lose, because they are continually being told that they are second class and so they get the feeling, why do I have to it? And people talk themselves into thinking that there is no real discrimination. But they have to realise that, as I say, you cannot be real, you cannot be you, if you are not being open about yourself, if you are not **able** to be open about yourself. People talk about flaunting homosexuality, but, you know, that is a cop out. Every wedding is a flaunting of heterosexuality, so why do we not have the right just to, not to flaunt in that sense, but just to be open about ourselves, just to feel free. In the morning tea room, just to say what we did on the weekend with the people in our relationship. It is just the little things like that count.

Gietzelt: After having had all that experience, in retrospect do you believe what you did was the correct thing? Do you feel better for it in the sense that you are honest with yourself?

Clohesy: I personally feel better and I have been lucky in that the job I have got I think now offers far more potential than teaching ever would have, but I certainly think yes that I have grown as a person.

Gilling: Can I just go back, Mike, to the plurality of views amongst teachers. Would you say that there is any dimension of views amongst teachers from which children should be protected? In other words, if somebody advocated violence, nazism, whatever you like, or rather lived that way and that the pupils whom he or she taught were aware of that, would you think there was any case for protecting them from that point of view and the person who lived that life style?

Clohesy: I find it difficult to support their being excluded from that kind of experience, I would hope that if they were confronted with that opinion, that there would be sufficient other opinions to counter balance that. But I do not think the way of teaching people not to be violent is not to expose them to violent people. I think the way to get people not to be violent is to show them, you know, if you like, the evil of violence. But it is not to exclude, not to take the right of choice away from them which is what we always do. If we take a certain kind of experience away from someone, then we are denying them the right to choose. We are denying them their freedom. We have to give people the right to choose for themselves and not to be making decisions for them all the time. I think what happens with children constantly is that adults say, we know better – this is it, and it just extends over such a wide area. We have to give decision making back to them in the same way that we have to give decision making back to adults, because they do not know how to make decisions either.

Gilling: Would there be any age limit on exposure to different points of view?

Clohesy: That is very difficult and I honestly do not know, but my feeling is if there is one it should be as low as possible, but I really do not feel competent to answer that.

Gietzelt: Mike when [with] this whole question of homosexual teachers and students, there has been a problem in Queensland (see **4.4.2** page 162) and I venture I have read some similar type of problem in South Australia (see **4.3.2** page 156) about conveying to students the other opinions that were available to them as far as sexuality is concerned and there has been some similar experiences in Victoria, as I recollect, and of course, the experience in New South Wales today has shown us that it is an area which there is tremendous public reaction. Have there been any real endeavours made to overcome at this level what we talked about earlier today, about the seduction of the young, it seems that this is the area where the hostility has to be broken down perhaps more than other, because, if we are to educate young people to have a balanced attitude, proper attitude, then obviously they need to be impacted with the ideas and yet it is in this area where we seem to get the biggest reactions, it seems. On the evidence that is available to us generally, it is the one which gets the parents reacting most violently, how, what has the organisation done or has there been any research on how best we can handle this sort of a problem from a point of view of community enlightenment.

Clohesy: There has not really … There is a very strong gay teachers group in Melbourne which is working on those issues, there is the remnants of one here. I think, two levels probably on an official basis that need to be explored: one is unions which have to be explored to the extent that they should be, though from some of the response we have had from unions in general I do not hold much hope there; the other one obviously is the Minister for Education and Education Department and CAMP in the last few weeks has made attempts to open dialogue with the Minister for Education here, but had no success at all. But there are the wider questions to which you allude of how to deal with the parental reaction and the seduction questions and things like that which I think we need to continually go into.

Cairns: Yes, Mike, could I ask you a couple more questions. Since I asked you questions, you have made very clear, I think, your view about the need for you to be able freely to express your own sexuality, otherwise you have no meaning, you have no reality. Now do you see other characteristics that other people who are not homosexual have, that prevent them in the same way from being themselves.

Clohesy: Sure, I think it is part of the whole thing, I think part of the massive reaction against us, just talking in terms of sexuality, is heterosexuals' fear of their own sexuality and the extensions to which it might go if

they were free and I am sure that is an enormous part of the personal reaction that we get from them.

Cairns: Apart from sexuality, do you see any other characteristics that people possess that leads them to be repressed and suppressed in the same way?

Clohesy: I think, basically, it is that people simply are not encouraged, at any point throughout their life, to take responsibility for themselves, to have control over their own lives, to have decision making abilities. That, all the time, we see it in the family, we see it in the education system, decisions are continually made for people and they do not know the experience of having control over their own life and I think that is it.

Cairns: Right now, there is just one other question. You said that, in your view, there was no authority in the Bible for the stand that the people who are violently opposed to your employment would take. Earlier, a witness (see **1.1.3** page 26) had said that the Pauline view of authority was such a base for that view. Do you agree with that?

Clohesy: No I do not. I think perhaps that one could form a very tenuous argument from certain selected passages of the Bible to support that stand, but if one takes the Bible as a whole, then I believe there is no support for such a stand. But I think we should also point out the inconsistencies even in the stand which the Catholic Church in particular takes. For instance, they claim that they accept that homosexuals can be homosexual so long as they do not practise it sexually, and yet what they were saying to me by dismissing me was that I could not be a homosexual. And the other point to make there about not being able to practise homosexuality with the Catholic Church is that celibacy is seen by them as one of the highest virtues which a person can have and one of the highest states to which a Catholic could ever aspire and yet lauding it as they do they then expect **all** homosexuals to be celibate and I find it a little incongruous to expect that all homosexuals could have that vocation.

Cairns: Now, from a teaching point of view, from a theological or from a church point of view if it does not lie in authority, where do you think the intense objection to homosexuality that you have experienced comes from?

Clohesy: Well, I think there is probably personal reaction in it of authorities, but I think it is that now churches are part of the superstructure, maintaining the status quo, that the institutions which exist now have practically no links with the religion which founded them and that they exist as status quo preserving organisations and that all they do is serve, in a very direct way, to maintain that system that exists.

Cairns: Would it also lie in their own discomfort with sexuality in general?

Clohesy: Yes, when I said personal reaction, that is what I meant.

Cairns: Thank you.

Mathews: Thanks Mike.

4.1.5 Today

The ADB informed the TWG in May 1991 that private schools are still not covered by the Anti-Discrimination Act except for the racial discrimination provisions.

At its 1984 annual conference the Independent Teachers Association (ITA) adopted a 'Policy on Privacy in Employment of Teachers in Non-Government Schools' this policy includes:

3.0 Personal Life

3.1 The ITA considers the areas of housing arrangements and household-sharing; marital status; pregnancy; church attendance; personal beliefs; **personal sexual preference**; confidential dealings with professional persons such as priests, counsellors and medical or legal practitioners; and behaviour of family members, including parents, children and siblings to be **private** [emphasis added].

3.2 Any form of pressure upon teachers in these or other private areas is a form of harassment and is therefore intolerable.

3.4 The ITA further considers that nothing in these private areas should be a barrier to employment or to continued employment.

The TWG wrote on 12 August 1991 to the Catholic Education Office of NSW stating as follows:

In November 1976 a Tribunal on Homosexuality and Discrimination heard evidence on a range of issues which were perceived to entail discrimination against homosexual m\women and men.

One of the cases presented to the Tribunal was that of Michael Clohesy who had been employed as a teacher of French at the Marist Brothers' High School in Eastwood since 1975. In September of the same year the Campaign Against Moral Persecution (CAMP), NSW of which Michael was the Secretary published its submission, *Homosexuals and Human Relationships*, to the Commonwealth Government's Royal Commission on Human Relationships. Early in October 1975 Michael appeared on the TCN9 program, A Current Affair, to talk about the submission. It was stated on the program that he was homosexual. He was subsequently dismissed from his teaching position by the Catholic Education Office of NSW.

After 15 years, a range of issues raised before the Tribunal are simply no longer issues. For example, New South Wales now has Anti Discrimination legislation. It is the intention of a number of those who were responsible for setting up the Tribunal to contrast the attitudes and practices which prevailed in 1976 with those that prevail now.

We are aware that private education institutions are exempt from those provisions of the Anti-Discrimination Act which make it unlawful for employers to discriminate against employees on the grounds of homosexuality. Because such an exemption does not imply that employers so exempted are required **to** discriminate we would like to know your current attitudes and practices with respect to the employment of teachers who are homosexual.

Will the Catholic Education Office refuse to employ as teachers women and men who are known to the Office to be homosexual?

Will the Catholic Education Office employ as teachers women and men who are known to the Office to be homosexual provided they do not publicly declare their homosexuality?

What steps, if any, does the Catholic Education Office take to ascertain if current or potential teacher employees are homosexual?

Brother Kelvin Canavan, Executive Director of Schools responded on 12 September 1991 as follows:

BKC/PD/cmo

I acknowledge receipt of your letter, dated 12 August 1991, regarding the employment of teachers who are homosexual, and advise that it is custom and practice in the Sydney Archdiocesan [*sic*] school system to treat all teacher applications on their individual merits.

If at some future time you wish to present a position on behalf of the Tribunal Working Party, I suggest you write to me with a view to arranging a meeting at some mutually convenient time.

On 11 November 1991 the TWG responded to the Executive Director's invitation to meet as follows:

Thank you for your letter of 12 September [1991] in response to the Tribunal Working Group's request for information of the Office's policy regarding the employment of homosexual teachers.

On behalf of the Tribunal Working Group may I express our appreciation of your offer to meet with us to discuss the issue. The Group is primarily not an ongoing group but one whose task is to document the Tribunal and the changes which have occurred since 1976. I have, however, passed copies of your correspondence on to members of the Gay and Lesbian Consultation of the NSW Ant-Discrimination Board who I feel want to take up the offer you made to us to meet and discuss matters of mutual concern.

The teacher is urged to have … a sympathetic and patient approach to pupils with sexual worries or deviant attitudes. Such an approach … need not be mistaken for approval …

4.2 New South Wales Personal Development Program
4.2.1 Letter from the Tribunal on Homosexuals and Discrimination to Eric Bedford, Minister for Education, dated 23 November 1976. 4.2.2 Statement of Alleged Discrimination in Personal Development Program, Exhibit 25. 4.2.3 Cross examination by the Tribunal on 27 November 1976. 4.2.4 Today – NSW Board of Studies, 2 Unit Course, Years 11-12, *Personal Development, Health and Physical Education Syllabus*, 1990.

4.2.1 Tribunal Letter

The Tribunal Collective wrote to Eric Bedford, the NSW Minister for Education the following letter on 23 November 1976:

> The Hon Jim Cairns; Mr Barry Egan; Senator Arthur Gietzelt; Ms Bridget Gilling, will be Tribunalists at the above Tribunal. They will hear evidence if instances of discrimination (specific and general) from homosexual people on the Saturday. Ms Helen Coonan, solicitor; and Jane Mathews, barrister will be counsel for each in all cases presented. On the Sunday the Tribunalists will hand down a report, with recommendations, based on the evidence.
>
> From the booklets on Personal development in secondary schools, the following sections are to be presented as evidence of discrimination against homosexuals:
>
> *Contact 7*, page 31;
> *Contact 9*, pages 1, 3, 4, 47;
> *Contact 12*, pages 1-2;
> *Contact 14*, pages 1-2, 14-17;
> *Contact 16*, page 1.
>
> We would like to invite your Department to submit a statement outlining its reasons for believing the above pages not to be discriminatory. We would like to apologise for the very short notice, but the delay has been beyond our control.
>
> Copy: Director General, Department of Education

4.2.2 Discrimination Statement

EXHIBIT 25

The Personal Development program was introduced into NSW secondary schools in 1974. I am going to show that the aims on which the course is based and the context of the course reinforces the discrimination against homosexuals in this society.

This course gives the sanction to schools to overtly disseminate, principles and attitudes towards sexual behaviour. Although the statement of Principles avoids rigid prescription, there are definite undertones which convey a message. The course overtly reinforces and maintains the alleged heterosexual norm. It offers no other valid alternative.

In the introduction to the course there is a statement: "There seems to be no significant opposition to the view that there is a pressing need for young people to be given effective guidance, subject as they are to social forces and to the influences of changing attitudes to relations between men and women and between individuals and society." [55]

This statement could be quite acceptable on the surface but if we analyse a few of the words and notice how the rest of the course is set out, this statement becomes highly questionable.

The words 'effective guidance' implies that students need to be aware that there are diverse viewpoints but they need to be steered towards the 'correct' one. This supposed 'correct' one as will be seen from the exhibits on the Contacts, which are the basis of the course, is towards heterosexuality.

The words 'relations between men and women' would to the majority of people exclude relations between women and women and relations between men and men. This is reinforced by the fact of looking at a diagram on the front of the Contacts, which you have in front of you. It depicts the outline of a man and a woman in a highly sexist fashion.

Exhibit 25(1) shows an outline of the Personal Development course. This course is divided into four main areas: biological, developmental, social and health.

Under the heading of biological aspects come headings such the anatomical differences between males and females, the male and female reproductive system, conception, pregnancy and family planning. By starting with the biological differences and then talking about reproduction, they are emphasising heterosexuality at the expense of any other alternative. By mentioning the reproductive system, there is an emphasis on the female fulfilling the socially accepted role of mother. The undercurrent is, that the woman is not complete unless she fulfils her biological role in society and this turn implies that she must have sexual relationships with a male. There is no alternative offered of a single woman not having children or a woman having a child without having sexual relationships with a male via artificial insemination or by possible parthenogenesis.

Homosexuality is only mentioned twice under the social strand. In one section it is included with sex laws – social consequences, age of consent, abortion, rape and prostitution. In the other section it is mentioned after trial marriage and communal living. Because homosexuality is mentioned in this context, automatic value judgements are conveyed to and assumed by the students doing the course.

Exhibit 25 contains excerpts from the Contacts which show how homosexuality is not included and that when it is mentioned it is seen as a deviance.

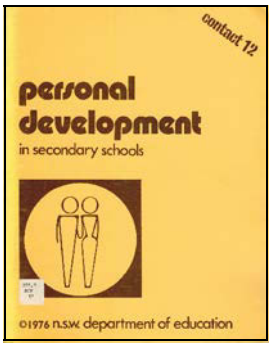
In *Contact 7*, (p. 32) there are a series of diagrams depicting the stages of growth and development. These

[55] *Personal Development in Secondary Schools – The place of Sex Education, a Statement of Principles*, New South Wales Department of Education, Sydney, April 1974, p. 4.

show from infancy to ages 16 and 17. At different stages girls and boys play together, then there is antagonism between the sex groups and the last picture depicts males and females going out in couples. There are no pictures depicting and affectionate relationship between two girls or two boys. And we can see that the emphasis is on monogamy.

Contact 9 deals totally with the family. By reading this section, the family is defined only as the nuclear family consisting of husband, wife and their children. Homosexual families consisting of two or more adults, with or without children, are not mentioned.

One of the aims of the Personal Development course states "to develop in the students an appreciation of the importance of family." [56] It also states that "no sex education program would be complete unless it included education for family life, parenthood and the knowledge of the role of each member of the family …" This automatically rules out the possibility of the individual being the basic unit and other alternative life styles as living alone, couples without children, single parent families, homosexual families, communes, etc. The stress on the 'importance of family' means that any other alternative is not valued as highly. If any person chooses an alternative it is seen as a failure. This automatically places a negative judgement on homosexuality.



Contact 12 is given totally to talking about marriage – that is, heterosexual marriages. The fact that the majority of the course is discussing heterosexual unions automatically invalidates unions of any other type. Marriage in this Contact is described as "… a social institution and a relationship between two human beings of the opposite sex." [57] It is not mentioned that some homosexual relationships fulfil all the definitions of a marriage except that the partners are of the same sex. Thus marriage of heterosexuals is seen to gain all the positive sanctions of this society and homosexuality, by the fact of not being mentioned in the context of marriage, automatically receives negative sanctions.

Contact 14 talks about relationships. The emphasis of this section is to show that children are influenced by their parents and that this influence should be towards heterosexual relationships. I quote from page two: " … the strength of the parent/child relationship will strongly influence the child's present and future behaviour patterns and **his** attitude to other people, but increasingly **he** is looking to **his** age-mates and forming various types of relationships with them." [58] [emphasis added].

"Young people build on the relationship patterns formed in the early years and these patterns tend to influence future male/female relationships." [59] This quote tends to smack of the outdated psychiatric evidence which shows that homosexuality in males is a result of a domineering mother and a submissive father and vice versa for females. It implies that, in the nuclear family, parents have to be very careful that the children will copy the role-playing of the adult of the same sex. In other words, children must be brought up to be heterosexual.

Contact 14 also contains the only mention of homosexuality. It is approached from the very heterosexist bias. Various views on homosexuality are quoted. Dr Frank S Caprio [60] is quoted talking about sodomy and pederasty. Since this would be the first section on homosexuality mentioned to students, it would

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[56] *Contact 9*, Personal Development in Secondary Schools, New South Wales Department of Education, Sydney 1975, p. 1.

[57] *Contact 12*, Personal Development in Secondary Schools, New South Wales Department of Education, Sydney 1976, p. 2.

[58] *Contact 14*, Personal Development in Secondary Schools, New South Wales Department of Education, Sydney 1976, p. 2.

[59] ibid. p. 2.

[60] Caprio, F. *Variations in Sexual Behaviour*, Grove, New York, 1955.

immediately put forward a negative and false view of homosexuality. It would reinforce the view that homosexuality is to do with males only because they only mention anal intercourse. It would also reinforce the view that homosexual sexual behaviour only consists of anal intercourse and it would also arouse the fears of students that homosexuals are dirty old men who prey on little boys. No where in the course do they mention that heterosexuals partake in anal intercourse and that the majority of pederasts are heterosexuals. The fact that the section on homosexuality commences in such a way is value-laden.

The second quotation from history is about Alexander the Great, who was very upset when his male lover died (of course, it had to be a young boy). This firstly reinforces the view that homosexuals are into role-playing, that is, that they model their relationship on heterosexual ones – that of necessity, there has to be a more dominant powerful partner and a submissive weaker partner.

Both these examples I have mentioned reinforce the false views of homosexuality as being:–
1) an exploitive sexual relationship from which children need protection;
2) that a homosexual relationship between two people is one which results in a tragedy of some sort.

The next section reinforces society's view of lesbianism, that is, that either it doesn't exist or that it can be ignored and that in most cases it is not worth mentioning. And this is the only mention under the heading of homosexuality where lesbianism is mentioned. The quote is:– "As for early female homosexuals, Agrippina and Levia were well-known Roman lesbians. It is generally held that homosexuality flourished in the Roman bath houses." [61]

Well such [so much] for lesbians!

This is then followed by the traditional psychoanalytic view of a male homosexual having a domineering mother and a detached father – followed by a token mention of Freud's view that homosexuality is not an illness.

Although they **appear** to have produced an unbiased account of homosexuality by using quotes for and against, they have stated the traditional view and are using the fact that most people follow traditional views.

The main fact is that, in talking about homosexuality, they have drawn on prejudiced studies from history, and psychiatric studies of homosexuals who were in psychiatric institutions or prisons. No where in the Personal Development course have they discussed historical views on heterosexuals or have they given any psychiatric evidence on heterosexuals to say that recent studies have shown that they are quite reasonable. There is no argument presented **for** or **against** heterosexuality.

As a conclusion to the section on homosexuality, the Personal Development course states that "homosexuality may distress the individual and may cause **him** to seek psychiatric help. The aim of the psychiatric treatment is usually a better adaption to life in general and a more satisfactory adjustment to the particular difficulties of being homosexual in a predominantly heterosexual society." [62] [emphasis added]. his means the Personal Development course concurs with the idea that, since homosexuals have problems in this society, then it would be better that they be changed to the more acceptable pattern of living, that is, heterosexuality. They see heterosexuality as a better adaption to life in general – perhaps implying that heterosexuality is higher up the evolutionary scale? These types of statement automatically produce a value judgement in the student.

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[61] Cavan, Ruth Shonle ed.: *Marriage and Family in the Modern World*, Thomas Y. Crowell and Co., New York, 1969 quoted in: *Contact 14*, Personal Development in Secondary Schools, New South Wales Department of Education, Sydney 1976, p. 14.

[62] *Contact 14*, Personal Development in Secondary Schools, New South Wales Department of Education, Sydney 1976, p. 16.

Following the last statement, there is another one that states (*Contact 14*, on top of page 17), "that the latter aim" (i.e. altering a person's sexual propensity), "is sometimes achieved, especially when the patient is relatively young or has experienced some heterosexual desire or activity in the past."

This statement implies firstly, that homosexuality is only a stage that can be changed. We all know that through childhood in the nuclear family we have been conditioned towards heterosexuality, thus every individual had some heterosexual activity. Thus, the only conclusion from the above statement is that all homosexuals can be changed to heterosexuality and **should be** because it is better for them. This statement does not take account of the fact that homosexuals at some time during their life have realised that they are homosexual and want to remain that way as they have found that this life is fulfilling to them.

At no stage during this section on homosexuality have they talked about a fulfilling homosexual relationship and yet in all other sections they make positive statements about boy/girl relationship and marriage. This section not only discriminates against homosexual relationships, it discriminates against single homosexuals and makes no mention whatsoever of homosexual families with children. Homosexuality is not seen as a valid alternative, it is seen as a deviance from the norm. The main argument that is put up is the fact that since homosexuals are in a minority in this society and have emotional reactions to living in this society, they should be changed to heterosexuality. Why doesn't the Personal Development course suggest that since blacks are having emotional hassles in living in a white dominated society that they should change their colour. The whole course is based on the premise that everyone wants to fit into one mould, that is, the heterosexual monogamous marriage mould.

The last Contact, (*Contact 16* – p. 48) on the last page of the exhibit under the heading of Personal Development and the Handicapped we have a chapter entitled: "the future of the handicapped person in marriage and the family life." Again, there is no mention of any other type of relationship existing for the handicapped person. This reinforces totally the whole view that there are no other alternatives.

In the aims of the Personal Development course, it also states that there is much truth in that we teach what we are and parents and teachers need to be aware of the exemplary roles they play in the eyes of young people. This emphasis on the responsibility of the teacher would again lead the teacher into implying that heterosexuality is the only acceptable life style to emphasise. Also, another quote: "The teacher is urged to have an understanding and tolerance of individual differences, a sympathetic and patient approach to pupils with sexual worries or deviant attitudes. Such an approach, which avoids judgement, need not be mistaken for approval or excessive permissiveness. It will be necessary to recognise the difference between isolated or experimental activity and unhealthy behaviour patterns." [63] I do not think I need to comment on that.

4.2.3 Cross Examination

Mathews: Next we have Robyn Plaister and she has complaints about the Personal Development course as it has been introduced into some NSW schools and the context in which homosexuality is dealt with.

Plaister: I refer to Exhibit 25 and 25(1) (reads Exhibit 25 – see **4.2.2** page 147).

Mathews: Thank you very much. I am afraid we have got our terrible time problem again, but just one question if it is possible to answer it briefly. How do you think homosexuality should be dealt with in schools?

Plaister: I do not think it should be dealt with as a specific area. I think the whole Personal Development course needs to be changed to looking at people first as people and then talking about relationships no matter what they are. So that heterosexuality, homosexuality, bisexuality, asexuality would only come into this at the end of talking about how to relate to a person as a person.

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[63] *Personal Development in Secondary Schools – The Place of Sex Education, A Statement of Principles*, New South Wales Department of Education, Sydney 1974, p. 15.

Coonan: Robyn, do you think that this emphasis to heterosexual marriage as such in this course has been given the stress it has simply because, whether we like it or not, it still seems to have remained the main tenet in our society and that, accordingly, it would seem appropriate that it still be given that sort of stress. It is interesting that they have not excluded, as they used to, any reference to alternate ways of living, it is just that they have kept them very much as say other alternatives, rather keeping the main stress which is heterosexual marriage. What is your comment to that?

Plaister: Well, I feel that they have totally reinforced the view that heterosexuality is the only way of living, and that marriage is the ultimate end.

Coonan: Do you mean only or preferable?

Plaister: Beg your pardon?

Coonan: Do you mean the only way or a preferable way?

Plaister: I think they put it to us that it is a preferable way, but I think by getting to the children and reinforcing the situation where they come from heterosexual families anyway, and saying you should follow what your parents are doing I do not see that gives them any other alternative. I can only see in that light that they can see homosexuality as not a valid alternative.

Coonan: But I gather that you are not saying that homosexual life styles should be given any greater emphasis than any other life style. It should be treated in totality.

Plaister: Yes.

Coonan: Is that correct? Just coming to the purpose for which this course is used – namely, for educational purposes for children, to what extent do you think the susceptibilities, for want of a better word, of the normal parent are to be respected? That is, that probably most parents would hope that their children would grow up being other than a homosexual, not because being a homosexual is such a terrible thing, but because as we saw in the letters from the mother (see **7.9.2** page 241) and the grandmother, (see **7.10.2** page 244) they see their child as going through so much pain and it causes their family so much pain. To what extent are those susceptibilities entitled to be respected in a course such as this?

Plaister: I think, at any one stage, if we accept the pressure that people put on us, in other words, not to cause them pain or not to put them in a bad position as they see themselves in society when they have homosexual children, we are going to keep the system going as it stands at the moment. I think at some particular stage we have to, I suppose, ignore to a certain extent the pressures that adults and parents are putting on the children.

Coonan: And it would be your view, I suppose, that children are much better off being taught about and shown a variety of life styles, at that age, rather than trying to struggle through and find a lifestyle that suits them when they have been conditioned one way later on in life.

Plaister: Yes.

Coonan: Just one further question, because I do not want to take up all the time. Can you describe the characteristics of, you said that in this course they never describe a happy fulfilling sexual relationship, I think the traditional view of homosexual relationships, sorry, is one in which, certainly a very valid relationship, but one in which enormous problems are faced. Can you describe from your general knowledge the characteristics of a happy fulfilling homosexual relationship?

Plaister: That is a very difficult question, because I think that it is difficult to answer it from a heterosexual point of view too.

Coonan: Well, do not answer it from the heterosexual point of view.

Plaister: No, I mean I think it would be difficult for a heterosexual to answer that what a complete fulfilling relationship was.

Coonan: I'm sure it is difficult for anyone.

Plaister: I would think that.

Coonan: Well, you suggested that they should have described it and I was just wondering if you would go about describing it. This is being my devils advocate's hat.

Plaister: I do not think I meant it in those terms. I think all I was trying to say was that relationships, both homosexual and heterosexual and whatever, should be presented in an equal light as fulfilling relationships depending on what the person chose.

Coonan: And it is obviously realistic that in all relationships there are problems.

Plaister: Yes.

Coonan: Thank you.

Cairns: Yes, I take your point about the whole structure of this and how you consider it approaches it completely from the wrong angle. But looking at homosexuality, pages 14, 15 and, and 17, it does not seem to me that it is too bad. I want to direct your attention to three points and there are more than that. First of all, in the middle of page 15, there is a quotation from Freud, [64] one that is very rarely used because Freud is usually taken to be the great research and theoretical spokesman for the artificial creation of homosexuality and here is a very strong statement in the opposite direction. Would you agree with that?

Plaister: Yes.

Cairns: The second point is, it relates to what you have just been asked. There is a paragraph, second one from the bottom on page 15, [*Contact 14*] which directs attention to "recent studies of homosexuals, who are not psychiatric patients or prisoners, have usually found that homosexuals do not show psychological disturbance or poor judgement at work any more than heterosexuals." Now it is valuable to have that, is it not?

Plaister: It is valuable to have, but in the context in which it is placed, after having spent perhaps a page on writing about psychiatric studies where they have shown that homosexuals do have problems, that they are maladjusted, etc., I do not think it has much value when it is placed after that sort of thing. And the main fact is that they use psychiatric evidence to talk about homosexuality where they do not use psychiatric evidence to talk about heterosexuality.

Cairns: Yes, in the next paragraph, of course, they deal with Siegelman and contradicting Bieber. [65]

Plaister: Yes.

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[64] Freud, Sigmund quoted in *Contact 14*, Personal Development in Secondary Schools, New South Wales Department of Education, Sydney 1976, at p. 15. "Freud (1905-1951) unlike later psychoanalysts, believed that homosexuality was not an illness." He wrote: "Inversion (homosexuality) 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".

[65] Siegelman, M. 'Psychological Adjustment of Homosexual and Heterosexual Men: A Cross-National Replication', *Arch. Sex. Behav*. 7:1-11, 1978. Bieber, Irving, et. al. *Homosexuality: A Psychoanalytical View*, Random House, New York 1962.

Cairns: Not a completely unbalanced view, is it?

Plaister: I would say that the context to which they have given weight to previous psychiatric evidence where the homosexuals are found to be maladjusted would outweigh, I think, especially when you are talking to students in schools.

Cairns: Well the last point is not altogether facetious, but we did hear this morning about how the Army (see **2.1.4** page 32) wants to have a vigorous and healthy outdoor life, it may not do any harm for them to know that Alexander was heartbroken and inconsolate, so much that he fasted for three days, when he learned that his young lover had died. Alexander, the great conqueror may have some little influence on the army.

Gietzelt: Have you any experience, that you can relate, about how these matters are, as a result of these papers, discussed within schools at all. How the teachers lead the discussion, how the students react to the papers?

Plaister: The feedback that I have got so far because, I do work in a school but I am not teaching this course, is to the effect that homosexuality, that section, is largely ignored. It does not say anywhere in the course that they have to complete the whole of the course and therefore this section is avoided, basically because the teachers feel that they do not know enough about it, because they are heterosexual. The other feedback I have had is to the effect that it is mentioned when they start talking about the developmental stages and it is mentioned with the love of the student for her teacher or something to this effect, it is seen as a stage which you pass through and it is something that will change with time.

Gietzelt: Is there any suggestion how we might overcome that sort of problem? Has the matter been taken up with the department – that they ought to be placing within the school discussion, competent people to deal with these matters, just like we have christian education to the children at primary school level.

Plaister: In Melbourne, the Gay Liberation tried to talk to different schools, and I think that was about 1973, the principals at that time allowed them in and they had talked at several schools, then the media got hold of it and it was written up to the effect that the homosexuals were perverts, well converting all the students to homosexuality, more or less along those lines, and so there was a statement made that no longer would homosexuals be able to go into schools and talk about homosexuality.

Gilling: What about teachers, homosexual teachers already in the school or homosexuals already in the school, is there, to your knowledge, any identified homosexual teacher who is teaching the Personal Development course?

Plaister: Identified to whom?

Gilling: To the headmaster or whoever allocates the portfolio of teaching the Personal Development course.

Plaister: No I do not think that any principal would allow a teacher, if he or she was a known homosexual, to teach that particular course.

Gilling: You think, but you do not know to that effect.

Plaister: I know of homosexuals that are teaching this course, but are not known to the principal to be homosexual.

Gietzelt: By contrast, I do not suppose we could have a copy of the similar material that might be published in the northern state of Queensland, I do not suppose.

Mathews: There would not be any. Is Pamela Stein here?

Plaister: No she is not.

Mathews: That takes us directly to the next item involving Robyn, namely, the reading of the circular sent to or distributed by the Education Department in South Australia.

4.2.4 Today

The 1990 New South Wales Personal Development Program – 'Personal Development, Health and Physical Education Syllabus' has great potential for big changes in relation to development of knowledge, skills and attitudes of different sexual expressions, discrimination and prejudice.

This syllabus "… is concerned with improving the health of both the individual and the community through the involvement of students in the processes of investigation, communication, analysis, decision-making and values formation." [66]

It also states that it "… is designed for all students in Years 11 and 12 proceeding to the Higher School Certificate Examination. While there are no formal prerequisites for the course, this syllabus will provide an opportunity for students to extend and refine the understandings and skills they have developed in Personal Development, Health and Physical Education over Years K-10." [67]

The syllabus is further "… intended for a wide range of student needs and interests. Through participation in Personal Development, Health and Physical Education each student will become an informed member of the community." [68]

In the chapter dealing with the objectives and outcomes of the syllabus, which is divided into three educational aspects, namely: knowledge, skills and values, we find the following:

Values and attitudes

Objectives	Outcomes
• respect for the values and attitudes of others	• respect the efforts, ideas and feelings of others • reflect on and evaluate the beliefs and attitudes of others • discern forms of racism, sexism and prejudice • recognise the factors that make a person's individuality

The syllabus has four compulsory core modules which are to take about 80% of total course time:

1) Analysis and management of personal health;
2) Analysis and management of community health;
3) The science of movement;
4) Skills development and composition.

The nine optional modules, of which two are compulsory using about 20% of total course time, are as follows:

OPTION 1 Human sexuality	OPTION 2 Community health issues	OPTION 3 Sociology of games and sport
OPTION 4 Two social health issues: Drug use and HIV/AIDS	OPTION 5 First aid and sports injuries	OPTION 6 Outdoor recreation
OPTION 7 Human movement analysis	OPTION 8 Movement composition and appreciation	OPTION 9 The art and science of coaching

[66] 2 Unit Course, Years 11-12, *Personal Development, Health and Physical Education Syllabus*, New South Wales Board of Studies, 1990, p. 1.

[67] ibid.

[68] ibid. p. 2.

The optional module with which we are most concerned here is 'Human Sexuality'.

This module has three main areas of study:

1) **Development of sexuality**
- definition
- influences on sexuality
- male/female social roles

2) **Relationships and sexuality**
- sexuality and lifestyles
- individual v shared responsibilities
- equity in relationships
- sexuality through the lifespan
- sexuality and technology

3) **Adolescent sexual behaviour**
- attitudes about adolescent sexual behaviour
- influences on adolescent sexual behaviour
- consequences of adolescent sexual behaviour

In the second area of study, 'Notes and Suggestions' which by the way are only advisory, we find the following:

• Identify factors involved in forming relationships and discuss why some people choose marriage, de facto relationships or alternative lifestyles.	• Discuss and define homosexuality, heterosexuality, bisexuality and transsexuality.

The new 1990 New South Wales syllabus for Personal Development, Health and Physical Education is a great improvement on the one brought before the Tribunal in November 1976.

However, despite this much needed and achieved improvement in the syllabus we should not loose sight of the fact that human (people's) sexuality is an option. Secondly, and perhaps much more importantly, we do not know as yet what the quality of teaching will be like in this course. In the past personal development programs have had low status and priority amongst teachers.

… proselytisation within schools for life styles which are opposed by or even abhorrent to the vast majority …

4.3 South Australian Education Department Circular

4.3.1 Tribunal on Homosexuals and Discrimination Letter to Dr D.J. Hopgood, Minister for Education, Adelaide, dated 10 October 1976.

4.3.2 Minister of Education, South Australia, Statement by the Minister of Education and Education Department Circular Number 69, *Contentious Issues in Schools*, by Dr Don Hopgood, Exhibit 5.

4.3.3 Presentation of Discriminatory Statement to the Tribunal on Homosexuals and Discrimination on 27 November 1976.

4.3.4 Today – TWG letter to Director General of Education, Adelaide, 7 April 1991; Letter from Director General, 15 April 1991; Letter from Director General, 15 May 1991; TWG letter to Director General, 7 August 1991; Letters from Director General, 16 August 1991 and 8 December 1992.

4.3.1 Tribunal Letter

The Tribunal Collective wrote to Dr D.J. Hopgood, South Australian Minister for Education on 10 October 1976 as follows:

> A panel of prominent people will compose the above Tribunal. They will hear evidence of instances of discrimination (specific and general) from homosexual people on the Saturday. There will be counsel for each side in all cases presented. On the Sunday the Tribunalists will hand down a report, with recommendations, based on the evidence.
>
> The Official Education Department Circular, Number 69, will be presented as evidence of discrimination against homosexual people at the above Tribunal.
>
> We would like to invite your Department to submit a written statement outlining its reasons for believing the Circular not to be discriminatory. At a later stage arrangements might be made to present your Departments views orally on the actual day of hearing.

4.3.2 Contentious Issues in Schools

EXHIBIT 5

Statement by the Minister of Education Dr Don Hopgood

From time to time, questions are raised about the possibility of proselytisation within schools for life styles which are opposed by or even abhorrent to the vast majority of the community. Since the promulgation of the Freedom and Authority Memorandum of 1970 it is clear that what happens in schools so far as imparting knowledge, advocating points of view or inculcating attitudes are concerned, is a matter for the professional expertise and integrity of teachers. The Government is concerned that this position should be

maintained.

At the same time, it is conceded that the Government's position in this matter should be more than just a pious resolution. This matter was the subject of comment in the last Parliament because of the successful passage of a private Members's Bill to amend the Criminal Law Consolidation Act. Various courses of action were then urged – further amendments to that particular Act, an appropriate amendment to the Education Act or to the Regulations under that Act. Since that time, I and my officers have considered what action could best secure the Government's position without doing violence to the professional integrity of teachers.

With the support of my colleagues, I have now decided to have issued an official Education Department Circular, No. 69, which will be sent to all School Principals and will be incorporated in the proposed Administrative Instructions currently in the course of preparation and which will be issued to schools in mid-1976. It indicates a frame of reference within which the Freedom and Authority of Schools is to be interpreted. This matter has been discussed with representatives of the South Australian Institute of Teachers and Principals. Both prefer an Administrative Instruction of the type intended rather than amendments to either the Act or Regulations.

The circular will read:–

E.D. Circular 69.
Contentious Issues in Schools.

The Freedom and Authority Memorandum of 1970 giving undisputed control of their school to principals, in consultation with their staff and the school community, must be interpreted in terms of the Education Act and Regulations and departmental policy as proclaimed from time to time by the Director General.

Indeed, the exercise of freedom and authority within schools must be used with the prevailing moral attitudes, practices and customs of the community always in mind. Fundamental amongst these is our society's belief that in social, personal, moral and political matters schools are not to be used by interested persons for propagating their particular or private beliefs nor on any account for proselytising.

This does not mean that controversial matters should not be discussed in schools. In fact it is of paramount importance that they should be, with opportunities for presentation of arguments and points of view for and against to students of appropriate maturity and previous preparation. In this connection, however, the very appearance of some people in a school programme could be construed as advocacy. Among such would be people of extreme views or those known as professed advocates of activities or beliefs associated with homosexuality, particular religious doctrine or unorthodox moral and political beliefs which have no considerable support and, indeed, are objectionable to the vast majority of the community, You therefore, have the right and, indeed, the duty to see that they have no access to children in schools.

There are other places where such people can express their views in our democratic society, but your first duty is to children and school is not one of these places.

4.3.3 Presentation to Tribunal

Plaister: I think this will explain the question that was just asked. This is a statement by the South Australian Minister of Education (reads 'Statement', Exhibit 5, see **4.3.2**) And this is the circular that was sent out headed *Contentious Issues in Schools* (reads 'Circular', Exhibit 5, see **4.3.2**).

Mathews: Thank you.

4.3.4 Today

The TWG wrote to the Director-General of Education in South Australia on 7 April 1991 as follows:

> In November 1976 a Tribunal on Homosexuals and Discrimination heard evidence on a range of issues where discrimination against homosexual men and women was perceived.
>
> The 1976 South Australian Education Department Circular 69 – *Contentious Issues in Schools* was presented to the above Tribunal believing it to be discriminatory against homosexual women and men.
>
> We drew the Tribunal's attention particularly to the following discriminatory segments of the Department's circular:
>
> > Indeed, the exercise of freedom and authority within schools must be used with the prevailing moral attitudes, practices and customs of the community always in mind. Fundamental amongst these is our society's belief that in social, personal, moral and political matters schools are not to be used by interested persons for **propagating their particular or private beliefs nor** [on] **any account for proselytising** [emphasis added].
> >
> > This does not mean that controversial matters should not be discussed in schools. In fact it is of paramount importance that they should be, with opportunities for presentation of arguments and points of view for and against to students of appropriate maturity and previous preparation. In this connection, however, the very appearance of some people in a school programme could be construed as advocacy. Among such would be people of extreme views or those known as professed advocates of activities or beliefs associated with **homosexuality** … [emphasis added].
>
> After 15 years, many of the issues raised before the Tribunal have been rectified, and I mention the NSW Anti-Discrimination legislation as one example. It is the present intention of a number of those who were responsible for the setting up of the Tribunal to compare the situation in 1991 with matters raised in 1976.
>
> Could you please inform us if the above circular is still current, if not, what circular(s) has/have replaced it and forward us a copy or copies of the new circular(s).

On 15 May 1991 the Director of Education in South Australia responded as follows:

> I refer to your letter, dated 7 April 1991, concerning Departmental policy in contentious issues in schools.
>
> Education Department Circular 69 was repealed in 1980. Policy advice on the subject was included in the Department's Administrative Instructions and Guidelines which is currently under review. A copy of the replacement will be sent to you as soon as possible.

The TWG wrote again on 7 August 1991 to the South Australian Director General of Education as follows:

> Thank you for your letter, regarding repealed Education Department Circular 69, dated 15 May 1991.
>
> In your letter you also mention that " … replacement material will be sent to you as soon as possible."
>
> Could you please indicate when we could expect this material to be available to us.

The Senior Administrative Officer, T J Brook, Acts, Regulations and Guidelines of the South Australian Education Department responded to the TWG on 16 August 1991 as follows:

> I refer to your letter, dated 7 August 1991, concerning a review of this Department's policy on contentious issues in schools.
>
> At this stage the replacement material is not complete. However, once it has received official sanction a copy will be forwarded to you in accordance with our Director-General's previous undertaking.

The Director of Education in South Australia wrote to TWG again on 8 December 1992 and stated that:

> I refer to your letter dated 7 August 1991 and my reply of 16 August 1991, concerning a review of this Department's policy on contentious issues in schools.
>
> Enclosed is a copy of an amendment to the Department's Administrative Instructions and Guidelines which was published in the Education Gazette No. 9, week ending 23 October, 1992, and which denotes the Department's current policy.

Amendments To The *Administrative Instructions And Guidelines* – Discussion Of Contentious Issues In Schools

Paragraph 92 of Section 3 of the Education Department's *Administrative instructions and guidelines* has been amended to ensure that in the light of current legislation and policies the material cannot be misinterpreted with regard to discriminating practices.

Section 3, STUDENT MATTERS, is amended by deleting the whole of paragraph 92 and substituting the following:

92 Discussion of contentious issues in schools

92.1 Rationale

92.1.1 In several curriculum areas contentious matters relating to political issues, religious beliefs and moral values may arise.

92.1.2 In a pluralist, democratic society, schools need to ensure that students become aware of the diversity of views held on controversial matters.

92.1.3 When contentious issues are considered by the school to have curriculum relevance, they should be discussed in a sensitive, objective and balanced manner.

92.1.4 Principals and teachers must ensure that students are given the opportunity and skills to develop their own views when controversial matters are discussed.

92.2 Obligations of principals/teachers

92.2.1 Education Regulation 125 states "if in their course of their duties teachers find it necessary to discuss contentious issues with their students, it is incumbent upon them to present those issues fairly and reasonably".

92.2.2 Principals and teachers should refrain from deliberate acts or words aimed at imposing their own beliefs, opinions and practices which have been deemed to be controversial.

92.2.3 There is a responsibility to ensure that visiting non-Education Department personnel who present or put forward controversial positions on social, moral, personal and political issues are only used in classroom instruction in a balanced and educationally sound learning environment. Generally, the initiatives for introducing speakers or distributing controversial material presenting a particular viewpoint must come from the school in accordance with its education programme and not from partisan or pressure groups seeking to use the school as a forum to advance their causes.

92.2.4 The Principal's approval is required for the introduction of visiting non-Education Department personnel to the school. It is implicit in the Principal's approval that he/she or a responsible

nominee has already ascertained the broad scope of content of the proposed address/presentation and that he/she is confident that the students are able to differentiate between objective and subjective statements.

92.2.5 Factors to be taken into account must include the curriculum relevance, the age and maturity of the students and the school/community relations aspect. The Principal or a responsible nominee may need to seek the advice of the school council and other community members to determine prevailing community attitudes.

92.2.6 Any literature or other material to be distributed to students must be approved (in the form in which it is to be presented to students) by the Principal or a responsible nominee. In the case of a film or video, the Principal may delegate the task of previewing the material to a senior member of the staff who is then responsible for advising the Principal as to its suitability and acceptability.

92.2.7 Parents must be given the opportunity to withdraw a student from attendance at religious education classes and some components of the health education course which they do not wish their children to attend. Mature age students shall have the right to withdraw from attendance on their own volition. Exemptions are provided for in Education Regulations 196 and 242 respectively.

… many changes are taking place. Some of the changes … we may find hard to accept.

4.4 Kelvin Grove College of Advanced Education in Queensland
4.4.1 Tribunal on Homosexuals and Discrimination Letter to Greg Weir, dated 6 October 1976.
4.4.2 Submission from Kelvin Grove College Homosexual and Lesbian Group to the Tribunal on Homosexuals and Discrimination, Exhibit 41.
4.4.3 Press release by the Director of Kelvin Grove College of Advanced Education on 23 September 1976.
4.4.4 Queensland Legislative Assembly, Questions Upon Notice, 29 September 1976.
4.4.5 Homosexual Caucus – National Campaign.
4.4.6 Cross Examination by the Tribunal on Homosexuals and Discrimination on 27 November 1976.
4.4.7 Today – TWG letters to Greg Weir, 28 March and 7 June 1991; Materials from Greg Weir, October 1991; TWG letters to Director General of Education, Registrar Queensland University of Technology and Gay Counselling and Information Service, 16 January 1992; Letter from Professor Roger Scott, Director General of Education, Queensland, 14 February 1992.

4.4.1 Tribunal Letter

The Tribunal Collective wrote to Greg Weir, Kelvin Grove College of Advanced Education (CAE) Homosexual and Lesbian Group the following letter on 6 October 1976:

> A panel of prominent people will compose the above Tribunal. They are at the moment Jim Cairns, Senator Arthur Gietzelt and Bridget Gilling, and very likely Barry Egan. They will hear evidence of instances of discrimination (specific and general) from homosexual people on the Saturday. There will be counsel for each side in all cases presented. On the Sunday the Tribunalists will hand down a report, with recommendations, based on the evidence.
>
> The New South Wales and Australian Government are being pressed to introduce anti-discrimination legislation which will protect the rights of homosexuals. By holding the Tribunal we will be able to show the Governments that we indeed are discriminated against. Furthermore the Tribunal will have educational value in presenting discrimination to the invited politicians and other prominent people in the community.
>
> Having read through the letter from the Australian Union of Students, and having heard about the homosexual discrimination which went on at Kelvin Grove, at the last National Homosexual Conference, we are wondering if you would be prepared to make a written submission to the Tribunal outlining the discrimination you people went through.

If you people are in agreement with our proposal then we will write to the Director of Kelvin Grove stating that your homosexual discrimination case will be presented to the Tribunal asking the Director to submit a written statement stating reasons he believes the treatment of your group not to be discriminatory.

Looking forward to your quick reply, love and peace

4.4.2 Kelvin Grove Homosexual and Lesbian Group

EXHIBIT 41

Submission to: The Tribunal on Homosexuals and Discrimination
From: The Kelvin Grove Homosexual and Lesbian Group

The Kelvin Grove Homosexual and Lesbian Group was formed at the beginning of the academic year, 1976. Since that time it has come under attack from outside organisations. Such attacks resulted in the College being pressured to disband the group. The final consequence of this pressure and attack has been the State Government discriminatory policy of not ensuring employment to those members of the group wishing to enter the teaching profession upon graduation. This is regardless of whether or not these students are bonded to the State Department of Education.

Pressure Groups Within The Community:
Two extremist groups, Community Standards Organisation and Parents of Tertiary Students Association, initiated a campaign aimed firstly at the elimination of the group and secondly at the exclusion of homosexuals and lesbians from the teaching profession. To achieve these aims, they petitioned members of the College Council, State Parliamentarians, and Parents and Citizens Associations.

The College:
Because of College Administration sensitivity to public criticism, it initially tried to dissuade the group from (a) publicly advertising its existence and (b) identifying in any way with the College e.g. using the College name or utilising College facilities. Direct pressure was applied to the group and also to the Student Union, which was supportive of the group.

This stand was later modified by a College Council decision which recognised that the College could not "interfere in the affairs of legal student groups" (see **4.4.3** page 163).

The College attitude of tolerance rather than support was reiterated by the Minister for Education (Hon Val Bird): "I understand that while not endorsing the group's activities, the council … decided unanimously not to … suppress it." (see **4.4.4** page 163).

The State Government:
The Queensland Minister for Education, Hon Val Bird, in reply to a question without notice stated: "Students who participate in the activities of homosexual and lesbian groups in college should not assume that, upon graduation from college, they will be employed by the Department of Education." (see **4.4.4** page 164).

4.4.3 Kelvin Grove College Council – Press Release

The Kelvin Grove College Council met on the 22 September 1976, and issued the following press release, announcing their decision.

At the regular meeting of the College Council of Kelvin Grove College of Advanced Education on Wednesday, 22 September, the matter of a student homosexual and lesbian group at Kelvin Grove was raised, carefully considered and discussed by all members. The College Council now wishes to state its

unanimous view that it does not intend to interfere in the affairs of legal student groups. If a group is formed it is either lawful or unlawful. If a group offends against the law, those who constitute it are subject to criminal penalties. The Council will at all times cooperate with the Police and wishes to make clear that the campus is not and will never be a sanctuary for students seeking to flout the laws.

The Council does not accept that it should become a censor. We live in a time of competing values, at a time when many changes are taking place. Some of the changes we find good, others as individuals, indeed as a group, we may find hard to accept. But we do not pressure to use the authority we possess to prohibit what is not prohibited by the law. We cannot presume to do so.

Furthermore, we believe that the prohibition of even small groups of students would be both counter productive and wrong. The great body of young people in the College are of full voting age or very close to it, and they must be able to stand on their own feet and make judgements on issues as they find them. We firmly believe therefore that nothing except unwarranted and disproportionate publicity is generated by acts of prohibition.

Finally, the Council wishes to point out that at every opportunity the College staff and the Director emphasise the high ethics and standards expected by the community of its teachers.

4.4.4 Queensland Legislative Assembly [69]

5. Teaching Staff, Kelvin Grove College of Advanced Education

Mr Lindsay, pursuant to notice, asked the Minister for Education and Cultural Activities (Hon Val Bird):–

(1) With reference to my question of 1 September concerning the teaching staff of the Kelvin Grove College of Advanced Education and the article in *The Courier Mail* of 24 September headed 'College Approves Homosexual Group', wherein it was stated that the council of the Kelvin Grove College of Advanced Education has approved the presence of a homosexual and lesbian group on campus, what is the name of each and every member of the Kelvin Grove council and what other positions do they hold in the community?

(2) Who on the college council voted for the presence of the homosexual and lesbian group and who voted against it?

(3) Will he give an assurance to me and the great majority of concerned parents whom I represent in this Parliament that no members of the homosexual and lesbian group at Kelvin Grove College of Advanced Education will be posted to schools in the Everton electorate should the Education Department ever lower its standards to the stage where young men and women with such unfortunate and unnatural personal life-styles are ever admitted to the profession of teaching our children?

Answers:–

(1) The names of the members of the council of Kelvin Grove College of Advanced Education are shown on page 1602 of the Queensland Government Gazette No. 98 of 17 July [1976] [70] and on page 1988 of the Queensland Government Gazette No. 116 of 14 August [1976]. [71]

Members of the council hold also the following positions within the community:–

- Chartered accountant;
- Company manager;

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[69] Queensland, *Parliamentary Debates*, [Hansard] Legislative Assembly, Third Session of the Forty-First Parliament, Wednesday, 29 September 1976, pp. 736-7.

[70] STITT, Neville William, F.I.C.A., A.A.S.A., A.A.U.Q., (Chairman), Chartered Accountant; ADAMS, Rodney John Lewis, A.B.I.A.; BOTSMAN, Peter Bernard, B.Com., B.Ed., M.A., Dip.Ed.Admin., Ph.D. (Connell), M.A.C.E., Director, Kelvin Grove CAE; BURNETT, Paul Charles; CAULDWELL, David John, Company Direct or; COCHRAN, Douglas Clive, F.A.S.A., Public Accountant; DOHERTY, Ralph Leonard, M.B., B.S., P.H., F.R.C.P.A., Director, Queensland Institute of Medical Research; GOLDING, James Alwyn, B.A., A.Ed., M.A.C.E., Director of Secondary Education, Department of Education, Queensland; GOODWIN, Kenneth Leslie, M.A., Dip.Ed., Ph.D., Professor of English, University of Queensland; HIRSCHFELD, Keith Eliott, M.B., B.S., R.A.C.P.; JARRETT, Thelma Edith Lorraine, F.C.N.A., JONES, Gordon James, B.Sc., B.Ed., M.A., Assistant Director, Kelvin Grove CAE; MALE, Allan Charles, B.A., B.Ed.St., Dip.R.E.; MITCHELL, David Alexander Forrest, B.A., B.Sc., B.Ed.; MITCHELL, Herbert Edward, F.R.I.C.S., F.A.I.Q.S.; STONE, Bernard Felix, B.S., M.S., Ph.D.; THATCHER, Margaret Jann; THOMS, Patience Rosemary, O.B.E., Editress, Courier Mail Newspaper; WELCH, Mervyn Albert, B.A., B.Ed.

[71] FITZGERALD, Raymond Francis, B.A., A.Ed., Principal, Brisbane State High School.

- Executive Director of Nursing;
- Former newspaper editress;
- Medical doctor (2);
- Minister of religion and Director of Youth and Christian Education;
- Officer of college (5);
- Public accountant;
- Public servant (2);
- Quantity surveyor;
- Research scientist;
- Student of college (2); and
- University professor.

(2) I understand that while not endorsing the group's activities, the council, at a regular monthly meeting last week, decided unanimously not to attempt to suppress it. In reaching the decision the council took into account the adult status of the large majority of the college students. It, therefore, did not accept that it should act as a censor of the activities of student groups.

The council takes the view that if any group offends against the law, that group is subject to the processes of the law. Appropriate actions are matters for the police and the courts. The council has indicated that it is willing to co-operate at all times with the police. It does not regard the college as enjoying any privilege under the law.

The council has noted that attempts to suppress a minority group often results in a status being accorded the group out of all proportion to its significance.

Members of councils of colleges of advanced education are citizens of high standing and bring to the management of the colleges wide experience in community affairs.
I believe their balance and mature judgement is invaluable in these times of rapidly changing community values and standards.

(3) A clear distinction needs to be drawn between the role of a college council which is responsible for the over-all management of the affairs of its college and the Department of Education as the employer after graduation from a college. Students who participate in the activities of homosexual and lesbian groups in college should not assume that, upon graduation from college, they will be employed by the Department of Education.

4.4.5 Homosexual Caucus – National Campaign

In march 1976 the Kelvin Grove Homosexual and Lesbian Group was formed at Kelvin Grove College of Advanced Education. It was formed to, firstly, alleviate isolation that homosexuals and lesbians experience on small campuses, and, secondly, for political action to promote homosexuality as a valid life-style within the education system and the wider community.

The group's first action was to raise the issue of homosexuality at Kelvin Grove C.A.E. Union Council. Consequently two motions were passed. The first was as follows:

"That we (Kelvin Grove CAE union) support the right of homosexuals in Colleges of Advanced Education to form groups which aim at the acceptance of homosexuality in both society and in the education system."

The second granted $200 to enable the group to send a delegation to the Homosexuals in Education conference.

This was followed by an ongoing awareness raising campaign, through the publication of articles, posters and pamphlets.

Subsequent to the publication of an article concerning the group in the 'Expo Uni' booklet published at the University of Queensland, the group came under public attack from reactionary community pressure groups – e.g. Parents of Tertiary Students Association (POTS) and Community Standards Organisation (CSO). These groups, via the media, called for an investigation by the Queensland Government into homosexuals in education and, more explicitly, demanded the abolition of the homosexual and lesbian group, stating that:

"Kelvin Grove is the main teachers training college in Queensland, and unless this homosexual group is eliminated, every teacher graduating from Kelvin Grove will be under a cloud of suspicion.

Homosexuals as individuals, are entitled to sympathy and the assistance of all possible medical and spiritual help available. But teaching is not a suitable career for them." [72]

The Director of Kelvin Grove CAE, after the initial publicity, had an interview with one member of the Homosexual and Lesbian group, and a representative of the Student Union, during which he commented on the adverse publicity received by the group. He upheld the right of any student to form a group on the campus, but denied the right of the Homosexual and Lesbian group to in any way associate itself with the College – e.g. by use of the College name. The group refused to accept this decision, considering it discriminatory, and issued a pamphlet by the usual College communication channels, open to students and staff, and groups within and without the College. In response to this, the Director forwarded the following memorandum, on the 31 August 1976, to the Student Union:

"The attached notice (that is the pamphlet) clearly, if not specifically, identifies the College and uses its facilities to publicise group activities. This cannot be condoned, and I must ask for it to be immediately removed from all pigeon holes."

The Union decided, after consultation with the Director and the Homosexual and Lesbian Group, not to remove the pamphlet, as such a demand was definite discrimination; and so the pamphlet was distributed throughout the College.

In an interview the following day, the Director informed two representatives of the Union that the Community Standards Organisation had written privately to all members of the College Council (the supreme governing body of the College) demanding the disbanding of the group. Because of this action, any decision made concerning the group became the ultimate responsibility of the governing body. The group during this time received support from various community groups, who upheld the homosexual and lesbian groups' right to exist, and homosexual and lesbian activists attended the College open day, and supported the display arranged by the College group.

The College Council met on the 22 September 1976, and issued the following press release, announcing their decision (see **4.4.3** page 162).

No support for homosexual rights is inherent in the Council decision. The College merely condones under sufferance the existence of the Homosexual and Lesbian Group, because of its legal inability to prohibit it.

The issue was taken up in Parliament in question time, when the Minister for Education, Mr Val Bird, stated that members of the group need not assume that they would be employed as teachers on graduation from the College. He saw homosexuality as an unnatural, unfortunate lifestyle. In reply, a letter was sent to the Minister by Greg Weir, who had been acting throughout as spokesperson for the group, requesting clarification of his (the Minister's) statement; specifically asking for the names of any member of the group known to the Department; and a statement of the Department's position on the employment of homosexuals and lesbians. No reply was received.

Greg Weir, who publicly came out as a homosexual, has not been employed by the Department of Education on his graduation, although he is bonded to the Department for three years. On presenting his application to an official of the Department, who was obviously unaware of his involvement with the group, Greg Weir and the President of Kelvin Grove CAE Union were initially assured that he would be employed, as there were teaching positions for all bonded students graduating in 1976.

After repeated enquiries to the Department, over a period of six weeks, during which no placement was given, the President of KGCAE Union, in a telephone conversation with a Staff Inspector of the Department, was unofficially informed that the Department would not employ Greg Weir now, and had no intention of employing him in the future. On receipt of a letter of application from him, he would be immediately released from his bond. The Department would not be paying him [*sic*] [his] first year teacher salary. Letters requesting official explanations have since been forwarded to the Director of Primary Education, from Greg Weir, and the President of the KGCAE Union.

There can be no other reason for not employing Greg Weir as a teacher but his homosexuality, since assurances were previously given that all students bonded to the Queensland Department of Education would be employed as teachers on graduation, and he in all ways fulfilled his contractual liabilities. This can only be seen as a direct discriminatory action, as it denies the rights of homosexuals and lesbians to employment as teachers, and emphasises the heterosexist nature of the education systems, which do not recognise the validity

[72] *Courier Mail* (Brisbane), Wednesday, 22 September 1976.

of homosexual lifestyles.

4.4.6 Cross Examination

Mathews: Now, the last item in this session and before afternoon tea, which I am afraid is already late, are two students from Kelvin Grove College of Advanced Education, specifically speaking about the problems that a homosexual group have encountered since starting at Kelvin Grove earlier this year.

O'Callaghan: (reads Exhibit 41, see **4.4.2** page 162).

Mathews: You said that this group was formed at the beginning of 1976. What sort of activities has it been organising on the campus?

O'Callaghan: Mainly supportive, getting in contact with other people within the college who are homosexual, consciousness raising, that sort of thing.

Mathews: You will have to speak up. And were there any, was it because of any particular activity that you encountered this opposition or was it merely the formation of the group.

Weir: No, not really. An article was published in the Queensland University paper Open Day paper and these two organisations, Community Standards Organisation and the Parents of Tertiary Students Association got hold of this and saw that the group operated on the campus and took action.

Mathews: So, it was merely the existence of the group and its publicity which led to this reaction?

Weir: Yes.

Mathews: Has anyone taken up the minister for education on this statement, that …

Weir: Yes, a letter was written to the Minister three weeks ago. He has not replied to it as yet.

Coonan: As this group was formed in 1976, I suppose you have not had an opportunity yet to just see the full extent of such threats being carried out, if in fact they continue to be carried out, that is not employing anybody for next year.

O'Callaghan: We will probably find that out next week when postings come out.

Coonan: We are just a bit too early. I am sorry I probably should know this, but how is the College funded? It is government funded, is it?

Weir: Yes, it is funded by the Commonwealth Government, mainly, but it does receive some monies from the State.

Coonan: And I suppose you would see this as really a confrontation with people who could well be considered to have equally extreme views to your own, namely the Community Standards Organisation and the Parents of Tertiary Students Association? Is that correct?

Weir: Yes, that is the main confrontation.

Coonan: That has been the main confrontation. Are you able to say why apparently that group has been able to have more success with the government than you have? Seeing you are both minority views, it is just interesting that you know two, just for argument's sake, two extreme groups have clashed and one has seemed

to have more success.

O'Callaghan: I think it is pretty well known the Queensland's government's attitude on various issues relating to sexuality or anything for that matter. And I think they are a pretty ready audience to any complaints made by these organisations. And I think, in fact, that these organisations have definite affiliations with members of the Queensland parliament.

Coonan: So they would reflect the government's views more closely than your association would? Thank you.

Egan: Do you know of any statements put out by the Community Standards Association? This is the second case to come before the Tribunal in which they get mentioned. Do they have publications that circulate?

O'Callaghan: Yes, well we have not seen any of their publications, however we have come in contact with their publicity given in local papers and this sort of thing, where they enunciate their aims etc. with particular reference to the group of course and homosexuals in education generally.

Gilling: They are given ordinary news coverage?

O'Callaghan: I beg your pardon.

Gilling: It is ordinary news coverage, not an advertisement or anything?

Weir and O'Callaghan: Oh no.

Gilling: In other words it looks that they have good access to the newspapers?

Weir: Oh yes, in fact most of the publicity was initiated by the Community Standards Organisation and it was very hard for the Kelvin Grove Homosexual and Lesbian group to get publicity by itself. It was only after the initiation by the Community Standards Organisation that the press and the media generally approached us.

Egan: Do their spokespersons have names or do they …?

O'Callaghan: Yes they do. It is Mr Cook, is one of them. Apparently it is very small organisation and he seems to be it.

Egan: Well it has reached from Queensland to Tasmania, that is quite interesting.

O'Callaghan: Yes.

Gietzelt: Do they get publicity in the dailies, as well as the local papers, that is the Community Standards Association?

O'Callaghan: Yes, that is the Community Standards and Parents of Tertiary Students Association.

Gietzelt: Do they take a very conservative position on all issues as well as homosexuality?

O'Callaghan: Oh, extremely, particularly education. They have a very negative outlook. It is all restricted to the three Rs and nothing else and of course they are very against sex education.

Mathews: Is there, on a slightly different tack, is there any sex education involving mention of homosexuality in Queensland at all?

O'Callaghan: No, there is no sex education.

Weir: There is a mooted course going around at the moment but it is going to take quite a while to be implemented and it is of such a nature that it will be taken after school by professionally trained people and it is only open to those people that want to come along to it. But there is no sex education in Queensland at all.

Cairns: Thank you.

Mathews: Thank you very much. Well, once again we are running late, I think had better we make our afternoon tea break a ten minute one rather than twenty minutes as in the program.

4.4.7 Today

Late in 1991 the TWG approached Professor Roger Scott, Director-General of Education, Queensland Department of Education, whether:

> In 1975, a graduate student from the, then Kelvin Grove Teachers' College, Greg Weir, was not accepted as a teacher by the Department of Education. A court case did not disclose the basic reason for this refusal to employ, and there was some debate on the matter in the State Parliament.
>
> Mr Weir was the founder of a student organisation at Kelvin Grove, for male and female homosexual students. He considered his difficulties in gaining employment as being based on the publicity he had attracted, and the strong objections expressed by some members of the wider community.
>
> His case was put before the Tribunal – Dr Jim Cairns, Ms Bridget Gilling, Senator Arthur Gietzelt and Mr Barry Egan – by Miss Jane Mathews and Miss Helen Coonan. The Tribunal found that there had been discrimination against Mr Weir.
>
> The Working Group, [is] made up of four of those connected with the organisation of the 1976 Tribunal. We are preparing a report that will compare and contrast the social, legal and political attitudes towards male and female homosexuals, then and now.
>
> Could you let me know whether Department would still discriminate against an avowed homosexual who was seeking employment as a teacher? Could you also let me know whether the Department has any policies on this matter? Further, could you let me know what if anything, is the Department's approach to the teaching of a range of lifestyles as being options that school students should consider?

The Director General responded on 14 February 1992 as follows:

> I refer to your recent letter concerning this Department's policies towards homosexuality.
>
> I am pleased to report that the Department of Education does not discriminate against avowed homosexuals seeking employment as teachers or in any other positions in the Department. The Department of Education selects and recruits its staff on the basis of merit. Accordingly, the Department's policy reflects the Public Sector Management Standard on selection and recruitment.
>
> You will be aware that Queensland's Anti-Discrimination Act 1991 makes provision for discrimination on the ground of lawful sexual activity against a person if the work involves the care or instruction of minors and the discrimination is necessary to protect the physical, psychological or emotional well being of minors. However, this Department would question the actions of any employee where the physical, psychological or emotional well being of students was threatened, regardless of their sexuality.
>
> In response to your enquiries with respect to education, the experience of Human Relationships Education in Queensland suggests that teaching explicitly about homosexuality causes major contention in school communities. However, whilst there is no specific policy on teaching homosexuality as one of the range of lifestyles in our community, there is scope within the current and proposed school curricula for discussion on this issue to take place. A range of curriculum and subject areas explore the diversity of

values, lifestyles and relationships in contemporary Australian Society (e.g. Home Economics, English Literature, Speech and Drama, Health and Physical Education, and Human Relationships Education). Other curriculum areas focus on the scientific and health prevention dimension of aspects of relationships (e.g. Health and Physical Education, Science/Biology, proposed HIV/AIDS resources for secondary schools).

5. Homosexuals and Their Children

Tribunalists:
Dr Jim Cairns
Barry Egan
Bridget Gilling
Senator Arthur Gietzelt

Counsel assisting:
Helen Coonan
Jane Mathews

Witnesses:
Lee Andresen
Robyn Plaister

… inevitable psychological problems in the child's identity formation would follow his upbringing in a homosexual household.

5.1 New South Wales Adoption Legislation Review Committee
5.1.1 Tribunal on Homosexuals and Discrimination letter to Rex Jackson, Minister for Youth and Community Services, dated 4 October 1976.
5.1.2 Adoption Legislation Review Committee Report, March 1976, Exhibit 3.
5.1.3 Letter from R. F. Jackson, Minister for Youth and Community Services, dated 14 October 1976.
5.1.4 Letter from R.F. Jackson, Minister for Youth and Community Services, dated 11 November 1976.
5.1.5 Cross Examination by the Tribunal on Homosexuals and Discrimination on 27 November 1976.
5.1.6 Today – ADB, May 1991; TWG letter to Robert Webster, Minister for Family and Community Services, 10 April 199; Letter from Robert Webster, Minister for Family and Community Services, 4 June 1991.

5.1.1 Tribunal Letter

The Tribunal Collective wrote to Rex Jackson, Minister for Youth and Community Services the following letter on 4 October 1976:

> A panel of prominent people will compose the above Tribunal. They will hear evidence of instances of discrimination (specific and general) from homosexual people on the Saturday. There will be counsel for each side in all cases presented. On the Sunday the Tribunalists will hand down a report, with recommendations, based on the evidence.
>
> The comments about homosexuals as parents and recommendation 38 on page of the Adoption Legislation Review Committee report, will be presented as evidence of discrimination against homosexual people at the above Tribunal.
>
> We would like to invite your department or the committee chairperson to submit a written statement stating it believes the comments and recommendation not to be discriminatory. At a later stage arrangements might be able to be made to present your department's or committee's views orally on the actual day of hearing.
>
> copy: Mary McLelland, Chairperson, Adoption Legislation Review Committee.

5.1.2 Adoption Legislation Review Committee Report [73]

EXHIBIT 3

Homosexuals as Adopters

Although no submission was made favouring adoption by homosexual couples, a number strongly opposed such a proposition. We noted that in law marriage is a union between a male and a female person [74] and that therefore a homosexual couple seeking to adopt a child would have to be considered as two single applicants. Under the present system such application would be fruitless since, even if those applicants were able to have their names placed on the adoption register, preference would be given to married couples. Quite apart from the legal position however, we considered that inevitable psychological problems in the child's identity formation would following his upbringing in a homosexual household. For the same reasons we also considered that a party to a marriage who could be shown to be homosexual was also certainly unfit to be an adopting parent.

Recommendation 38: **Homosexuals should not be approved as adopting parents** [emphasis added].

5.1.3 Letter from NSW Minister for Youth and Community Services 14 October 1976

I wish to acknowledge your letter of 4 October, 1976, inviting a statement from my Department or the chairperson of the Adoption Legislation Review Committee regarding recommendation 38 of the Adoption Legislation Review Committee report for the Tribunal on Homosexuals and Discrimination which will be held on the 27 and 28 November, 1976.

This request is receiving my close personal attention and in the near future I will communicate with you again.

5.1.4 Letter from NSW Minister for Youth and Community Services 11 November 1976

EXHIBIT 3A

I am writing with further reference to your letter of 4 October 1976 regarding the proposed Tribunal on Homosexuals and Discrimination to be held on 27/28 November 1976.

Your representation related specifically to the report of the Adoption Legislation Review Committee and I note that you have forwarded a copy to Miss Mary McLelland who chaired this Committee.

As you are no doubt aware the Committee presented its report to my predecessor in office in March 1976 and consideration is now being given to the development of proposals for Cabinet for legislation to amend the law on New South Wales relating to adoption.

Although the Director of my Department was a member of the McLelland Committee, I should like to draw your attention to the statement which appears in the preliminary note to the report:

"The publication of this document does not commit the Minister or the Department to any course of action and should not be construed as necessarily supporting the views expressed herein."

It will be for Cabinet and the Government to determine at the appropriate time the detail of the proposed legislation and I anticipate that it will be some little time before that is finalised.

I have carefully examined recommendation 38 of the Report. The narrative which precedes it states the fact

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[73] New South Wales, Adoption Legislation Review Committee Report, March 1976, p. 58.

[74] *Corbett v. Corbett* (1970) 2 WLR 306.

that, under the law as it now stands, marriage is a union between a male and a female person and that therefore, a homosexual couple seeking to adopt a child would have to be considered as two single applicants. As you are probably aware it is possible for single persons to be approved as adoption applicants, by the placement of their names on the Adoption Register. Any single person, whether homosexual or not, is entitled to apply for the entry of his or her name in the Adoption Register but it is only fair to point out that the entry of one's name on that Adoption Register by no means guarantees placement of a child. In fact under the present system, priority is given to married couples where both are under the age of 38 years at the date of application, they have not more than one child already in their care and are able to satisfy the Director of my Department that they are unable or unlikely to have children naturally, or that it would be medically inadvisable for them to do so. Second preference is given to married couples who do not satisfy one or more of these criteria. After that follow single applicants, and as the McLelland Report points out, such applications although successful would be fruitless since even if the applicants were able to have their names placed on the Adoption Register, preference would be given to married couples.

The McLelland Report went on to state that quite apart from the legal position, inevitable psychological problems in the child's identity formation would follow the upbringing in a homosexual household. I find myself substantially in agreement with that view. I do not consider that the community at large regard homosexuals as pursuing a desirable life style and the rearing of a child placed for adoption by homosexuals could not be justified in terms of the understanding of a parent giving consent to adoption, as to the likely upbringing of that child.

I would also take the view that where one of the partners to a marriage is found to be homosexual, that marriage would, as a general rule, be considered potentially unstable for the placement of a child for the purpose of adoption.

I realise that some members of the homosexual community, including those associated with your Organisation, may disagree with these views but the Director of my Department is required under the Adoption of Children Act always to act in the best interest and welfare of the child. Where it is possible to place a child for adoption in the care of a happily married couple then I consider that is the best means of safeguarding the child's welfare and interest.

It is always open to any person whether homosexual or not and whether single or married, who has applied for the entry of his or her name in the Adoption Register and has had that application refused by the Director, to appeal to the Supreme Court of New South Wales.

5.1.5 Cross Examination

Coonan: We are now ready to commence session four which is the final session of the evidence part of the Tribunal, and we are now up to the section called Homosexuals and Children. Lee Andresen and Robyn Plaister will talk about the NSW Adoption Law Review Committee and the NSW Adoption of Children Act and both of those refer to Exhibit 3 and 15 respectively.

Andresen: Thank you. I should like to take, with your permission, the second of the items first, that is, the NSW Adoption of Children Act (reads section 19, (1) and (2) see **5.2.2** page 185) which are the parts of that Act that appear to apply to homosexuals. That is Exhibit 15 in your files. I should like to follow that with Exhibit 3 which is a document from the Adoption Legislation Review Committee. This was set up in March 1975 to inquire and report upon what changes are necessary to the law of adoption, and in a latter part of that report, page 58 which is the third page of the exhibit, I would like to read the paragraph referring specifically to the possibility of adoption by homosexual couples under the existing law. I quote (reads exhibit 3 from page 58 at the top (see **5.1.2** page 173). And, finally Exhibit 3A (see **5.1.4** page 173), which is part of the contents of a letter from the present Minister of Youth and Community Services to CAMP NSW. I will read a number

of paragraphs of the latter half of that letter, (reads exhibit 3A, paragraphs 7, 8, 9, 10 and 11). I submit that, in several respects, this poses a discrimination against homosexuals, the first of which is that, if applying, if a couple or more than a couple of homosexuals living together were applying for adoption, their union, their family let us call it, is not able to be regarded under the law as legitimate in any sense. They would have to be considered as single persons and that, secondly, there is overt discrimination with regard to the opinions expressed by both the committee and the present Minister on the issue of identity formation of children. These opinions that there would be inevitable psychological problems following the upbringing in a homosexual household, however plausible or widely held, I submit have no empirical basis in fact that I know of, and that the quotation and use of apologies as these, such ways of explaining that it would not be suitable, is an offence and a discrimination against homosexuals. I think you will realise that, in the same way as that not all heterosexuals are interested in raising children and bringing up children, so not all homosexuals would be; but there do exist some, perhaps many, who living in a stable relationship with one another, perhaps even more than two people together, have precisely the same feelings towards children as a heterosexual group or couple would have. They want to be able to bestow love and care on children in their own household and to do this, in their desire for this they are denied any possible way of doing it legally.

Coonan: Thank you. I have the original letter from the Minister who, when asked if he would like to make any further statement in relation to the matters to be presented to this Tribunal, replied, "Thank you for the letter …" , etc. "The previous correspondence in this matter fully sets out my views in relation to homosexuals and the adoption of children. At this stage I do not think there is anything I can add to those remarks." And those letters are tendered, together with the original letters and copies of the Act. Just before the Tribunal asks some questions: Are you saying that you think that the legal definition of marriage is certainly too narrow, and needs to be extended to include other valid relationships.?

Andresen: Yes, indeed and this point is further to a similar point that has been raised earlier by the Tribunal. The legal definition is too narrow, it requires that a marriage be between persons of the opposite sex and legally established. We are asking for a view of a family which goes beyond that.

Coonan: Can you give the Tribunal any idea, from your personal knowledge, of the number of homosexual persons who would want to adopt mothering and fathering roles towards children in a homosexual relationship?

Andresen: No, I have no idea or way of knowing what that percentage or proportion would be. I do know, however, that there is a significant feeling in any representative broad group of homosexuals meeting together, there is inevitably likely to be raised an issue such as this and it is quite commonplace to find such a need arising in any broadly based discussion in the homosexual community.

Coonan: The letter from the Minister, and indeed the McLelland report, seems to emphasise the negative aspects of homosexuals rearing children if indeed they can be substantiated. Can you think of any enriching experiences or positive aspects of homosexuals raising children?

Andresen: With a full awareness that what I would regard as a positive aspect may not at all be what many others would agree to I would certainly feel that, to be able to be raised in a household whether it contained two or more homosexual males or two or more homosexual females or a mixture of a number of them, would enable a child to gain what I would consider to be a very valuable asset: that is, an upbringing which would enable him or her to see beyond the conventional sex roles in society; to, hopefully, be a person who had a greater freedom of choice in deciding which, if any, given sex role that person might play in later life. I am not talking about sexual orientation, here, erotic interest, that is another issue altogether. But the sort of roles one plays in a family or in society at large, I can only consider a child would be enriched, his or her vision enlarged by such an experience.

Coonan: Perhaps more tolerant?

Andresen: I hope so, yes.

Coonan: Just one final question. Do you see or do you admit that there could be special problems arising in raising a child in a homosexual relationship? Problems such as the child coping with cruel comments at school and lack of understanding by other persons.

Andresen: Indeed these, these which are social pressures from outside the family group, could create problems. The question that arises in my mind is: do we, as it were, try to say that we will construct a society in which such problems will not exist before we allow these sorts of families to exist or do we go the other way around or do we try to work for both things at once? It seems to me that it is a chicken and egg issue and I would say that, of course, there will be problems. I myself, as a homosexual, have three children . I know that they are going to face problems, potentially, of this sort. I can only believe that by hoping to raise them in a fairly free, progressive, let us say way, a way in which they are exposed to all sides of the argument, that they will be strong enough to stand up for themselves and to believe in the people who have devoted their own lives and attention to them.

Coonan: Thank you.

Cairns: Could I ask just one question in particular. Would you think the best way for a child or any other person to be able to stand up for himself, is to be clearly aware of its own needs first?

Andresen: Yes, I would.

Cairns: And do you think that a child having the opportunity to share experience with a homosexual parent would be more likely to become aware of these needs than a child in a heterosexual undelineated … no, I will not weight the question, but heterosexuals, if you like.

Andresen: I would very much hope so. I firmly believe that to be the case. To expand it a little bit: I would believe that parents, let us call them, be they two men, two women or a larger group, who have themselves come to the point of knowledge of their own needs that many homosexuals will have reached and have already reached, that children raised in such a household would, I am quite confident, be more likely to be able to get in touch with their own needs and hence to be more authentic persons, responsible to the voice within themselves to a greater extent than, let us say, children who are brought up with only one view of the world, that is, the one imposed by the heterosexual nuclear family.

Gilling: We, sorry are you finished, Jim? We seem to be back in the area that we covered with the homosexual families. In other words we are not talking specifically or only specifically about discrimination against homosexuals, we are talking about discrimination against the non-married. It is the case, and certainly it is the case where there are fewer children for adoption, that any collection of people or a single person who is not married has no chance whatever in the present circumstances of getting a child for adoption. Would you see it that any person or persons living together, not married, would have the same sort of claim as homosexuals to be assessed as individual people, not according to the labelling of their life style?

Andresen: Indeed. It would be far from me to make a special plea for homosexuals in this regard. Clearly, what we are asking for is part of a larger issue, that is, the recognition of a wider variety of family relationships, of human unions between people that can be regarded in our society as legitimate, not only for the sake of existing, but legitimate for the sake of the raising of future generations within. Yes.

Egan: What do you say to the Minister's assertion that there is an understanding by the parent giving consent to adoption of the likely upbringing of the child. Do you think that is something that requires an answer?

Andresen: That worries me a little. I do not have very much that I can say with any confidence about it. I was not, I have not been aware that there was any explicit expression of this. I can only assume that it is regarded

as being implicit in our society that if a person gives a child for adoption, the Minister apparently believes it to be implicit, that it is expressed that the child would be adopted by and brought up in a heterosexual nuclear family situation. I do not know of anything more about it than that. It sounds to me to be specious, it is as if the Minister is saying that this is the way these [sic] [things] are. I know personally of no explicit statement of that.

Egan: You would see it as the Minister interpreting, in his way, community standards.

Andresen: Entirely. It seems to be an interpretation by him.

Cairns: Do you think the Minister is right in interpreting community standards that way?

Andresen: I am afraid that he probably is right to a considerable extent. I have felt, for a long time, that whenever this issue has been raised, it has been a very sensitive one. It seems to strike, to go very deep to the roots of the whole issue of our society, what sort of a society we live in and what sort of society we are moving towards. It seems to be right at the heart of the preservation of the status quo. It seems to present us with the picture that if we are to allow, say homosexuals or other groups, to adopt children, this would be one of the most potentially significant ways of changing our society perhaps, of raising children who looked at the world a little differently and who threatened the present institution and, for this reason, my answer is: I am afraid that this might be the feeling and the fear of a large proportion of our community.

Gietzelt: Do you have a particular problem that many people, mainly mothers, who surrender the child for adoption, do often nominate the type of environment in which they want the child to live. And when they do not do it, then under the existing Act, the responsibility rests entirely with the Minister and finally with the court, because the court has to finally ratify the preliminary arrangements in the Supreme Court. I think a minimum of six months later. So that, somewhere, there has to repose a responsibility. I have difficulty in this area, because I am totally opposed to any form of discrimination, but I think we have got to have a look at it and I am glad you have sort of answered the last question the way you did because it is a very difficult area. I do not think we can take away from some authority, the way to determine what is best for a child, particularly at the age when many of them are available for adoption, because they have to have somebody acting on their behalf. The few debates that I have engaged in the Parliament on the Family Law Bill and so on, we spoke about the needs of children to, in some cases it was necessary for them as it was put to me by the women's movement, if they had a neurotic mother, for example, that they ought to be taken out of that environment and put in a more pleasant environment and, therefore, they should go perhaps into child care centres and things of that nature. I think what we need to know is, what has been the experience, I am saying now we, I am talking of the community, what has been the experience of children brought up in a homosexual relationship, whether there in fact has been any adverse reaction to their development as an individual growing up. I have an adopted child, a mixed race child, I know the traumas the mixed race child goes through, living in a normal, in a sense, you know, that we describe normal. How much more difficult would it be for that child if he did not have the way in which society is at present structured, a mother, in a way which the society accepts motherhood for example, now I am raising that for you to help me, and to help us, to understand the tremendous problem we have here, because it is not only a question of looking at it from the point of view of the couple to adopt, but also the future protection of the child.

Andresen: Yes. I think what would stick in our throats most strongly would be views such as this expressed by the Minister, that, where it is possible to place a child for adoption in the care of a happily married couple, that is the best means of safeguarding welfare. This grand discriminating assumption that the best environment, as it were by nature, for a child ever to be in is that particular situation. This, it will be said by many, is obvious, and is a fact of life. We question that. That is the grounds of our claim. We are saying: who is to say that this is the best means? Is it a measure of the amount of love the parents can show? If so, are you saying that homosexuals are less capable of loving each other, and so on, you go on in that direction. What is it about that which is the best for the child?

Gietzelt: I would agree because one in three marriages, heterosexual marriages, break up.

Andresen: Absolutely.

Gietzelt: So clearly there would be a great percentage of those out for adoption who do not fulfil that requirement and, as I say, six months after you have the child, the Supreme Court either ratifies or otherwise the agreements, so that there is no protection for the child, I agree. But I would like to see some evidence of how a child reacts in the environment. Surely from other countries overseas, have you got any evidence that would help us to understand this and explain it in a way that would be acceptable to those members of the community that have an understanding of the general problem?

Andresen: It would certainly, it is pretty obvious that for our own society here it would be impossible to find examples of this since the law has never permitted it to happen. Any examples of it would have to have been extra-legal and I do not know personally of those or of any documentation of them. I think the nearest one could go to in order to look for evidence, and although it is not precisely on the subject, but it does bear upon the next section we will be moving onto, will be the question of custody. That is, of natural children living with their homosexual parent and that bears certainly on this I think, although there are differences. And for that issue we have our own audience here, and I myself from own experience can speak of this, and to my knowledge there appears to be no evidence whatever that the children are any less than competent persons compared with similar children raised in a heterosexual household.

Coonan: Just getting back to the problem of adoption, could we go some way towards solving the problem, if just all responsible adults were capable or not so much capable, but eligible to adopt children depending on their own particular circumstances, so that, in fact, the criteria was not a happily married couple but the criteria was a responsible adult and then looking at that particular person's set of circumstances to see whether they could also give the child whatever else the child needed.

Andresen: It sounds fine, if Utopian.

Coonan: Oh, yes.

Cairns: Do you think there is any difference in the change that I can certify to that has taken place in the last fifty years. When authorities, and ministers and the like fifty years ago wanted to lay down the law about what should be done in these areas, their final authority was the will of God or the Commandments of God; now it is community opinion. Do you think there is any significance in that change?

Andresen: Significance for whom, for what?

Cairns: For the strength or weakness of that view, for its openness to change.

Andresen: On the surface, it would, it would at first appear to be an improvement. I hesitate to really believe that is the case to any great extent, since it does appear that, as these documents suggest that the place of the priest, the propounder of dogma of the past has to a large extent been taken by the psychologist, the psychiatrist, to whom the community now looks for its dogma on what is right and what is wrong. And that is throughout all these documents – identity formation problems, instead of sins and wickedness or whatever it might be, weaknesses of character, of the bust [sic].

Cairns: The universities have taken the place of the cathedrals.

Andresen: Indeed, yes.

Coonan: Could we perhaps at this point ask Robyn and Lee to go on to the next Exhibits namely 24 (see **5.3.2** page 187) and 44 (see **5.4.2** page 191), with respect to homosexuals and custody of children?

Plaister: The next one is the South Australian case where custody was given to the lesbian mother. I would like to read out the custody case Campbell v. Campbell which occurred in South Australia in June 1974. Although custody of the children was given to the lesbian mother, I would like to show the Tribunal that the fact of the mother being lesbian led the judge into making many provisos which with a heterosexual mother would not have been made. The following is a summary of the case: (reads exhibit 24 but not the first paragraph). Now, in the course of the judgement of the South Australian case, I would like to remind you of the quotation that "the days have gone when courts will disqualify a woman from the role of a parent merely because she has engaged in or is engaging in some form of extra-marital sex, be it heterosexual or homosexual. Such conduct is of course a relevant consideration but is not decisive" (see **5.3.2** page 189). Now in this particular case, although he states that homosexual conduct is not a relevant consideration, he has spent most of the summing up in talking about lesbianism. If this woman had been having an affair with a male, nowhere would there be mentioned the fact that this woman and man should engage in overt sexual acts in front of the children. By denying this woman the right to show affection to her female partner before the children, the judge is denying her the right to have emotional and sexual fulfilment. He is echoing the prevailing discriminatory attitude of this society in which we live. The actual fact of the woman being questioned on how she makes love to Linda shows that homosexual behaviour is seen by a court of law as being deviant. Would a woman involved in an extra-marital heterosexual relationship be questioned in court about the use of sexual aids? The emphasis is being placed on the woman not to teach her children anything about homosexuality. In effect the courts are saying that it is reasonable in this particular case that the woman keeps the children, as long as she brings them up to be heterosexual. The provisos that were made are based on the myth that homosexuality is contagious and that the very young should be protected from choosing what they really want to be from a range of alternatives. In other words, as far as children are concerned, there is only one right way to bring them up and that is as heterosexuals. The fact of the mother having to produce psychiatric evidence to show that her sons were well-adjusted, reiterates the view that psychiatry and society sees homosexuality as abnormal. The judge has reinforced this view by requiring the woman to make sure the children see Dr Gerard at intervals of not more than one year. One wonders what deleterious effect a regular psychiatric assessment would have on the children, and what rebounds this will have on the mother-child relationship. In summary, the judge ruled that in order for the woman to gain custody of her children, she must forego an emotionally and sexually fulfilling relationship and deny herself the expression of feeling to a person for whom she has a deep love.

Coonan: Does the panel want to deal with this particular case now or take Lee's case and deal with them jointly?

Gilling: Given the time constraints we had better deal with them jointly.

Coonan: Lee, if you will go ahead.

Andresen: I will read the case without comment as I think it is self explanatory. It is Exhibit 44 (see **5.4.2** page 191) and a statement concerning a custody case that came before the Family Court in Melbourne (reads exhibit 44).

Coonan: Thank you. I just might make a comment, being a practitioner in that particular jurisdiction, that one of the unexpected side effects of the Family Law Act has been to arouse, now that grounds are no longer an issue and conduct is no longer an issue in that respect, it seems to have brought out in the judges the most prurient interest in parties conduct in relation to their children, so much so that it is now virtually impossible to get a simple decree nisi of a divorce if a mother, or for that matter the father, is living in a de facto relationship, unless, as a matter of policy, the de facto also comes before the judge, so that the judge may also ask the de facto their attitudes towards the children. So that is just something that probably most people would not know unless they have been through it. However, just to ask a couple of questions in relation to both your statements. You would say, of course, that overt sexual activity in front of children, be it heterosexual or homosexual, probably would not be appropriate, overt sexuality.

Plaister: Would not be appropriate?

Coonan: Would not be appropriate in front of children.

Plaister: No, I do not hold that view at all. I do not hold the view that sexual behaviour should be hidden away from children.

Coonan: No, I am not saying sexual behaviour should be hidden, I am saying overt sexual behaviour. Would you behave in either a simulated sexual intercourse or in sexual intercourse before children, in front of children.

Plaister: My personal belief is, yes.

Coonan: You would, what about you, Lee?

Andresen: To me, it is entirely a matter for private judgement and it does not really bear upon the issues. A may do it, B may not, that is the way it is, it is not a matter for political or legal concern.

Coonan: So, you say that in the matter of custody and welfare of children that the way in which a parent conducts themselves sexually should have no bearing whatsoever?

Andresen: Given that the conduct of the parents is, comes within what is permitted by law and let us hope that is the sort of law that proscribes violence or coercion.

Coonan: You can see the difference though that begs the question because, then you get back to the position of needing some inquiry to establish to this third person who is the judge, that particular child who they are making a decision about is not in any kind of jeopardy or danger. How do we get around it?

Andresen: This to me raises the terrible issue of that people could, the concept that people could be in jeopardy or danger by hearing about or witnessing things. It is a proposition which I cannot personally sustain as a teacher myself.

Gietzelt: If you regard the sex act as the natural and normal act then it should not matter which way the preference is exhibited.

Cairns: Does not this basic view we are concerned with, that the judges are still influenced by, have the assumption, that the sex act, whatever it is, should not be known about?

Plaister: Yes.

Gietzelt: That we should not regard sex as something normal.

Andresen: Right, it is a thing to be ashamed of, hidden and to feel guilty about. That is rampant in those statements by those judges, that view.

Coonan: Or is it that the judges wonder just at what point children should become, you know, passive watchers, or passive participants or in what way they should gain knowledge.

Cairns: I suppose it is both, but I think if you take them back to their, the inner core of their view, I feel always it goes back to this and I think that comes from their own repression when they were kids.

Gietzelt: So there would be no restrictions on what happens in a heterosexual marriage as far as sexuality is concerned, the husband and the wife may well do it openly and walk from room to room and things of that

nature, that's not important.

Cairns: That is done surely!

Gietzelt: But the courts don't interfere.

Coonan: Yes they do, my word they do, that is canvassed in pages and pages of affidavits still.

Gietzelt: When the marriage breaks down, but I am talking about in the normal heterosexual relationship.

Coonan: And in de facto relationships there is always some sort of allegation of improper conduct on the part of the de facto, be it male or female. It seems that when a marriage breaks up, the party who is making the allegations always seems to think that their partner has really fallen from grace in more ways than breaking up with them, but has taken up with the partner who is not suitable at all, be it male or female.

Gietzelt: Was it not the philosophy behind the Family Law Bill to sort of take that respect out of the situation.

Coonan: Well, somehow or other though attitudes just do not change. You know, trying to legislate to change peoples' attitudes just has not had that effect and, of course, it is worse with some judges than others and it depends on who is appointed.

Gietzelt: That brings me back to Jim's point, does it not, you are coming back to the individual judges …

Coonan: Yes, and their own repression.

Cairns: Can I take another point with you a bit further? I do not know that answer to this kind of question and I do not know how useful it is to ask you. I asked this morning, why the apparently low incidence of homosexuality. I can ask it the other way – why the high incidence of heterosexuality? But this matter that you have been giving evidence about is shown by the views expressed by the judges and others that they are concerned that the children might learn or acquire something that the community thinks is bad, that is, homosexuality. Now can we say anything about that. We have had views from the Festival of Light, create new homosexuals, that someone else more moderately inclined said, it can be learned, apparently from watching. What do you think about that?

Plaister: Well I think that all of us will give empirical evidence to show that we have come from heterosexual families, so therefore it is not learned behaviour.

Cairns: Well, I know I cannot refer to the experts here, because they do not tell us anything about it really. Freud is always quoted the wrong way, I believe, on this, I think if anything he was saying it was not learned and it was not the result of unusual attachments to mothers and fathers, it was something quite more basic than that. And, on the other hand, you can get experts that take a contrary view to that. But if we are going to be dealing with this prevailing view in the community and in the courts, that it is alright as long as it is invisible, we have got to know something about this, now what is available on it, do you think?

Andresen: Precious little when it comes from the psychological establishment, because of the way in which traditionally psychological, psychoanalytic, and so on, evidence has always been gathered in, collected, in terms of the questions to be asked by and the answers to be expected within, our own particular cultural setting. This underlines the impossibility of the conventional psychologist stepping outside, as it were, of our own society here and looking at it in a socially relativistic way. We have no evidence, to my knowledge, of any substance that has been gained in that way. I think we have to look more to the anthropologists more than to the psychiatrists and sociologists and so on. Look to the anthropologists and look at other culture and see where, for example, children and adults have slept together in the same bad; look there and see whether the

children are growing up maladjusted or whatever other terms you want to describe them. Look into wife swapping, husband swapping, mate swapping, characteristics of other cultures. This seems to me a place, a most likely place where we are finding some evidence and the evidence, as far as I know it, is that we are locked in our society in a prison and are unable to step outside of it and see that these fears that we have are simply based on myths.

Plaister: There has been statistical evidence by Mark Freedman [75] in America on the fact of children in homosexual families being better off than they are in heterosexual families. But, of course, this is not given the value that we would like to see put upon it.

Coonan: Maybe it will eventually only come from the children of very successful parenting by homosexual couples or homosexual mothers or fathers, who will then be able to give their own testimony as to the sort of life they have had. But it would obviously be true, and you can tell the Tribunal, that there are very many cases in the community of homosexuals who are rearing children apparently with absolutely no ill effects, or certainly no more than they get anyhow, and it is also not impossible that you can get custody, but unfortunately these undertakings are usually imposed on you, undertakings not to do this or that.

Plaister: But what I am worried about, basically, although we presented two cases where they have gained custody, there are many cases where homosexuality is hinted at during the proceedings of the court although it is not mentioned specifically, it must have some influence on the judge's decision.

Mathews: But things have improved, have they not? Some years ago it would be difficult to imagine judges granting custody to admitted homosexuals at all. At least that is happening, even if curbs that I appreciate you do not agree with, are being placed on their activities. It must be an improvement.

Plaister: Slight.

Gietzelt: I think when Jim was asking a question about homosexuality and heterosexuality, it seems to me strange that we have gone through practically the whole day and probably it is at this stage that we ought to be talking about bisexuality too. Do you have any comments on that aspect? Could you, for example, in the courts have been able to prove that was the part of a person's sexuality that ought to be taken into consideration?

Plaister: I know of no cases where it has come up.

Coonan: As we are once again against time and no doubt a lot of people have to get away, could we just thank Robyn and Lee very much.

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[75] The following literature would seem to corroborate this: Freedman, Mark J., Ph.D., 'Homosexuality Among Women and Psychological Adjustment', *Dissertation Abstracts*, 28, 4294-B, 1968; Hopkins, June H. 'The Lesbian Personality', *British Journal of Psychiatry*, 1969, 115, pp.1433-6; Freedman, Mark J., Ph.D., *Homosexuality and Psychological Functioning*, Wadsworth Publishing Company, 1971. p.106; Siegelman, Marvin., 'Adjustment of Homosexual and Heterosexual Women', *British Journal of Psychiatry*, 1972, 120, pp.477-81; Basile, R.A., 'Lesbian Mothers I', *Women's Rights Law Reporter*, 1974, 2, pp.3-25; 'A New Study Urges Homosexuals to Speak Out', *The New York Times*, 19 May 1974, p.49, col. 2;

The following is relevant post Tribunal literature

Green, Richard, 'Sexual Identity of 37 Children Raised by Homosexual or Transsexual Parents', *American Journal of Psychiatry*, 135, 6 June 1978, pp.692-7; Dr Marmor quoted in *Monash University Law Review*, vol. 5, June 1979, pp. 309-10; Huggins, Sharon Lynn, M.S., 'A Comparative Study of Self-Esteem of Adolescent Children of Divorced Lesbian Mothers and Divorced Heterosexual Mothers', *Masters Abstracts International*, 25, 3, Fall 1987, p.285; Giuliani, Teresa Louise, Ed.D., 'A Comparative Study of Lesbian, Single Heterosexual, and Married Heterosexual Mothers and Their Adolescent Children on the Dimensions of Sex-Typing and Assertiveness', *Dissertation Abstracts International*, 48, 10, April 1988, p.3142-B.

5.1.6 Today

The ADB believes that it is now possible for homosexuals to foster children but still not to adopt them.

On 10 April 1991 the TWG wrote to the NSW Minister for Family and Community Services, Robert Webster, seeking clarification about the possibility for homosexuals adopting children:

> In November 1976 the Tribunal on Homosexuals and Discrimination heard evidence on a range of issues where discrimination against homosexual women and men was perceived.
>
> The New South Wales Adoption Legislation Review Committee (March 1976) Report was presented to the 1976 Tribunal. We drew the Tribunal's particular attention to recommendation 38 (see **5.1.2** page 173) of the report which states: **Homosexuals should not be approved as adopting parents**. The committee based the above recommendation on the following four points:
>
> 1. We noted that in law marriage is a union between a male and a female person [Corbett v. Corbett (1970) 2 W.L.R. 306] and that therefore a homosexual couple seeking to adopt a child would have to be considered as two single applicants.
> 2. Under the present system such application would be fruitless since, even if those applicants were able to have their names placed on the adoption register, preference would be given to married couples.
> 3. Quite apart from the legal position however, we considered that inevitable psychological problems in the child's identity formation would following his [sic] upbringing in a homosexual household.
> 4. For the same reasons we also considered that a party to a marriage who could be shown to be homosexual was also certainly unfit to be an adopting parent.
>
> The then Minister for Youth and Community Services, [Mr Rex Jackson] in a letter to the Tribunal, supported all the above four reasons of the committee for homosexuals not to be approved as adopting parents.
>
> After 15 years, a number of the issues raised before the Tribunal have been rectified, and I mention the NSW Anti-Discrimination legislation as one example. It is the present intention of a number of those who were responsible for the setting up of the Tribunal to compare the situation in 1991 with matters raised in 1976.
>
> Could you please inform us what the present position is regarding points 1 and 2. We also would like to know what your position is regarding points 3 and 4.

On 4 June 1991 the Minister for Family and Community Services, Robert Webster, responded as follows:

> I am writing in reply to your letter about adoption in relation to the 1976 Tribunal on Homosexuals and Discrimination.
>
> My position in this matter is based on the belief that adoption is a service to the child, not adults (that is the community/applicants), and that no-one has the right to adopt a child but must be assessed according to the requirements of the Act and policies developed by the Department.
>
> You will remember that in assessment of adoption applicants the Department is itself governed by the Adoption of Children Act 1965. I would draw to your attention Sections 17 and 19 in particular. Section 17 provides that the interests and welfare of the child be the paramount consideration; and Section 19 provides that firstly an order of adoption only be made in favour of married couples jointly (or, in certain circumstances, defacto couples) and secondly, special circumstances are required before an Order of Adoption in favour of a single person should be made.
>
> Thus in answer to your request to be informed of the present position regarding the 4 points noted in your letter:–
>
> Point 1 remains the same because of legal requirements.
>
> Point 2 remains the same except in special circumstances where adoption by a single applicant may be considered. In such a case homosexuality of an applicant would be one factor to be considered in the assessment of the eligibility of that applicant.

The Department has altered its position regarding points 3 and 4 and would no longer use the word inevitable or unfit in relation to these matters. Each case would be assessed on its individual merits with homosexuality of the applicant being one factor considered.

I trust that this satisfactorily answers the questions you have raised.

… an adoption order shall … be made … in favour of a husband and wife jointly.

5.2 New South Wales Adoption of Children Act
5.2.1 Tribunal on Homosexuals and Discrimination Letter to Rex Jackson, Minister for Youth and Community Services, dated 4 November 1976. 5.2.2 Adoption of Children Act, 1965, Exhibit 15. 5.2.3 Letter from R.F. Jackson, Minister for Youth and Community Services, dated 19 November 1976. 5.2.4 Today – TWG letter to John Hannaford, Minister for Health and Community Services, 11 November 1991; Letter from John P Hannaford, Minister for Health and Community Services, 19 December 1991. For cross examination by the Tribunal on Homosexuals and Discrimination on 27 November 1976 (see **5.1.5** page 174).

5.2.1 Tribunal Letter

The Tribunal Collective wrote to Rex Jackson, Minister for Youth and Community Services the following letter on 4 November 1976:

> Further to your letter dated 4 October 1976, the Tribunal collective has further decided to bring before the Tribunal:
>
> The Adoption of Children Act, 1965, as amended; and in particular Section 19.
>
> We would like to invite your department to submit a written statement outlining its reasons for believing the Act not to be discriminatory against homosexual people. At a later stage arrangements might be made to present your views orally on the actual day of hearing.

5.2.2 Adoption of Children Act [76]

EXHIBIT 15

Section: 19

(1) Except as provided by subsection (2), an adoption order shall not be made otherwise than in favour of a husband and wife jointly.

(2) Subject to subsection (3), where the Court is satisfied that in the particular circumstances of the case it is desirable so to do, the Court may make an adoption order in favour of one person.

(3) The Court shall not make an adoption order in favour of one person if that person is married and not

[76] New South Wales, Adoption of Children Act, 1965.

living separately and apart from his or her spouse unless that person's spouse consents to the application for the adoption order.

5.2.3 Letter from NSW Minister for Youth and Community Services, 19 November 1976

Thank you for your further letter of 4 November 1976 relating to the Tribunal due to be held on 27 and 28 November 1976. The previous correspondence (see **5.1.4** page 173) in this matter fully sets out my views in relation to homosexuals and the adoption of children.

At this stage I do not think that there is anything I can add to those remarks.

5.2.4 Today

On 11 November 1991 the TWG approached John Hannaford, Minister for Health and Community Services to clarify the current position concerning the eligibility of homosexual people to adopt and foster children:

Please find enclosed a copy of the correspondence between Peter de Waal for the Tribunal Working Group and the then Minister, Robert Webster, concerning the eligibility of homosexual people to adopt children. Would you be able to confirm that the position outlined by Mr Webster is the one that still applies. If it does not, we would appreciate it if you would let us know how it differs.

We have also been informed that the Department is happy to allow homosexual couples or individuals to foster children in the Department's care. Would you please let us know whether this is indeed the case.

On 19 December 1991 the above Minister replied as follows:

I refer to your letter concerning the eligibility of homosexual people to adopt and foster children.

The position regarding adoption of children by homosexual adults remains the same as that conveyed to you by the Hon R J Webster, MLC, in June 1991 (see **5.1.6** page 183).

In regard to fostering, the Department of Community Services accepts applications from all persons who are interested in providing foster care. Upon expressing interest the applicants enter into a assessment process, and a decision regarding their approval is made on the basis of the applicant's ability to meet the needs of children requiring care. A child who is in need of care is 'matched' with an approved carer who can meet that child's needs. The same process applies to all applicants.

I trust that the above information clarifies this issue for you.

Dr Webster clearly has, and believes that the community has, a profound abhorrence of female homosexuality.

5.3 Custody to Lesbian Mother in South Australia

5.3.1 Tribunal on Homosexuals and Discrimination letter to Peter Duncan, South Australian Attorney General, dated 23 November 1976.

5.3.2 Campbell v. Campbell, Application under South Australian Guardianship of Infants Act, 25 June 1974, Exhibit 24.

5.3.3 Today (see **5.4.4** page 199).

5.3.1 Tribunal Letter

The Tribunal Collective wrote to Peter Duncan, South Australian Attorney General the following letter on 23 November 1976:

> The Hon Jim Cairns; Mr Barry Egan; Senator Arthur Gietzelt; Ms Bridget Gilling, will be Tribunalists at the above Tribunal. They will hear evidence on instances of discrimination (specific and general) from homosexual people on the Saturday. Ms Helen Coonan, solicitor; and Ms Jane Mathews, barrister will be counsel for each side in all cases presented. On the Sunday the Tribunalists will hand down a report, with recommendations, based on the evidence.
>
> The judgment by Justice Bright in the case *Campbell v. Campbell*, 25 June, 1974 is to be presented as evidence of discrimination against homosexual people.
>
> We would like to invite your Department to submit a statement outlining its reasons for believing the above judgement not to be discriminatory. We would like to apologise for the very short notice, but the delay has been beyond our control.

5.3.2 Campbell v Campbell [77]

EXHIBIT 24

Application Under **Guardianship of Infants Act**.

The facts are stated in the judgment.

Terence Groom and Co. Solicitors for the applicant.

J. Gray (Genders, Wilson and Partners, solicitors) for the respondent.

June, 15, 1974. *Cur. adv. vult.*

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[77] *Campbell v. Campbell*, [9 SASR 1974], pp. 26-29.

Bright J.: This is an application pursuant to the **Guardianship of Infants Act 1940** with respect to the custody of two small children born respectively on 16 January, 1969 and 11 September, 1971. The parties were married on 27 July, 1968 when the applicant wife was seventeen years old and two months pregnant. The respondent was at that time just nineteen years of age.

There appears to have been some early tensions in the marriage which were accentuated after the older son was born. I need not recite the history of the marriage in any great detail. The parties separated during the month of May 1972, came together again in the month of October 1972, and have thereafter lived apart. It is not agreed that the final separation was a consensual one. The respondent has at all times paid maintenance for the children but has never paid maintenance for the applicant. The applicant, however, supports herself and the children with the aid of a pension, some part-time employment, child endowment payments and the maintenance paid by the respondent. At one stage of the marriage the applicant had a brief adulterous relationship with another man and at another stage the respondent had a brief adulterous relationship with another woman. Neither of these relationships seems to have posed any great threat to the marriage.

The applicant alleges that the marriage broke down because of the conduct of the respondent. She claims that he was unduly aggressive, struck her on some occasions, threatened her on others, including one occasion when he was carrying a loaded gun, and generally behaved in an uncooperative and unhelpful manner in the home. The respondent alleges that the breakdown of the marriage was caused by a homosexual relationship into which the applicant had entered with a woman whom I will call by her christian name Linda. Linda and her husband and the parties to this suit were friends and neighbours. A strong but originally innocent friendship developed between the two wives. At some stage that friendship developed into a sexual one and Linda's marriage has also broken up. Linda has one child in her care. At the present time the applicant lives with her two sons in rented accommodation a few hundred yards away from the house where Linda and her son live. The two women see each other every day and co-operate in looking after the three children involved. They are at pains not to engage in any overt sexual activities when anybody else is present. The applicant admits that she has a deep love for Linda and she admits that sexual activities which she describes as: "touching her all over" occur from time to time in private. The two women never sleep in the same bedroom overnight.

Unquestionably the only genuine complaint which the respondent can make against the applicant's having custody of the children is the applicant's relationship with Linda. I find on the evidence that the applicant deeply loves her children, clothes them well, feeds them properly and houses them properly. In this she is assisted by her father and mother, who gave evidence and who would be of great assistance to her and would have a good influence on the two children. I heard also from the school teacher who has the elder child in her class. The lady assured me that the boy was polite and well dressed and got on well in class and was well adjusted. I have no reason to think that his younger brother is not also well cared for.

I am very satisfied that the respondent is very fond of his children. As I observed him giving evidence it seemed to me that he was far less mature than his wife, moody and inclined to self justification. It is obvious that he could see the children more frequently, if he were really minded to do so, than he does at present. He is living in the former matrimonial home at Christies Beach. This property is registered in the names of the two parties. I need not go into the history of the occupancy of this house. It is sufficient to say that the respondent and his married sister and her husband and children share the house. The married sister has had two years training as a nurse and she appeared to me to be a responsible type of woman who could give good care to the children if custody were given to the respondent.

The plan which the respondent put forward for custody was that the children should come to the former matrimonial home and that he would put a double bunk in his bedroom for their sleeping accommodation. He and the two boys would therefore be in the one room. His married sister would house keep for him and there would be a stable family situation. This was the arrangement mentioned in his affidavit and in his evidence. It was not until the married sister herself gave evidence that it became apparent that the

arrangement would have to be a temporary one. Within six months she expects to move to a Housing Trust home somewhere in the area, she does not yet know where. She would be able to look after the children during the day time for her brother but the children would be alone with him in the night time. This is obviously not nearly such a desirable arrangement as the respondent proposed.

Two medical practitioners gave evidence. One was Dr Gerard, the child psychiatrist at the Adelaide Children's Hospital. In his opinion the homosexual behaviour of the applicant was a personality problem and he did not regard it as being likely to cause harm to the children. Dr Gerard is a very highly qualified psychiatrist and I place great weight on his opinion in this matter. The other medical practitioner was a general practitioner, Dr Webster, who practised as a psychiatrist for a relatively short time in Perth thirty years ago but has no higher qualification. Dr Webster clearly has, and believes that the community has, a profound abhorrence of female homosexuality. He appeared to have in mind some form of simulated sexual intercourse perhaps with aid of a dildo. The use of any such instrument has, however, been specifically denied and I have no reason to think that anything other than some form of mutual stimulation takes place. Dr Webster thought that to have children brought up in an aura of female homosexuality was likely to be disastrous for them.

I do not wish to pose as an amateur psychiatrist or psychologist. I do not know, and I venture to think that nobody can really know, what would be the effect upon these young children of being brought up in a homosexual environment. Dr Gerard would put the environment as being slightly better than one where there is a mother but no father. Dr Webster would put it as being somewhat worse than an environment in which there is a mother who is having an adulterous relationship with another man.

It seems to me that one cannot isolate the matters influencing young children. To the extent that a child is a product of his environment he surely must be the product of the whole of the environment, the good influences as well as the bad. Dr Webster has not satisfied me of the likelihood of the serious effects to which he deposes, but nevertheless it seems right that because the homosexual relationship has had these effects attributed to it I should do my best in any order that I make to limit its possible effects. In all other respects it is quite clear that it is better for the children to remain with their mother. If the children have to be brought up in a one parent family I do not doubt that they are better with their mother than with their father. I also much prefer the general household arrangements being provided by the applicant to those which are temporarily available to the respondent. Moreover the household arrangements available to him in the long term are not nearly as good as the proposed temporary arrangements.

In the end, however, I am influenced most by my strong belief in the applicant's very great love for her children. I believe that herein lies the best safeguard for the children against any improper contamination. I do not think that any mother substitute, however kind and efficient, can be a wholly satisfactory replacement for a loving and caring mother. The days are gone when courts will disqualify a woman from the role of parent merely because she has engaged or is engaging in some form of extra-marital sex, be it heterosexual or homosexual. Such conduct is, of course, a relevant consideration, but it is not decisive. The whole situation has to be considered and measured against the whole of any proposed alternative situation.

I believe that if ill-effects become apparent from the applicant's homosexual activities she will find a way to desist from them rather than lose the affection and respect of her children. I do not doubt that this affection is reciprocated by the children, and whilst I also do not doubt their affection for their father, I think that to take them from the only environment they have known would be a very serious step indeed and one that would be quite likely to have very deleterious effects upon them.

In the result I require an undertaking from the applicant to the effect that she will not sleep in Linda's bedroom with Linda over night or allow Linda to sleep in her bedroom with her over night, that she will not engage in or permit any acts of a sexual nature with Linda in the presence of the children or of other persons who might report those acts to the children, and that she will make arrangements for Dr Gerard to see the children at intervals of not more than one year so that he may satisfy himself as to the well being of

the children. All these undertakings are to apply during the continuance of the homosexual relationship with Linda. Upon such an undertaking being made I will grant custody of the children to the applicant, but I direct that the respondent is to have liberal access on terms to be arranged between the parties and in default of arrangements as may be ordered by the Court. The respondent is to continue to pay $5 per week maintenance in respect of each child. The respondent is to pay the applicant's cost of this application and order.

Order accordingly.

Solicitors for applicant: Terence Groom and Co.

Solicitors for respondent: Genders, Wilson and Partners.

… the … notion that a homosexual relationship … must be an unwholesome one for children. … no condition was put on the conduct … of a heterosexual relationship.

5.4 Custody to Homosexual Father in Victoria
5.4.1 Letter from Alan … [78] to the Tribunal on Homosexuals and Discrimination, dated 21 November 1976. 5.4.2 Submission from Alan …, …, Carlton, Victoria, to the Tribunal on Homosexuals and Discrimination, Exhibit 44. 5.4.3 Judgment of Her Honour Mrs. Justice Lusink, Family Law Court, Melbourne, 10 June 1976, Number M9276. 5.4.4 Today – TWG letter to Scott Mitchell, 18 October 1990; Letter from Scott Mitchell, 24 October 1990; Letter from Scott Mitchell, 18 December 1990.

5.4.1 Letter from Homosexual Father, 21 November 1976

Please find enclosed my submission for the Tribunal on Homosexuals and Discrimination.

I wish to emphasis that my name or address should not be published.

I have no objection to the submission being read to the Tribunal, but at this stage, pending legal advice, regret that it should not be published.

5.4.2 Submission from Homosexual Father

EXHIBIT 44

Submission from Alan … of … Carlton Vic 3053

Name and address not for publication

At the end of 1975 my marriage, which had lasted 13 years and produced three children, broke down irretrievably. As a family we had lived together continuously, but had only recently moved to the country. When my wife decided to leave, she returned to the city leaving the children in my custody, agreeing to see the children as often as possible. A month later a dispute over permanent custody of the children arose which made it necessary to appear before the Family Court in Melbourne.

In her original affidavit filed, my wife made it clear that she intended to use the fact of my having a

[78] In 1990 the Tribunal Working Group attempted to contact Alan … to ascertain if anonymity was still required. A letter was posted to the original address supplied and contact was made with GAMMA—Gay and Married Men Association. Both these searches proved unsuccessful.

homosexual relationship as demonstrating my unfitness to care for the children. In that this was the essence of her case presented to the court it can also be regarded as demanding a decision which would be regarded as a precedent in the new Family Court. The judge's decision and her reasoning behind the decision together with her summary of the evidence as put to her, are contained in the attached document (see **5.4.3** page 193).

The crucial point about the decision, which divided custody so that two of the three children remained with me, is that my custody of the children was made conditional on my undertaking to not conduct a homosexual relationship in my home, or have at home any person with whom I have a homosexual relationship at any time when the children are in my custody.

It should be pointed out that, as is clear in the document attached, evidence was submitted which threw into question my wife's ability to cope with the custody of three children, and this may modify the impression which this judgment otherwise gives of a considerable move away from the prejudice shown in the past against giving custody of children to a homosexual parent.

On the other hand, it could also be pointed out that in the institution of the Family Court, there is apparently something of the same liberalisation of attitudes towards homosexuality as found in certain other social institutions, i.e. there is no use made of the continuing criminal status of male homosexuality, and there is an obvious tendency to accept the right of individuals to express their sexual preference, **provided** that a homosexual preference remains invisible.

Of course the main effect of this conditional custody order is that I may not behave in my home the way I wish to, my children are prevented from learning to relate to my homosexuality in a natural way, and effectively, that if I wish to conduct a homosexual relationship it cannot be manifest in my home. The reasoning behind this conditional decision is demonstrated where the judge claims that on the one hand it is not her place to comment on the moral issues involved, (concerning my homosexuality) but that " … it is of the utmost importance that the children are kept in ignorance of it … and these children must be protected from the harm which may flow from a knowledge of the relationship."

The argument which can be put against this prohibition, against the whole notion that a homosexual relationship per se must be an unwholesome one for children to witness are [sic] [is] of course too great to be gone into here. Sufficient to note that no condition was put on the conduct by myself or my wife of a heterosexual relationship.

There are certain quite specific implications which flow from this judgment.

Firstly, although it is the declared purpose of the Family Law Bill to remove the necessity to demonstrate guilt or to make moral judgement, a moral judgement is certainly made against the allowability of a **visible** homosexual relationship in front of children, and since legal custody in my case is made conditional it opens the possibility for a challenge to my custody being made on the grounds of failing to observe this condition, i.e. a return to the days of evidence obtained by way of spying.

Secondly, since the reasoning given for the condition being placed on my custody is of the children being aware of my homosexuality, presumably my making any public stance on the matter, i.e. in a way which might lead to my children learning of my homosexuality would place this custody in direct jeopardy. I am therefore prevented from taking any public political action as a homosexual in the cause of homosexual rights.

5.4.3 Custody of Homosexual Father [79]

In the Marriage of: … Respondent
– and –
… Applicant

This suit was commenced by the wife filing an application which was heard ex parte seeking custody of the three daughters of the marriage. On that application an order was made granting … sole custody of the middle child, L, who was then, and still is, in her care in Melbourne.

The further hearing was adjourned for service of documents on the husband and he has since sought orders that he be granted custody of the three children. It was in these circumstances that the case, which began on the return day as an interim hearing of cross-applications, continued with the accord of both parties as a fully defended suit when it became clear that it was in the interests of the parties and the children that the matter should be concluded at the earliest opportunity.

Before stating the facts, there is one matter upon which it appropriate to comment. This has been a case which has demonstrated and, if it should still be necessary, vindicated the wisdom and vision of the legislators of the new Act. The Court has been asked to decide what is best for the welfare of three little girls, that is, the criteria is still the same, but the setting is different. Here we have three children being brought up in a life style which is outside what is still considered to the norm; children who are subjected to influences and who are learning values, all of which would have been totally unacceptable a few years ago, and most of which are still regarded by the community at large as strange, immoral and iniquitous. I refer to and adopt, with respect, the views of Fogarty J. in his judgment delivered the 27 day of February 1976 in *Horman v. Horman*, No. M2347 of 1976, where, at p. 24, he comments upon the difficulties of laying down standards of accepted morality. We are, however, increasingly being asked to make a choice where the alternatives presented are variations on an unknown theme. It is agreed that we are not being asked to pass judgment on the way people choose to live their lives, but we are being asked to look at these variant life styles and then try to conclude the effect upon the children of what we inevitably with our background regard as unusual behaviour by the parents. It is in this context that I comment on the assistance that the new Act gives to us. Because of its flexibility, the discretion we are given, and the facilities and help it provides, we can with informality and a freedom unknown in the past investigate any matter which may be of relevance to the welfare of the children. In particular I refer to the advantages both conferred by the Act and inherent in its philosophy with regard to the practice of interviewing children. This has always been a course which could be followed at the discretion of the Trial Judge. I refer, however, to the judgment of Selby J. in *Sargeant v. Watkins* (1965) FLR 302 where His Honour stated:

> At the request of both counsel I saw the child in my private chambers at the conclusion of the evidence last week. This is a course which I am frequently asked to adopt and which I follow as a rule with great reluctance. It is a practice which has been followed in cases of this nature for many years, both here and in England, but in many cases the disadvantage involved in such a practice outweighs any advantage the judge may have in coming to a decision. In the first place it usually happens that the child himself is strongly biased in favour of the person with whom he has been living. It often happens (although I am not suggesting it did in this case) that such person has, whether consciously or unconsciously, prejudiced the child against the other parent, but I think the most serious disadvantage inherent in the practice lies in the fact that judges properly regard what is said to them at such interviews as confidential.

and His Honour then went on to state that what he is told is not evidence; it is not subject to cross-examination and the Judge cannot therefore be addressed by counsel when they are unaware what is in the Judge's mind.

What the learned Judge said still applies. Again, the criteria is [sic] the same, but the application is different.

The fact that I could talk to all three children was of inestimable value, not because they told me their wishes, not because they said which parent they wanted to be with, not because I wanted to see which

[79] Judgment of Her Honour Mrs Justice Lusink, Family Law Act 1975, Family Court of Australia, Melbourne, Delivered 10 June 1976 no. M9276 of 1976.

parent had the child more appropriately dressed for the occasion, but because, in an atmosphere of complete informality and relaxation, I was given the chance of assessing, as far as is possible in so limited a time, how they are reacting to the life they are living, their emotional and physical stability, their security, their happiness and all other considerations which go to the total well-being, that nebulous thing which we call welfare. They taught me much.

The subjects of the application are A just turned twelve, M aged six and a half, and L aged 5. A and L are in the defacto custody of the father, living on a 20 acre subsistence farm 75 kilometres from Melbourne. The farm is on the outskirts of a village which consists of approximately 3 buildings including the local school which the children attend. On the farm, which, from the evidence, has a reasonable and comfortable weatherboard house, is living, apart from the father and the eldest and youngest child, … , a design consultant, and his defacto wife of nearly three years standing who is now aged only nearly 20 and some years younger then … The husband has an admitted and still continuing homosexual relationship with … a man some years older than he is. … lives in Melbourne but has visited the farm on approximately 4 occasions over the past 5 months. The husband and … did not meet until the wife had ceased living with the husband and thus the friendship was not the catalyst that led to the wife leaving, although at one stage she inferred that this was so. … has also admitted one prior homosexual association and at least one adulterous association since the marriage.

Since about the month of November 1975 the wife has lived in Melbourne and is presently renting comfortable, three bedroom accommodation in Hawthorn, which, it was never denied, would be adequate for the children. She has had two admitted adulterous relationships since the marriage and at least some interest in lesbian activities in the past, although she has said that this interest has now ceased.

The background is that the wife, the husband, the three girls, … and … his defacto wife lived for approximately 14 months together in a house in Albert Park, after which … and … moved out for a period of time. Towards the end of the year 1974 it was agreed that the four adults would purchase a farm together, which they did at the beginning of 1975. It is on to this property that the husband, the wife and the children moved at the beginning of 1975, being joined in April of that year by … and … They all continued to live together until about November 1975. Throughout the year all four adults spent [a] portion of their time in Melbourne working, each of them there for varying periods and particularly the parents and … staying away for perhaps two or three days at the time. This was based, at least as far as the three (excluding the wife) were concerned, on the necessity to earn sufficient moneys in the city to meet the mortgage payments and other essential commitments which the income of the farm was unable to cover despite the fact that it gradually became productive on a limited scale. From the beginning a roster system was introduced which the wife stated was arranged by mutual agreement. The roster entailed shared responsibilities, not only for the housework and for farm work, but far more importantly, for the general caring of the children. What is significant is that the wife admits that … has always had a very close and warm relationship with the children, and the evidence as to the children's attitude to … and her's to them was similar. There was never any suggestion that she in her turn did not care for and love them well. The girls were therefore fed, bathed and prepared for school by whichever of the four adults happened to be at the farm at the time, such adult performing all the usual parental duties. It is, however, agreed that when the husband and the wife were both home together, the husband did the greater part of the day to day caring for the children, the allegation being that the wife did not like to get up early and was indifferent to the joys of wielding a broom.

The wife, at the commencement of the farming venture, was studying two subjects at the university and was in Melbourne for up to three days per week and, in fact, for the first two weeks after they moved was in Melbourne continuously. She admits that she had initially though it would be very good for the children to live on the farm and was enthusiastic about the project she soon appears to have become disenchanted with farm life and living at … and by November 1975 had finally decided to leave, which she did. She stated in evidence "that the situation on the farm was very bad" although she did not elaborate as to what she meant by that remark. She said that she did not believe that the farm would be able to provide financially for them all as had originally been hoped, and she left so that she could become independent and later provide for the children herself. Whilst this may partially explain her motivation, it appears nearer the truth to say that she had a real desire to return to live full-time in Melbourne and continue her university studies, at the same time getting the fringe benefit of the independence which she was seeking. I

do not doubt that she also felt that, on the completion of her education, she would be more financially secure. When she left the farm, … moved back to Melbourne leaving the three children with the three adults. She gives as her explanation for not taking the children at that time the fact that she could not provide for them, and this was undoubtedly true although it does show that she either was satisfied that the children were happy and being well cared for, or alternatively that she was unconcerned. I accept the former rather than the latter proposition. It was arranged that she was to return to M.M. when she chose to do so to see the children but it is conceded that when she did visit there was an atmosphere of hostility and disapproval and she had difficulty in relating to her daughters. The remaining adults admit that they felt that the wife had, by opting out, abdicated her responsibility both as to her share of the financial commitment on the farm and as to her share in looking after the children. The wife denied that she had abandoned the children and there is no doubt that she now believes that she has a genuine desire to have all three children with her. However, from my observation and the evidence, I would accept the premise that the wife is very ambivalent in her attitude towards caring for the children. Even in the event that I did not totally accept the allegation made against her by her own mother that she would find it impossible to cope both emotionally and physically with the three children, I find it very credible that she would have some difficulty in taking on the full-time responsibility for the three little girls for any length of time. The wife is undoubtedly trying to "find her own identity" as she puts it. She is still working and is a part-time student. She has had some period of psychiatric help and she has evidenced her total rejection of at least the marriage by reverting to the use of her maiden name. The allegations that she has been subject to some emotional instability, apart from the overt behaviour in the Court, are substantiated by the fact that she spoke about having "an identity crisis" which crisis [sic], as far as I can understand, involves some decision to be made as to her sexual bias. She had admittedly and clearly been seeking some form of security or recognition and has shown some interest, the extent of which was not investigated, in lesbian activities. She denies that she has any sexual association with any male at this present time. The strongest condemnation against her was given by her mother, … stated that on Mothers' Day this year she went to visit her grand-daughter in Hawthorn and found the wife in bed with a man whilst M, the child who has been living with her mother from the end of March 1976 on a permanent basis, was sitting at the end of the bed. In evidence when re-called later, … most vehemently denied this allegation, stating that the man had called early in the morning and that she was still in her dressing gown when her mother arrived. … had sworn an affidavit two days before the hearing and there was some discussion, and in fact it was put by Mr Abraham for the wife, that … had been subject to a "confidence trick". This was said to be on the basis that, when … had sworn that her son-in-law was "very honest with sound morals and high ideals", she had not been told of his homosexual relationship with … I found, however, … to be a most impressive witness. She is a retired school teacher and obviously a fair and very practical woman who has had considerable experience of life and children. If she was indeed the victim of a "confidence trick", which I doubt, she concealed it astutely. Whilst at first it was difficult to accept that a mother could give damaging evidence against her own daughter without vindictiveness, I am prepared to believe that she is a devoted grandmother and is looking at the whole position totally objectively. She frankly admitted that she didn't like the situation as it existed between the husband and … She, however, equated it very much with her own daughter's behaviour, as she put it, "her lovers". She appeared to take a very pragmatic view of the unconventional living arrangements of both her daughter and her son-in-law and, whilst she did stress the irresponsible attitude of her daughter towards the children, I was not so much affected by that as by her genuine objective concern for the welfare of her grand-children. She described the atmosphere on the farm as being one of love, warmth and security, although she freely admitted that she herself was surprised to find it so.

In view of the sexual meanderings of both the husband and the wife in this case, it is difficult to predicate that one party is more "guilty" of immoral behaviour than the other one, in any event, this is a decision that does not have to be made. As is usual in custody cases a great deal of time was spent delving into the conduct of both parents with a view to demonstrating the unfitness of that parent to have custody. The only concern is how far such behaviour by either parent is going to affect the welfare of any children who are committed to their care. The wife presented as emotional and distraught, even allowing for the torment of a protracted defended custody case and her obvious well understood distress when her mother gave her evidence … knew of the husband's homosexual relationship at or about Christmas time 1975. It

was said that she had taken no steps to remove the children from what she believed was a deplorable situation until May of this year. I do not place great weight on this alleged delay but I do view with some alarm the evidence, which was not denied, that the mother has constantly moved since she has been back in Melbourne, and M, the child who is with her now, has attended three schools since the beginning of this year. I further do not place any weight on a document written in the handwriting and signed by the wife on the 11 day of May 1976 in which she purported to reach an agreement with her husband concerning the custody of the children. Evidence was given that this document was drawn up as the result of a long and emotional discussion between the parties, and the wife alleged that she had been coerced into writing it after the husband had threatened that she would not see the children again if she did not do so. The husband admitted that he had come to Melbourne from H …, where he had been staying with his parents with two of the children, at the specific request of the wife, to sign an agreement. He alleged that, on his arrival, the wife had procrastinated and he had become very annoyed. Whatever the true fact of the conditions under which the agreement was written, I do not treat it as a document which would in any way influence the ultimate decision that has been reached. I would further point out that other affidavits were filed on behalf of the wife but the deponents were not called to give viva voce evidence. The facts deposed to have been considered in the context of all the evidence.

It is within this background that a decision has to be made as to what is the best interests for the future of these three children. I shall not repeat yet again the general principles which apply to decision making in a custody case. Section 64(1) sets out the same directions we have always had. In deciding what is best for the welfare of these three girls I can only reiterate and adopt what was said by Lord MacDermott in *J v. C* (1970) A.C. 668 at 710-711 when referring to what the child's welfare requires. His Honour stated it connotes a process:

> Whereby when all the relevant facts, relationships, claims and wishes of parents, risks, choices and other circumstances are taken into account and weighed, the course to be followed will be that which is most in the interests of the child's welfare as that term has now to be understood.

To all these matters I respectfully add the wishes, which inevitably involve the happiness of the child, which happiness becomes even more important when one has to make a choice, not between two people, but rather between several, and where one has also to consider environmental factors and an extended family situation.

A, the eldest child, has always indicated most strongly her desire to remain on the farm. She spoke naturally and happily, and displayed quite unconsciously her complete involvement and satisfaction, not only with the farm and farm life, the Khaki Campbell ducks, her chooks and the sheep, but with all three adults about whom she spoke in affectionate terms. The child referred to … as one would of a well-loved older sister and it was significant that S, in her own evidence, stated that she never regarded herself as a mother figure but rather as an older sister. As far as the two men are concerned there is no doubt that there is a warm loving relationship between them and the little girl and, in the total environment, she is receiving security, stability and obvious happiness. She is secure in her school life and her friends, and her grandmother made it clear in evidence that she had not only noticed a great improvement in the health of the children, but she was delighted to see that A had settled down at school for the first time in her somewhat chequered educational history. One can only conclude that the three adults on the farm are a very stable extended family unit. There appears to be a genuine sharing of responsibilities and a deep friendship between them all. … and … were both impressive witnesses, the latter the more especially so as she is not yet 20 years of age. They have lived in a defacto relationship for approximately three years and, although they are not contemplating marriage, and indeed they could not do so … still being bound in matrimony to another, they are apparently not only happy and content to continue to live at … with … and his daughters, but, as … put it, she "visualises that the rest of her life is going to be spent at …" They professed their great attachment to the children and this has been substantiated by all the evidence that has been presented. … remains on the farm most of the time at present and is spinning and weaving wool and making woollen garments from the small number of sheep that are being raised. The family is well fed and appear content with the life which, if idealistic and lacking some material advantages, is at least to date succeeding, as far as one is able to ascertain, in giving all the things to the children which they need and want.

The very real concern is the behaviour of the father …, as has been referred to earlier, met in a homosexual group, after his wife had left him, a man with whom he subsequently formed an association. Evidence was led that on three or four occasions … had stayed at the farm for the weekend and the two men had shared a bed. There was some discrepancy in the evidence as to whether the children were actually on the farm each occasion but it is clear that they were there on at least two nights when … stayed on the farm. It was categorically denied that there was any evidence of overt sexual behaviour by the two men, and I would accept this denial. All three adults on the farm said that the visiting man was looked upon as just another friend who came to the place and the children regarded him in the same way as they regarded their own friends who came to stay with them. As has been said earlier, it is not my place to comment on the moral issues involved. However, it is of the utmost importance that the children are kept in ignorance of it. The Court has the duty to act if it is convinced that the proposed mode of behaviour of a parent may jeopardise the future welfare of the child (see *Evers v. Evers* (1972) 19 FLR 296) and these children must be protected from the harm which may flow from a knowledge of the relationship. I value the husband's honest appraisal of the situation. I do not necessarily believe that he will be a worse father because he is admittedly bisexual and from my observance of him and the evidence which was given and never denied, he has a very warm and loving relationship and a real concern for his daughters. In his address … suggested that the husband was neither a father figure nor yet a mother to the children. The husband and the wife had discussed, and to a limited extent had practised a reversal of the parental roles. I do not accept … submission. A parent, if a loving and caring one for its child, is not disqualified because he is a homosexual or she is a lesbian. As I propose ordering that the children will be all spending a great deal of time on the farm, it will be a part of that order that the husband be restrained from carrying on the association at the farm or at any place where the children could ever become aware of the friendship. There has been, as already referred to, a very real change in the idea of conventional morality and, whilst in 1966 in *Chisholm v. Chisholm* (1966) NSWR 125, Selby J. held against a mother in her claim for custody because of the fact that she was living with a married man in a defacto relationship, in the last ten years this attitude has had to become tempered with the changing society. Consequently, in *Barnett v. Barnett* (1973) 2 ALR 19 at 25, Hutley J. said:

> Objections to the conduct of parents because they infringe the conventional moral code also have no weight in so far as they reflect upon the parents' fitness to take charge of the child.

In a recent decision in South Australia—*Campbell v. Campbell* (1974) 9 SASR 25 (see **5.3.2.** page 187) – Bright J. granted custody to a lesbian mother whose conduct in no way interfered with her care for her children. His Honour declared that:

> The days are gone by when Courts will disqualify a woman from the role of parent merely because she has engaged in or is engaging in some form of extramarital sex be it heterosexual or homosexual. Such conduct is of course [a] relevant consideration but it is not decisive.

In my opinion this statement applies equally with regard to a father in the event that, all other matters being considered, he is regarded as the better parent to have the custody of the children.

There was some discussion as to discussions concerning sexual deviancy in front of the children. It is not easy to assess either the truth of this allegation, or even less easy to assess, if the allegations are true, what and how much effect, if any, such conversation would have on the children.

I have no doubt that … and … love the children very much indeed and will continue to help their father care for them in the event that they are committed to his custody. I have no difficulty in being convinced that A should remain on the farm where she is. She should also continue to have a very close and regular contact with her mother and I propose making orders that will hopefully ensure this. The more difficult problem concerns the two younger girls, both close in age and the elder of the two younger than A by almost six years. Since the mother obtained accommodation in Melbourne, originally in North Melbourne, the three children went to stay for weekends with her. Since March 27th 1976 M, the middle child, has remained living with her mother in Melbourne, but L, who was with M and her mother for some time, returned again to the farm and has remained there ever since. M has no affinity with farm life. It has been stated that she is very close to her mother and is progressing well in Melbourne. There would appear

to be no reason to upset this arrangement. However, the situation with regard to L is the most difficult one. She is obviously very attached to her father and sister and to … and … on the farm. She is happy and well cared for there and she is, in effect, having the benefit of a loving father and another man together with the care of two older sisters. It is with sadness that I appreciate that, whichever way it goes, there is no way in which two of these three children will not be separated from the other. In many case where judicial consideration has had to be given to the separation of children it has been considered proper that the children should remain together. I accept this premise as a general rule, particularly in view of the fact that children from a broken marriage have an affinity with each other somewhat stronger than children from a stable environment. The latter do not have the need of sibling support to give them the security that they are otherwise missing. But this case is exceptional. Both the eldest and the middle daughter clearly fit into the "picture made by the pattern of their present lives". See *Oliver v. Oliver* (1969) 13 FLR [at] 397 where it was stated by Selby J.:

> The Court must try to envisage as a whole the picture made by the pattern of their (the parents) present lives and the lives as they are likely to be in the future. Into that picture the life of the child must be inserted. It is the duty of the Court, having formed that picture, to make the order for custody which best promotes the interest of the child. The Court should have regard to all relevant considerations in trying to form a true picture of the situation with which it is dealing.

Applying this [sic–these] criteria, the child A and the child M must remain where they are. As far as the child L is concerned the evidence shows that she is happy and progressing very satisfactorily on the farm. I believe that she should stay there with her eldest sister, her father and the extended family. I am fortified in this decision by the fact that the middle child, M, appears to have settled down extremely well and is very happy with her mother. As the middle child in the family it is possible that she needs the extra individual attention that she is now receiving and in considering what is best for the three children it is not correct to look at one child in isolation. It is necessary to see the effect on all the children of orders which one intends to make. Although the children will be separated, it will only be a five day separation each week. These three sisters should be together as often as it is possible and it is proposed that each weekend they will spend as a united group. The orders will be conditional upon undertakings being given by the husband and the wife and, in the particular circumstances of this case, I am also making specific directions as to both parties reporting to the Welfare Officer attached to this Court. At the commencement of the hearing consideration was given to a Welfare Officer's report being obtained but, in view of the fact that both parties had received counselling and the wife in particular had received at least two months of psychiatric help, it was not considered appropriate at that time.

Prior to making the orders I wish to commend both Mr Kirkham and Mr Abrahams who were not only of great assistance to the Court during a difficult hearing but conducted the case with concern and understanding.

The orders will be as follows:

(1) Conditional upon the husband undertaking to the Court

(a) that he will not conduct a homosexual relationship with any person on the farm property at … nor have any person with whom he has a homosexual relationship visiting the property at any time when the children are in his care;

(b) that he will advise the wife in writing not less than 7 days prior to any proposed change in persons living on the farm on a permanent basis;

(c) that he will advise the wife in writing not less than 7 days prior to any proposed change of address where he and the children will be living;

(d) that he will report to a Welfare Officer attached to this Court as directed by such Welfare Officer and being not less than one occasion every two months during the year 1976;

order that sole custody of the two children of the marriage A and L, be granted to the husband.

(2) Conditional upon the wife undertaking to the Court

(a) that she will advise the husband in writing not less than 7 days prior to any proposed change in persons living in her home on a permanent basis;

(b) that she will advise her husband in writing not less than 7 days prior to any proposed change of address where she and the child M will be living;

(c) that she will report to a Welfare Officer attached to this Court as directed by such Welfare Officer being not less than one occasion every two months during the year 1976;

order that sole custody of the child, M, be granted to the wife.

(3) That the husband and wife have weekend access to the children not in their custody on each alternative weekend from Friday night to Sunday, the husband's access to M being at the farm and the wife's access to A and L being in Melbourne. The first of such weekend access to commence with the children A and L being taken to Melbourne to the mother on the weekend commencing 18 June 1976. ~~Both the husband and wife to share equally in transporting the children.~~ It is further ordered that the party enjoying access collect the child or children from the home of the other party and return the child or children thereto. [80]

(4) That the husband pay to the wife maintenance for M the sum of $15.00 per week together with the total sum of $10.00 for the maintenance of A and L for the weekends of access to the said A and L enjoyed in Melbourne by the wife.

I reserve the question of further access during the Christmas and other holiday periods.
Order that the wife's claim for her own maintenance be reserved.
Liberty to either party to apply.

5.4.4 Today

Custody of children of a marriage dissolved under the provisions of the Family Law Act. [81]

The two cases mentioned (**5.3** and **5.4**) need to be distinguished. One was before the Supreme Court of South Australia, in its matrimonial jurisdiction, and not under the provisions of the Family Law Act. The Victorian case, (5.4), before Lusink J, was under that Act.

Under the Family Law Act, the homosexuality of a partner is not grounds for dissolution of marriage. Applications for access to, and custody of, children of the marriage, or those brought into the marriage, may be contested by one parent on the grounds of the homosexuality of the other.

Judges in Family Law Courts are bound by the terms of sections 60D and 64(1). These require that orders may only be made 'in the best interest of the child'. Neither section indicates that preference should be given to a heterosexual parent over a homosexual parent. In fact, decisions have been at pains to point out that the homosexual preference or behaviour of a parent is merely one factor to be taken into consideration in determining the best interests of the child.

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[80] The sentence 'Both the . . . children.' is included in the original transcript but struck-through by pen. The sentence 'It is further . . . thereto.' was not part of the original typed transcript but added by pen.

[81] See also: Goodman, Ellen, 'Homosexuality of a Parent: a New Issue in Custody Disputes' *Monash University Law Review*, vol. 5, June 1979, pp. 305-15. 'The Relevance of Religion in Custody Adjudication Under the Family Law Act', *Monash University Law Review*, vol, 7, 1981, p. 217.

Whilst such behaviour may be seen as a disadvantage, it need not be a fatal one. Judges have taken the view that community attitudes are not completely favourable to male or female homosexual behaviour. This being the case, children of a partner who is an acknowledged homosexual may be put at risk of social ridicule.

The restrictions embodied in orders such as those reported in the two matters put before the Tribunal in 1976 are not likely to be made presently. The grounds for this are that they are discriminatory and impossible to be enforced. No order has been made to restrict the heterosexual proclivities of a partner with custody or access.

Orders are made on the particular factors of each case, and the merits of each application are weighed in the light of what is the best interest of the child.

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6. Homosexuals in Prison

Counsel assisting:
Helen Coonan

Witnesses:
Bruce Thomson
Sue Wills

An aggressive homosexual is somebody who is likely to inflict rape on another person.

6.1 New South Wales Male Prisoner
6.1.1 Presentation of Male Prisoner Statement to the Tribunal on Homosexuals and Discrimination on 27 November 1976.
6.1.2 Homosexuality in New South Wales Prisons, Exhibit 30.
6.1.3 Today – TWG letter to John Horton, Executive Director Prison Operations, Department of Corrective Services, 22 April 1991; Letter from John Horton, 2 May 1991.

6.1.1 Presentation of Male Prisoner's Statement to Tribunal

Coonan: Before we go on to the next item, I am quite sure that the Tribunal will excuse anybody who is in personal difficulties and needs to go. The next item is a statement by a male prisoner, to be read by Bruce Thomson. It is matter forty and Exhibit 30.

Thomson: (reads Exhibit 30).

Coonan: Thank you Bruce.

6.1.2 Male Homosexuality in New South Wales Prisons

EXHIBIT 30

Statement to: Tribunal on Homosexuals and Discrimination

Homosexuals in New South Wales Prisons

The author served time in 1974, and is currently a prisoner. He gives the official version of the treatment of homosexuals, and then his own version. In 1975, prior to his current imprisonment, he was active with the Counter-Sexism movement, including the Sexual Counselling Centre, University of New South Wales, and the Royal Commission on Human Relationships.

Because of the punitive, anti-rehabilitative nature of the Department of Corrective Services, he has chosen to remain anonymous.

The Official Version

The following quotations are made by the Commissioner of the NSW Department of Corrective Services, Mr W.R. McGeechan. He was answering questions put to him during the Royal Commission into NSW Prisons, on the thirteenth day of July, 1976.

The homosexual classification "depends on personal opinion based on either the prisoner's history or the prison record." (Para 1972).

The homosexuals are now known as non-associates or NAs – NAs "is an internal classification used in the Custodial Division to protect the prison community from people who in the opinion based on judgement, should not be associated with others." (Para 1973).

NA classification includes … homosexuals? "Yes." (Para 1975) Cooma Prison and a wing at Maitland Prison are used for NAs? (Para 1978, Para 1983), "and for all those formerly described as homosexuals – Yes." (Para 1984).

The prisoner is classified non-associate "by word of mouth and reputation" (Para 1989) "from officers and possibly prisoners" (Para 1990) "and the prisoner's reputation." (Para 1991).

The description "non-associate is now just as irreversible as the one, homosexual – Yes." (Para 1993).

"I think that they" homosexuals "should be assimilated. That is presupposing that there is a professed or acknowledged homosexual prisoner; I think that he should be assimilated into the prison community, unless he is aggressive, and I think appropriate restraints have to be placed to protect the safety of the prison community." (Para 1995).
An aggressive homosexual "is somebody who is likely to inflict rape on another person." (Para 1996).

"There is no way that you can arrive at a decision before the event." (Para 1988).

… until three or four years ago, prisoners were classified as homosexuals – "Yes." (Para 2013), "… by the fact that the officer knew the prisoner, or the prisoner professed or declared himself to be homosexual, or in some possibly isolated instances, someone else declared him to be a homosexual … , another prisoner or prisoners." (Para 2014-5).

The Real Version on Homosexuality in Prisons

The literature on prison life does not give a complete view of homosexuality in prison. *Zimmer's Essay* [82] shows a rich and rare type of love in prison. Jean Genet's *Miracle of the Rose* [83] is that experienced by a career criminal prisoner. Another view is that of the non-institutionalised person, who experiences a shock in the transition to the prison world and its values, when compared with the non-prison world.

The career prisoner accepts prison homosexuality as an acceptable, normal way of life. The same general taboos about sexuality that exist in non-prison society also exist in prison. And homosexuality in any personal form is not normally advertised. It exists under the cloak of the prison 'heavies', with the silent approval of the prison officers.

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[82] Adamson Robert and Hanford Bruce, Wild and Woolley, Glebe 1974. In the preface it states:
"This is the first uncensored publication of *Zimmer's Essay*, with Robert Adamson's prison poetry, which is the foundation of the novel. Many of these poems have been out of print since the sell-out of the first editions of his books.
After rejection by several established publishers, *Zimmer's Essay* appeared in The Digger, during 1972's Porn Scare. As the first instalment was prepared, that paper was raided by the Melbourne Vice Squad, who also took the trouble to intimidate its erstwhile distributor and its printer.
Other pressure was applied to the printery to kill the paper. To his credit, the managing director of the firm, Mike Woods, offered to resign rather than see *Digger* killed.
While this low drama played in the boardroom, someone in the printery read a few inches of the novel and exclaimed. Executives converged. They discovered an account of homosexual rape, which disturbed them. In the words of one of them, 'The bloody thing gave me a case of piles.'
By the time it got to the printers, someone had taken a scalpel to the final photo-negative and cut cock, balls and arsehole out of *Zimmer*. *Digger* had an offer it couldn't refuse: censor itself or be killed. Time was short; a heavily bandaged *Zimmer's Essay* went onto the presses."

[83] Blond, London 1965.

This homosexuality includes the full range of sexual contacts, such as gang bangs, rapes, jealousies, love affairs and quick stands. The male-female polarity is even more exaggerated, where superficially, about 90% seem to be 'Hocks' (manly), 5% 'Cats' and 5% 'Kiora' (50-50 sauce, or bi-sexual). In private practice, probably 20% are active Hocks, 20% Kiora, 5% exclusively 'Bitch' and 55% not active in any form of shared sexual contact. These proportions vary from prison to prison, particularly at Cooma and Maitland.

The presenting sexual roles of Hock, Cat and Kiora are also accepted by the institutionalised (which they are) prison officers. Sometimes officers participate, either as voyeurs or as contact partners, in this underworld trade of male bodies that the prison heavies operate in every NSW prison.

With very few, if any, exceptions, the 28 NSW prisons have their meaningful prison life run by the prison heavies. All necessities and privileges are dispersed and often decided by the prison heavies, who rule prison life due to the lack of meaningful administrative competence of the prison officers.

This domination of prison life by the institutionalised and career-oriented prison staff (prison officers and 'heavies') is very upsetting to the non-institutionalised law offender. He is forced to be re-oriented to the values of prison life. Some of these major changes are listed below:

1. Sexuality becomes one of the very major interests in life. Prison is a very, very deprived environment, and a person's body, deprived of adornment or pastimes, becomes a major pre-occupation.

2. Sexuality easily becomes an anal/oral trading commodity which is devoid of tenderness or acknowledgment of tenderness.

3. One's sexuality, and hence a person, is evaluated in terms of maleness or femaleness, and hence in Hockness or Catness. Most prisoners, it would seem, would prefer not to be given these labels, if any.

4. A gang-banged or raped man is marked for the term of his imprisonment for further sexual approaches or mistreatment. Cats, and sexual victims do not have much social, legal or other protection. They become fair game for all. In my case, I kept two potential rapists at bay all night in a small cell. Upon reporting the incident in the morning, I was put into solitary isolation, deprived of most of the things I valued, and given 'exercise' in a yard with similar 'loneliness-shocked' persons. One should not report these things to prison officers. Because I was treated as a non-associate, it was and still is assumed that I am NA and homosexual.

5. Sexual victims are punished by isolation from the mainstream of prison life, the privileges and activities. Many homosexuals like the company of human beings. This isolation can be much worse than that of the heterosexual.

6. Prison language is predominantly anal/oral sexual abuse. Sex is an animal, derogatory act (though not in my opinion).

7. Access to professional aid for personal problems is difficult in prison, if at all possible. Staff is overworked, and the isolation from the sympathetic world heightens the feelings of the sexual (statistically) deviant.

8. Homosexuals and cats are generally stigmatised and treated with exploitation and derision. This treatment also transfers onto those who seem different from the 'butch' norm.

9. In those prisons offering educational courses such as V.D. and family planning talks, little is said or done on homosexuality.

10. Because of strict censorship in all but one NSW prison, any kind of sexual deviancy in the prisoner's mail, phone calls or visitors becomes a point of weakness and ridicule from both prison officers and prisoners throughout the prison. This is very significant when it is remembered that the prisoner has little contact with the outside world, that he is totally dependent on the prison world, and that he has practically no privacy.

All of the above circumstances need not occur in NSW prisons. Some solutions to alleviate the problem are suggested below:

a. The total upheaval now occurring in the Department of Corrective Services will loosen the control of the old-fashioned die-hards.

b. Further encouragement is needed for greater education of all prison personnel into better understanding of human sexuality and personality. Included would be positive discrimination from the staff so that the sexual deviant will be able to better counter the negative discrimination of our society.

c. Specifically the Non-Associate category should not be used for homosexuals, and should not be allocated on the basis of dubious reports and rumours.

d. Minority groups, including homosexuals, should have access to prisoners. Sex education visitors should give positive discrimination to minority aspects of their programs.

e. Ultimately, the treatment of all law offenders should not be deprivation and isolation, but instead, social, personal and cultural enrichment to assist the offender in avoiding the mistakes of the past.

6.1.3 Today

The TWG wrote on 22 April 1991 to J C Horton, Executive Director, Prison Operations, Department of Corrective Services:

In November, 1976 a Tribunal on Homosexuality and Discrimination heard evidence on a range of issues where discrimination against homosexual men and women was perceived.

After 14 years, a wide range of the issues raised before the Tribunal have been rectified – I mention the NSW Anti Discrimination legislation as one example. It is the intention of a number of those who were responsible for the setting up of the Tribunal to now contrast all the matters raised in 1976.

One matter that was raised was based on the evidence given by Mr W R McGeechan, then Commissioner, Department of Corrective Services, to the Royal Commission into NSW Prisons on 13 July, 1976.

Para 1973 states:

"Homosexuals are known as non-associates or NAs this is an internal classification used by the Custodial Division to protect the prison community from people who in the opinion based on judgement, should not be associated with others."

Para 1989, 1990 and 1991 contain this comment on the classification of "non-association":

"by word of mouth and reputation from officers and possibly prisoners and prisoner's reputation."

Para 1995 states:

"I think that they (homosexuals) should be assimilated. That is presupposing that there is a professed or

acknowledged homosexual prisoner … unless he is aggressive, and I think appropriate restraints have to be placed to protect the safety of the prison community."

These excerpts from the Proceedings of the Royal Commission were put as part of evidence given to the Tribunal by a man who had served two prison sentences. He claimed that homosexual prisoners were generally stigmatised and treated with exploitation and derision. He expressed the view that, specifically, the non-associate category should **not be** used for homosexuals, and it should not be allocated on the basis of dubious reports and rumours.

I would appreciate your advice as to the present status of the non-associate classification.

I would also appreciate your views on the general treatment of male homosexuals in the prisons of NSW.

The Executive Director, Prisons Operations, responded in his letter dated 2 May 1991 as follows:

Thank you for your letter of 22 April 1991 concerning the treatment of "Homosexual" inmates by the Department of Corrective Services.

Firstly, the classification "non-associate" has not been used in New South Wales for over twelve (12) years. With the introduction of Anti-discrimination legislation, any formal identification of homosexual prisoners ceased completely. Currently, the question of the sexual preference of inmates is not an issue or consideration in New South Wales Corrections.

Notations on departmental files and records in relation to the sexual preference of a prisoner are not permitted. Additionally, there are no programs or institutions specifically targeted at homosexual prisoners.

Indeed, Departmental policy, procedures and practices attempts to ensure that staff recognise, respect and treat inmates as human beings.

Initially, the recruitment process ensures that potentially unsuitable candidates are excluded from employment with the institutional setting. Subsequently, pre-service training for Prison Officers attempts to address the implications and impact of discriminatory attitudes within prisons.

Notwithstanding, it is extremely difficult if not impossible to regulate the attitudes of staff and inmates. Experience would suggest that the discriminatory attitudes which exist within our community are also reflected in our prison system.

She has survived every attempt to crush her will. She does not repent her lesbianism.

6.2 Sandra Willson, New South Wales Female Prisoner
6.2.1 Presentation of Sandra Willson's case to the Tribunal on Homosexuals and Discrimination. 6.2.2 Statement on behalf of Sandra Willson, Exhibit 39. 6.2.3 Today – ADB, May 1991; TWG letter to Peter Collins, Attorney General, 11 November 1991; Letter from Attorney General, 4 February 1992.

6.2.1 Presentation of Sandra Willson's Case

Coonan: … And go on to matter 41, which is the case of Sandra Willson, a woman imprisoned and who has been imprisoned for many years and it is considered that her homosexuality was a factor in her being kept or is a factor in her being retained in prison. It is to be read by Sue Wills. (I am sorry it is altered, it is matter 41 exhibit 39).

Wills: (reads Exhibit 39).

Coonan: Thank you Sue.

6.2.2 Sandra Willson's Discrimination Statement

EXHIBIT 39

Statement from Sandra Willson to the Tribunal on Homosexuals and Discrimination

In 1959, when she was 20 years old, Sandra Willson shot a stranger dead. She was acquitted of murder on the grounds of insanity, and confined to a psychiatric hospital at the Governor's Pleasure. In 1971, a panel of psychiatrists determined that she was sane, and she was transferred from hospital to a jail.

The average term for persons sentenced to life after conviction for murder in New South Wales is 13 Years. Sandra has been confined for 17 years – longer than any other woman in Australia – although she has applied for release in every year since she was judged sane.

In the opinion of psychiatry, Sandra was not criminally responsible for murder. Her sentence is already disproportionate for someone convicted of that crime. Psychiatry has judged that the mental state that accompanied her act no longer exists.

Like George Jackson and the Three Marias, Sandra Willson is in jail less for what she has done than for who she is. Sandra Willson is still in jail for two reasons: she has survived every attempt to crush her will

and, while she repents her crime, she does not repent her lesbianism.

From her youth onwards, Sandra Willson has suffered societal prejudice and punishment because of her sexual non-conformity. Her school girl crushes on teachers and other students were ridiculed or rejected. At 17, she moved into a flat with another girl and commenced what she described as a very happy relationship. The police, urged to the flat by another girl's mother, arrested them and they were charged with being exposed to moral danger. The Children's Court heard the intimate details of their sexual relationship and Sandra was sentenced to Parramatta Girls Home and ordered to undergo aversion therapy to alter her sexual preference.

For two years after her release Sandra held a number of short-term jobs. In 1959, she commenced training to be a psychiatric nurse at Rydalmere Hospital in Sydney. There she fell in love with another trainee and they began a passionate affair. When pressure was put on the other girl by senior staff, she broke the relationship with Sandra, saying that she now considered their affair to be unnatural and perverted.

Sandra describes her reaction:

Upon those words 'I can never see you again' I went into a state of shock … I felt like killing myself on the spot … By a long train of events I decided that killing myself alone was no good – people would be glad to see me gone – so if I killed one of 'them', society, someone **would** cry and possibly be sorry that they had interfered in my life and my right to live.

On 29 April, 1959, Sandra Willson murdered a Sydney taxi driver. Six days later, on 5 May 1959, she gave herself up to the police, for her own reasons. She writes:

I chose my victim by accident but felt that, although he had to die, in my grief-stricken mind, I could not hurt him by letting him see the gun and feel for those last seconds of his life, the terror of dying … I thought after this to go 'straight', love men, lead a normal life. Then my conscience caught up with me and also – wasn't I a coward, not willing to die, but able to allow another to die … Prison was the best punishment – a time of living death when each day I would remember **her** and grieve over losing her. I gave myself up to the police.

On 3 July, 1959, the City Coroner found Sandra Willson had a case to answer and committed her for trial at the Central Criminal Court on August 24. Judged unfit at the time to stand trial, she was retained in a psychiatric hospital. Over a year later, she was judged fit to plead to proceedings against her and on 15 November, 1960, her trial began. She pleaded not guilty to the charge of murder.

The trial only lasted one day. The sole defence witness, government psychiatrist, Dr John McGeorge, testified that Sandra Willson was certifiably insane and hence incapable of reasoning that her offence was wrong. After a five minute retirement, the jury reached its verdict: not guilty on the grounds of insanity.

Under New South Wales law, a judge has only one option when this verdict is returned, and he sentenced Sandra Willson to be detained in strict confinement to await the Governor's Pleasure. She was committed to custody at Parramatta Psychiatric Hospital.

A Governor's Pleasure sentence recognises diminished responsibility for criminal liability because a person is temporarily or permanently insane **and** it acquits the person for these reasons. It further provides an indeterminate sentence, generally within a psychiatric institution, so that the person may be given the opportunity to regain their sanity. The presumption is that if at some time in the future the person is judged to be sane and no longer to constitute a threat to the community, they can be released.

In 1971 Sandra Willson was Declared Sane

In 1976 Sandra Willson is still on Prison

Caught in the classic Catch-22 situation imposed on all institutional inmates, if she is meek and subservient and takes her pills, they argue that she is institutionalised and incapable of surviving in the world outside. If she demonstrates her grasp on reality by expressing her anger or resentment at the petty violence which is the currency of prison relationships, she is judged to be incapable of suppressing her violent urges.

Sandra Willson is still in jail for two reasons:

She has survived every attempt to crush her will.

She does not repent her lesbianism.

Sandra Willson Must Be Released Immediately!

6.2.3 Today

While the term Governor's Pleasure is no longer used and people appear before the Mental Health Review Tribunal and are assured 'due process of law' the belief of the ADB's Legal Officer is that what happened to Sandra Willson could still happen.

The TWG wrote on 11 November 1991 to the NSW Attorney General, Peter Collins regarding the present standing of the term 'Governor's Pleasure'.

On 4 February 1992 the NSW Attorney General responded as follows:

I refer to your letter dated 11 November 1991 requesting advice in relation to Governor's pleasure prisoners.

The legislation controlling Governor's pleasure prisoners is the Mental Health Act 1990 and the Mental Health (Criminal Procedure) Act 1990.

Chapter 5, Part 2 of the Mental Health Act 1990 deals with the review of forensic patients. A forensic patient is a person who is found not guilty by reason of mental illness or has been found to be unfit to plead.

Where a person is found unfit to be tried or is found not guilty by reason of mental illness and ordered to be detained, the Mental Health Review Tribunal has to review that person's case and, as soon as possible after the review, make a recommendation to the Minister for Health to:–

(a) the person's detention care or treatment; or

(b) if the Tribunal is satisfied that the safety of the person or any member of the public will not be seriously endangered by the person's release, as to the person's release.

Section 82 prescribes that reviews can be made at any time, but must be made at least once in every 6 months. Where the Tribunal recommends release to the Minister, the Attorney General and the Director of Public Prosecutions must be notified. The Minister for Health, the Attorney General, the Minister for Corrective Services, the Chief Health Officer or a medical superintendent can request the Tribunal to review the case of a forensic patient. If such request is made, the Tribunal must review the case of a forensic patient and make a recommendation to the Minister.

The person who ultimately decides whether to release is the Minister for Health although the Attorney,

under section 84 of the Act, has a power of veto over release if certain criteria are met. The Attorney can object on the ground that the person has served insufficient time in custody or if it is intended to proceed with criminal charges against the person. To date this power has not been exercised.

The Sentencing Act 1989 has no relevance to forensic patients. That Act promotes truth in sentencing for convicted persons and provides for the procedures to be followed in sentencing prisoners to imprisonment and for the release of prisoners on parole.

I have attached for background purposes, a copy of my second reading speech, [84] as Minister for Health, when the Mental Health legislation was introduced and relevant flow charts which are published as Schedules to the Act. These will assist in following the complex provisions for forensic patients and allow for clarification in the interpretation of the provisions.

At the time the legislation was introduced the Government established the Mental Health Act Implementation and Monitoring Committee, which was chaired by Ms A Deveson. This Committee is currently taking submissions on the Act. If your group is interested in making a submission it should be sent to the Committee c/- Department of Health, 73 Miller Street, North Sydney 2060. The relevant Department of Health project officer who can assist in this regard is Mr John Bennett on telephone number 399 9306.

The Criminal Law Review Division of my Department is also reviewing Governor's pleasure prisoners as part of the Standing Committee of Attorneys General work on the uniform criminal code. Any views your group may have on the issue could also be considered in this context.

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[84] New South Wales Legislative Assembly, 22 March 1990, pp. 884-94.

7. Miscellaneous Cases

Tribunalists:
Dr Jim Cairns
Barry Egan

Counsel assisting:
Helen Coonan
Jane Mathews

Witnesses:
Dennis Altman
Ron Austin
Bob Cotter
Cecily Davis
John Greenway
Robyn Kennedy
Brigitte Seega
Kym Skinner
Peter Trebilco

… nude bathing at the beach has already attracted an homosexual element …

7.1 Advertisement in the Manly Daily
7.1.1 Tribunal on Homosexuals and Discrimination letter to Felicity Pulman, 29 October 1976. 7.1.2 Discriminatory advertisement in *The Manly Daily* of 20 October 1976, p. 15, Exhibit 9. 7.1.3 Article in *The Manly Daily*, 20 October 1976, p. 9, featuring Mrs Pulman and her daughter Thurl. 7.1.4 Presentation of discriminatory advertisement to the Tribunal on Homosexuals and Discrimination on 27 November 1976. 7.1.5 Today – ADB, May 1991; TWG letters to The Editor, The Manly Daily, 15 July 1991 and 7 January 1992; Letter from The Manly Daily, 21 January 1992.

7.1.1 Tribunal Letter

The Tribunal Collective wrote to Felicity Pulman, of Balgowlah NSW the following letter on 29 October 1976:

> A panel of prominent people will compose the above tribunal. They will hear evidence of instances of discrimination (specific and general) from homosexual people on the Saturday. There will be counsel for each side in all cases presented. On the Sunday the tribunalists will hand down a report, with recommendations, based on the evidence.
>
> Your advertisement page 15, and comments page 9, in the Manly Daily, of Wednesday, October 20, 1976 will be presented as evidence of discrimination against homosexual people at the above tribunal. We would like to invite you to submit a written statement outlining your reasons for believing the Advertisement and Comments not to be discriminatory. At a later stage arrangements might be made to present your views orally on the actual day of hearing.

7.1.2 Discriminatory Advertisement [85]

EXHIBIT 9



[85] The actual size of the advertisement is 275mm x 195mm or a half page in *The Manly Daily*, 20 October 1976, p. 15.

7.1.3 Mrs Pulman's Article in the Manly Daily [86]

'Nude Beach Molesters'
A Mother Fears for Child

By Cathy Crawford

A Peninsula woman and mother said yesterday: "We can never be sure our children will be safe. A nude beach will attract perverts and child molesters".

Mrs Felicity Pulman, of Balgowlah, was expressing her fears over the proposal to legalise Reef Beach as a nude bathing beach.

Her fears are shared by other members who live near Reef Beach and who have formed the Reef Beach Action Committee.

Moral

Mrs Pulman says her opposition to Reef Beach is not a [sic–an] argument on moral grounds.

"It would be fine if there were nude bathing on every beach", she said.

"But legalising one beach attracts an unnatural emphasis".

Mrs Pulman claims Reef Beach is totally unsuitable as a nude bathing beach and the prime concern of residents is their children's safety.

"There is lot of bushland around the beach – an ideal ground for perverts and Peeping Toms," she said.

"And parents cannot watch their children every minute of the day".

According to Mrs Pulman, nude bathing at the beach has already attracted an homosexual element and very few women go to the beach.

"I have heard of incidents of people exposing themselves to children and soliciting young boys", she said.

Mrs Pulman said residents were concerned about limited parking in the area and the lack of amenities on the beach.

Opposition

She said there was a danger that Reef Beach would become overcrowded and nude bathers would move around to Forty Baskets Beach, traditionally a family beach.

"A better alternative would be a beach which is larger, more open and easier to police", Mrs Pulman said.

The Reef Beach Action Committee is urging people to express their opposition to legalised nude bathing at Reef Beach by sending telegrams or writing to the Premier, Mr Wran.

Mrs Pulman said Mr Wran was being "extremely arrogant" about the issue.

"The Committee has tried repeatedly to meet with him to discuss the issue but he refuses to do so", she said.

Mrs Pulman said the Committee had collected $340 from residents in the Reef Beach area to place advertisements objecting to the proposal.

"I would say 99 per cent of the residents are opposed to it", she said.

"But they must voice their objections".

7.1.4 Presentation to the Tribunal

Coonan: Could I now call on Cecily Davis to read an advertisement that was inserted in Manly Daily newspaper. (In soft voice, just read this statement. Just state your name and address).

Davis: Cecily Davis 9 Wattle Avenue Fairlight. Exhibit 9 (see **7.1.2** page 213) is a half page advertisement placed in *The Manly Daily* on Wednesday October 20, 1976 by Mrs Felicity Pulman, a housewife of Balgowlah. The wording of the advertisement is "Reef Beach, a beach which could attract nudes, perverts and homosexuals, or a quiet family beach? Which do you want?" In a statement, Mrs Pulman lumps nudes, perverts and homosexuals all in the one bag, which is highly offensive to us and probably also to legitimate nudists. A slight rewording of the original copy suggested by The Manly Daily solicitor removed the libel, but not the offence. I spoke to Mrs Pulman the day the ad appeared and found her statement to be based on emotionalism rather then fact. Her knowledge of the homosexual life style was abysmal and she could not cite any concrete examples of offensive behaviour having taken place on Reef Beach. On page nine of the same paper, Mrs Pulman is pictured with her two year old daughter, fearing for her child. To quote from this article, according to Mrs Pulman nude bathing at the beach has already attracted a homosexual element and very few women go to the beach. I asked Mrs Pulman whether by homosexual she meant male homosexual. She did,

[86] *The Manly Daily*, Wednesday, 20 October 1976, p. 9.

and so then I asked why the hell would she be frightened of male homosexuals? She was unable to give a satisfactory answer. I got the distinct impression that homosexuals were very unwelcome on her beach, even if we were clad in neck to knee bathers.

Coonan: Thank you.

7.1.5 Today

The TWG was advised by the ADB that such copy as the advertisement in *The Manly Daily* may be regarded as homosexual vilification if the vilification amendment to the Act comes in.

The TWG wrote to the Editor of *the Manly Daily* on 15 July 1991 requesting clarification as to:

> I hope you can help me with a query about the policies of *The Manly Daily*.
>
> On 20 October 1976 The Manly Daily published an advertisement, regarding Reef Beach, which associated 'Nudes, Perverts and Homosexuals' (copy enclosed). The ad was one of several cases of alleged discrimination considered at the 1976 Tribunal on Homosexuals and Discrimination (extract of relevant proceedings also enclosed).
>
> At present a research group is, as social history, tracing how legal and social attitudes may have changed since then. Would The Manly Daily run an advertisement so worded today? Any comments you may have would be appreciated.

The TWG wrote again on 7 January 1992 to The Manly Daily stating:

> I enclose copy of a letter and attachments which I sent for your comment some time ago but to which I have not received a reply.
>
> Any comments on your likely policy today towards the matter raised in my original letter – i.e. the wording of the ad – would be gratefully received.

The Branch Manager, Jennifer Stokeld, responded on 21 January 1992 as following:

> Your letter of January 7, 1992 and previous correspondence has been passed to me for comment.
>
> As you are no doubt aware, newspapers are bound by the ethics of the Advertising Code and the Australian Publisher's Bureau authority number is required on certain advertisements.
>
> Ethically, advertising should not be designed or worded to deceive the reader and any offer or statement should be true and honest.
>
> Should the advertisement in question be passed to me for approval I would refuse publication in its present form on the grounds that:
>
> 1. It may give rise to litigation.
>
> 2. It promotes the beach as all that they are protesting. [*sic*]
>
> The advertiser would be contacted and for the aforementioned reasons it would not be too difficult to persuade them to change the wording to avoid any embarrassment or costly and time consuming litigation.
>
> I do not believe my attitude was any different in 1976.

The TWG wrote again on 1 May 1992 stating:

> Thank you for your letter dated 21 January 1992 addressed to Dr Ian Black. Dr Black has asked me to

write to you regarding the following matter:

Your **second** ground for refusing to publish the advertisement in question is unclear to us. Could you please inform us, before materials are forwarded in the next few weeks to our publisher, what you mean?

The Branch Manager, Jennifer Stokeld, responded on 4 May 1992 as follows:

Further to your letter dated May 1, 1991 regarding clarification of point two raised:
"It promotes the beach as all that they are protesting".
The advertisement reads:

"Reef Beach, a beach which could attract nudes, perverts and homosexuals, or a quiet family beach?"

This advertisement brings awareness to the possibility [sic] of these types of people being on the beach which could attract others of the same ilk. This statement is also ambiguous as it does not say why, who or how Reef Beach could attract such people e.g. is it the landscape, the location, the people themselves? Should this advertisement be referring to anyone at all who is on the beach, it could cast aspersions as to their character.

Whilst this alone may not be grounds for possible litigation, in conjunction with point one of my letter it is however, a valid reason.

Under publishers' advertising terms and conditions [87] we have the right to withdraw advertising. We do not suggest in our conditions that a reason has to be offered for withdrawal. The newspaper manager at the time may consider that our readers may be offended and may not want to be subjected to speculation or conjecture from the advertiser and would therefore not offer a reason.

Due to the sensitive nature of this advertisement, a manager may choose to withdraw the advertisement without notice or comment.

I trust this clarifies the situation for you.

---

[87] These were included with the letter received. However, they are too lengthy to repeat here. They are entitled: 'Advertising Terms and Conditions' and 'Warranty and Indemnity' and are available from The Manly Daily.

Penny Short's poem … It was, he said, 'a filthy poem'.

7.2 Refusal to Print Lesbian Issue of Refractory Girl
7.2.1 Letter to Tribunal on Homosexuals and Discrimination.
7.2.2 Statement of alleged discrimination, Exhibit 40.
7.2.3 Presentation of materials to the Tribunal on Homosexuals and Discrimination on 27 November 1976.
7.2.4 Today – ADB, May 1991; TWG letters to The Manager, Maxwell Printing Co Pty Ltd, 12 August, 25 September and 18 November 1991.

7.2.1 Letter to Tribunal

The Tribunal Collective received the following letter:

From: Lee Andresen
To: Tribunal on Homosexuals and Discrimination

Refractory Girl Discrimination Case

Enclosed are: (1) a copy of the Lesbian Issue
(2) several copies of the enclosure of that issue, documenting in full the details of the events.

The present Refractory Girl Collective is contactable through Baiba Irving, 13 Bucknell St. Newtown (Ph. 519 3551). The persons involved editorially in the actual issue were Leslie Lynch (Ph. 560 5250) and Sue Wills, either of whom should be contacted directly over any matter concerning the facts of the case.

The Collective met late last week and Okayed our use of the case if we should wish.

Baiba Irving has indicated that particular issue was very poorly sold and they have a large unsold stock on their hands (surprised!). I have assured her that if (as I suspect) we have a literature stall at the Tribunal, we would gladly offer Refractory Girl for sale, (a) the old Lesbian issue, perhaps at reduced rates because it is dated, and also (b) any current issues. Should we agree to that I will be responsible for collecting them, etc., from Baiba.

The printer involved in the case was Maxwell Printing Co. Pty Ltd., of 862 Elizabeth St. Waterloo (Ph. 699 2600).

7.2.2 Refractory Girl Collective Statement

EXHIBIT 40

Are Lesbians Obscene?

This issue of *Refractory Girl* is several weeks late in coming out. This is due partly to the Collective

having difficulty raising the money to finance this issue. But this issue has been delayed by an extra 2 weeks for an additional reason, one which we feel our readers should know about.

After obtaining several quotations from printers we decided to give the printing of this issue to Maxwell General Printing Company Pty Ltd, a printer we had never used before but who had been used by *Mejane* and *CAMP Ink*. This company's quote was lower than others we obtained and the company guaranteed to be able to print it quickly. We dropped in the completed layout and artwork and one of the Collective went through it page by page with the managing director of the company explaining various things to him. He raised no objections to any of the contents and promised that we could take delivery of the issue ten days later. On the day that it was due to be completed we rang the printer and asked what time it would be ready only to be told that on the previous day the board of directors had met and had decided to refuse to print this issue they felt people would find it offensive. We were informed that the plates had been destroyed and that the art work and layout were being returned to us by courier.

This all occurred on Easter Thursday and we spent the rest of the day ringing around to other printers to see if we could have it done elsewhere and as quickly as possible. Tomato Press, which printed No. 4, offered to spent Easter printing it and to do it free of charge but was unable to obtain paper. Several other printers refused to even look at it once they heard that Maxwell's had decided not to print it. Eventually we made contact with Morgan Graphics who agreed to give *Refractory Girl* priority and has printed it for us in less than a week. We are very grateful to them.

When we were informed of Maxwell's decision we contacted several other groups which we knew had work done by this company to find out what their experiences had been. One of these groups, the *New Journalist*, was outraged by this instance of censorship. They decided they would find another printer to do their work. We wonder how many other groups printing with Maxwell's, or considering to do so, are aware of the risks they are taking of being rejected at the last moment. It involves a great deal of inconvenience and delay; we wouldn't have thought it a very good way to do business.

But even though we have succeeded in publishing this issue—albeit with considerable difficulty and delay—we feel that it is necessary to say something about Maxwell's judgement. We recognise that because printers as well as publishers are liable to prosecution under the laws relating to obscenity in New South Wales that printers have a right to refuse to accept work which they consider to be obscene. However we feel that right should be exercised when the job is delivered to them, not after they have entered into a contract to print, and certainly not on the day that they have promised delivery. We feel we have been unjustly treated by this publishing firm. Secondly, we object to their judgement. When we asked if there was anything specific which they objected to, the managing director told us that there was: it was Penny Short's poem which appears on page eleven of this issue. It was, he said, 'a filthy poem'. When we asked him, however, if he would print it if this poem were taken out he replied that he could not, that it was not his decision, and the final word was that they would not print *Refractory Girl*; they were not printing 'that sort of publication any more'. So we feel that Maxwell's disapproved of the contents of this issue, and that they cited this poem merely as a concrete example of their objection, and that it was not just the poem which they objected to.

In choosing the editorial contents of this issue it did not occur to any of the Collective that people might object to those contents on the ground of obscenity. But now that this objection has been raised by a printing company – one that has no apparent objection to magazines like *Searchlight on Sport* [88] which it printed the day it rejected Refractory Girl – we think that it may be raised by other people and feel that it is perhaps necessary to explain more fully the Collective's view.

We printed Penny Short's poem as part of a news story about a woman having a scholarship taken away

[88] *Searchlight on Sport* focused on 'girlie' photographs, sex-oriented advertisements and sport scandal. Sample headlines include: 'Mafia Moves On Aussie Boxing'; 'Groupies Shadow League Players'; and 'League Players Big Night Out'.

from her because she is a lesbian, an issue highly relevant to this particular number of Refractory Girl. We felt it was appropriate to publish it in the context that we did because Penny lost her scholarship not because of the quality of her poetry but because of her sexual preference. **That** is the issue involved and that is the issue which we are prepared to defend.

Female sexuality has been denied and repressed, particularly in western cultures, for several centuries and we feel that part of the struggle for women's liberation involves women fighting against that repression. It has been considered seemly for several decades now for men to write about their own, and women's, sexual experiences but this freedom has not been allowed to women. We feel that there is a connection between this denial and the general refusal to accede full sexual acts are obscene only if one considers those acts to be obscene and it is here that a sexist society's oppression of lesbians is manifested. Society has never wanted to acknowledge that lesbians exist, and this is one reason why female homosexuality has rarely been legally outlawed. The taboo against free expression of sexuality generally as well as the specific taboos against lesbians have conspired to prevent women from discussing their sexual feelings for each other. We feel that it is time to break this taboo. Lesbians exist. Lesbians have sexual relations. Are these obscene?

We reject their judgement that they are just as we reject that descriptions of heterosex are obscene. Ultimately we are undoubtedly engaged in a general fight against puritanism, sexual repression and censorship but we feel it is important that the particular question of women and of lesbians is not subsumed and lost within this general battle.

Therefore we reject totally, Maxwell's judgement about this issue of Refractory Girl. We have published it as planned and we are prepared to defend it against any criticism or prosecution.

Refractory Girl Collective
25 Alberta Street
Sydney
April 1974

7.2.3 Presentation to the Tribunal

Mathews: Cecily Davis, is she here? I gather there have been real problems with people not being able to hear. If you could speak right into the microphone. And you are going to talk to Exhibit 40.

Davis: That is right, I think it is 40. Yes. Exhibit 40 is a statement from the Refractory Girl Collective. In April 1975 they tried to print a lesbian issue and it was knocked back by a large Sydney printing company. Their statement is entitled *Are lesbians obscene?*, dated April 1974, 25 Alberta Street, Sydney. (reads exhibit 40.

Mathews: Thank you. I tender the file containing Exhibit 40.

7.2.4 Today

The ADB advised that a complaint could feasibly be heard today under the denial of services provision.

The TWG wrote to Maxwell Printing Co Pty Ltd on 12 August 1991 as follows:

> In November 1976 a Tribunal on Homosexuals and Discrimination heard evidence on a range of issues which were perceived to entail discrimination against homosexual women and men.

The refusal of Maxwell Printing to print Issue number 4 of the Women's Studies Journal *Refractory Girl* (Autumn 1974) in March/April 1974, because it was a 'lesbian issue' and, according to the company, contained a 'filthy poem' was brought to the attention of the Tribunal.

After 15 years, a wide range of issues raised before the Tribunal are no longer issues. For example, New South Wales now has Anti Discrimination legislation which makes it unlawful to discriminate on the grounds of homosexuality. It is the intention of a number of those who were responsible for setting up the Tribunal to contrast the attitudes and practices which prevailed in 1976 with those that prevail today.

Would you please inform us whether your company would again refuse to print the issue of a publication which contained lesbian material. I enclose a copy of the leaflet prepared by the Refractory Girl Collective which outline the events of 1974 involving Maxwell Printing. If a copy of the issue in question would help you to answer we will be happy to forward one to you.

The TWG wrote again, on 25 September 1991, to Maxwell Printing as follows:

I write to remind you of our request for information of 12 August, 1991. We would like to give you every opportunity to appraise us of your current attitudes to the publication of the material referred to in that letter (copy attached). To assist you I enclose a copy of the issue of *Refractory Girl* in question.

The final letter, dated 18 November 1991, to Maxwell Printing reads as follows:

I am writing to remain you of my request for your comments on the Company's refusal to print an issue of *Refractory Girl* in 1974.

May I assume, and report to the Tribunal Working Group accordingly, that given similar copy to print, the Company would similarly decline to print it?

In the event of our not hearing from you, we will record our letters in the printed report, for publication.

In the absence of any response from the company the TWG assumes that Maxwell Printing maintains a discriminatory policy regarding homosexual publications.

If the idea was to let the students see what homosexuals were like, they could have been taken to see them in psychiatric hospitals or somewhere …

7.3 Comments by Professor Leonie Kramer
7.3.1 Tribunal on Homosexuals and Discrimination letter to Professor Leonie Kramer, 29 October 1976. 7.3.2 *The National Times*, 17-22 November 1975, p. 6, The Overflow Column, entitled: 'Sex education', Exhibit 8, and *The National Times*, 24-29 November 1975, p. 2, Letters – 'A course in human sexuality'. 7.3.3 Presentation to the Tribunal on Homosexuals and Discrimination on 27 November 1976. 7.3.4 Today – ADB, May 1991; TWG letter to Dennis Altman, 26 November 1991; TWG letters to Dame Leonie Kramer, 9 May and 29 June 1991; Letter from Dame Leonie Kramer, 9 July 1991.

7.3.1 Tribunal Letter

The Tribunal Collective wrote the following letter on 29 October 1976 to Professor Leonie Kramer, Department of English, University of Sydney:

> A panel of prominent people will compose the above tribunal. They will hear evidence of instances of discrimination (specific and general) from homosexual people on the Saturday. There will be counsel for each side in all cases presented. On the Sunday the tribunalists will hand down a report, with recommendations, based on the evidence.
>
> The comments attributed to you in the Overflow column, *The National Times*, November 17-22, 1975, will be presented as evidence of discrimination against homosexual people at the above tribunal.
>
> We would like to invite you to submit a written statement outlining your reasons for believing the Comments not to be discriminatory. At a later stage arrangements might be made to present your views orally on the actual day of hearing.

7.3.2 National Times Article [89]

EXHIBIT 8

Sex education

The ignorance of most doctors about sexual problems is notorious, and this year the University of NSW tried to do something about it. The second year medical course included a three week program of lectures and discussions on the physical, emotional and social aspects of sex.

But you just can't win, even in this so called permissive age. Professor Leonie Kramer, from the University of Sydney, rang the Dean of Medicine with

[89] *The National Times*, 'The Overflow Column', November 17-22, 1975.

a complaint. Professor Kramer's daughter is a medical student at the University of NSW, and Professor Kramer was worried that one of the lectures in the sex course was to be given by Dennis Altman, a homosexual.

The Dean decided to go along to Mr Altman's lecture to ensure that he was not corrupting the students, and found that the lecture was just a safe sociological analysis of homosexuality in society.

Professor Kramer said she preferred not to comment when Clancy rang her, but later her husband, a doctor, rang back with some comments. He said that he and his wife felt that lectures on homosexuality would have been better given by a psychiatrist.

"If the idea was to let the students see what homosexuals were like, they could have been taken to see them in psychiatric hospitals or somewhere", Dr Kramer said.

Which seems to say something about doctors' attitudes to sex.

EXHIBIT 8

Letters [90]

A course in human sexuality

SIR, If Professor and Doctor Kramer quoted in Clancy's Overflow column (The National Times, Nov 17-22) want a view of homosexuality expressed by a psychiatrist, here is one:

First, as a psychiatrist and also a parent of a medical student at the Uni of NSW may I congratulate the Dean of the Medical Faculty for including a course in human sexuality for second year medical students. This is an absolute necessity for future medical practitioners who are so often consulted by their patients regarding sexual matters.

The Medical Faculty also showed good judgement in choosing Dennis Altman, a well qualified social scientist and a homosexual, to present a sociological analysis of homosexuality in society. A psychiatrist would more likely have presented a distorted picture of homosexuality from a skewed sample of patients he – she might have seen in clinical practice.

Professor and Dr Kramer show the over reaction of many uninformed through well – intentioned people whose stereotype of the homosexual person is one of a "psychiatric hospital patient", one in need of psychiatric care.

In my experience this is far from the case as most homosexuals are leading productive lives without the assistance of psychiatrists. Professional people in the fields of psychiatry and psychology have condemned community attitudes and laws that discriminate against homosexuals, and do not define homosexuality, per se, as an indication for treatment.

Community attitudes toward homosexuality as indicated by influential people such as Professor and Dr Kramer constitute one of the greatest burdens the homosexual person must bear. If homosexuals need to seek psychiatric assistance it is more likely to be due to such attitudes, rather than due to their homosexuality.

Dougald D. McLean,
Psychiatrist
Leichhardt, NSW

7.3.3 Presentation to Tribunal

Mathews: The next item is Peter Trebilco referring to comments in the National Times, and I think that Dennis Altman who was personally involved in this particular matter also wants to make some explanation of it.

Trebilco: Exhibit 8 is a cutting from *The National Times* of 17-22 November 1975 and I quote an article which is headed 'Sex education'. (reads the Overflow column). In the following edition of the National Times, 24-29 November 1975, a psychiatrist Dr Dougald D McLean, who lives in Leichhardt, replied (reads letter by Dougald McLean).

Altman: I just wanted to say that I have more evidence than the National Times. I was informed the day

[90] *The National Times*, 'Letters', November 24-29, 1975.

before I was supposed to speak, by the member of staff responsible for the course, that he had been called into his office by the Dean of Medicine following a complaint by Professor Kramer to the Vice Chancellor of the University of New South Wales. I think it worth pointing out that Professor Kramer was, at that stage, a member of the Australian Universities Commission, one of the more unfortunate choices, if I may say so sir, of your then government, and as such she of course had an unnecessary and unfortunate ability to put pressure on a Vice Chancellor. Academically, it seems to be perfectly clear that it was improper of her to, in any way, interfere in the proceedings of the university to which she was involved as one of the people who hands out money. I do not know how accurate the rest of the report is, that is, whether her husband did or did not say things that the National Times quotes him as saying. I do know that when I did the lecture, a number of the faculty of the University of New South Wales medical school turned up and I spoke to several of them afterwards and one of the professors at the University of New South Wales was very unhappy with my talk, because he felt I had not talked about pederasty and everyone know that all homosexuals chase after little boys. I put that before the commission as I think a very good illustration of the abysmal ignorance of professors of medicine and I think the case has already been made, that the attitudes of professors of medicine has very considerable effect on attitudes in the community at large. The only other point I would like to make is that a letter was written to the *The National Times* [91] [92] by a large number of members of staff at Sydney University who had been to see Professor Kramer and asked her whether the report was true, and have not as I understand it, been able to find out much from her. *The National Times* chose not to print that letter. I do not know why this was, but I think it is unfortunate that the support I had from a number of my academic colleagues was therefore never made public until today.

Mathews: Thank you. I tender the file containing the relevant documents.

7.3.4 Today

The TWG wrote to Dame Leonie Kramer on 9 May 1991 as follows:

> In November 1976 the Tribunal on Homosexuals and Discrimination heard evidence on a range of issues where discrimination against homosexual women and men was perceived.
>
> The Tribunal's attention was particularly drawn to the attached National Times article of 17-22 November 1975 attributed to you.
>
> After 15 years, a number of the issues raised before the Tribunal have been rectified, and I mention the NSW Anti-Discrimination legislation as one example. It is the present intention of a number of those who were responsible for the setting up of the Tribunal to compare the situation in 1991 with matters raised in 1976.
>
> - We are interested to ascertain if you would contact the Dean of Medicine at the University of New South Wales again today to complain about a known homosexual being involved in lectures on physical, emotional and social aspects of sex?
>
> - Secondly, do you still believe, as you did in 1975, that lectures on homosexuality would be better given by a psychiatrist?
>
> - Finally, would you still recommend that second year medical students could be taken to see homosexuals in psychiatric hospitals?

---

[91] The Tribunal Working Group contacted Dennis Altman to ascertain if he had a copy of the unpublished Sydney University Staff letter to *The National Times*. Unfortunately he did not have a copy of this letter. *The National Times* ceased publication in August 1986 and it seems highly unlikely that this correspondence can be found.

[92] See also, Moorhouse, Frank, *Days of Wine and Rage*, Penguin Books, 1980, pp. 386-7.

The TWG wrote again to Dame Leonie Kramer on 29 June 1991 as follows:

> Attached please find copy of a letter which was forwarded to you early in May of this year. To date we have not received a reply to the questions raised in our letter.
>
> We look forward to receiving a response from you. However, if no response is forthcoming within the near future we shall assume that your 1976 attitudes as mentioned in our letter dated 9 May have not changed and publish this accordingly.

Dame Leonie responded on 9 July 1991 as follows:

> I acknowledge your letter of 29 June 1991. I am surprised that you should assume that my late husband and I held the views attributed to us in *The National Times* article to which you refer.
>
> That defunct newspaper was notorious for its inaccurate reporting, misrepresentation, and inventions, and was the subject of many libel actions.

The TWG were advised by the ADB that the report published in *The National Times* could constitute vilification if the vilification amendment comes in.

I … realised that someone must have talked to him about my homosexuality.

7.4 Sacking of Helen Pasley
7.4.1 Alleged homosexual discrimination by the Australian Red Cross, Melbourne against Helen Pasley, Exhibit 28.
7.4.2 Presentation of discrimination to the Tribunal on Homosexuals and Discrimination on 27 November 1976.
7.4.3 Today – TWG letters to Chief Executive Officer, National Headquarters Red Cross Society, Melbourne, 13 April and 7 June 1991.

7.4.1 Discrimination by the Australian Red Cross

EXHIBIT 28

Statement by: Helen Pasley
To: Tribunal on Homosexuals and Discrimination
Re: Alleged Homosexual Discrimination by the Australian Red Cross

After some time I succeeded in getting a job in 1965, at the Red Cross Blood Bank in Melbourne. I worked as driver of one of the mobile units for one-and-a-half years and was regarded as the best driver they had.

During the time I worked there I had an affair with a girl, but this had ended some months before my dismissal. Again I was given no warning of a pending dismissal. I was suddenly called to the Director's office and told that I no longer had a job there and was given 1 week's pay in lieu of notice. I questioned the Director, to find the reason for my dismissal. At first he refused to say anything, but finally said that it perhaps had something to do with my driving. I retorted that it could not possibly have had anything to do with my driving because I was the best driver that they had. He admitted that. I then realised that someone must have talked to him about my homosexuality. I then refused to leave his office until he had given me a good reference. He quickly got his secretary to write a reference, signed it and handed me the reference and one week's pay.

Both of these dismissals (see **2.2.1** page 41) have severely hindered my career and have caused me great material and emotional hardships. The first loss of my job from the army was blatant discrimination against homosexuals, even though there were many officers in the army who were homosexuals. The second was a more subtle discrimination since the reason was never stated openly and thus I could have no grounds for redress.

7.4.2 Presentation to the Tribunal

Mathews: And I now call on Brigitte Seega to continue the saga of Helen Pasley and her attempts to get

employment.

Cairns: Is there any reason why Helen Pasley is not appearing before the tribunal?

Mathews: I gather she has got some exhibition which forces her to be elsewhere today.

Seega: (reads Exhibit 28).

Mathews: Thank you. I tender the original statement in that matter.

7.4.3 Today

The following letter was written by the TWG to the Chief Executive Officer, National Headquarters of the Australian Red Cross Society in Melbourne on 13 April 1991:

> In November 1976 the Tribunal on Homosexuals and Discrimination heard evidence on a range of issues where discrimination against homosexual women and men was perceived.
>
> The dismissal of Helen Pasley by the Red Cross Blood bank in Melbourne during 1965 was presented to the above Tribunal believing it to be discrimination against a homosexual woman.
>
> We drew the Tribunal's particular attention to certain aspects of Helen's statutory declaration:
>
> - Helen worked as a driver on a mobile unit for one-and-half years and was regarded as the best driver.
> - During that period she had an affair with a woman which had ended some months before her dismissal.
> - She was called to the director's office and was given 1 weeks' pay in lieu of notice.
> - No reason was given for her dismissal by the Director.
> - Helen persisted and was told that perhaps it had something to do with her driving. Helen argued that this could not be case because of having been praised about her excellent driving skills.
> - Helen then realised that someone must have talked to him (the director) about her homosexuality.
> - She refused to leave the Director's office until he had given her a good reference; this she got in the end.
>
> After 15 years, a number of the issues raised before the Tribunal have been rectified, and I mention the NSW Anti-Discrimination legislation as one example. It is the present intention of a number of those who were responsible for the setting up of the Tribunal to compare the situation in 1991 with matters raised in 1976.
>
> Could you please inform us what your current policy is regarding employment of lesbian and gay staff members who are open about their sexual preference.

The TWG wrote a second letter on 7 June 1991 which stated:

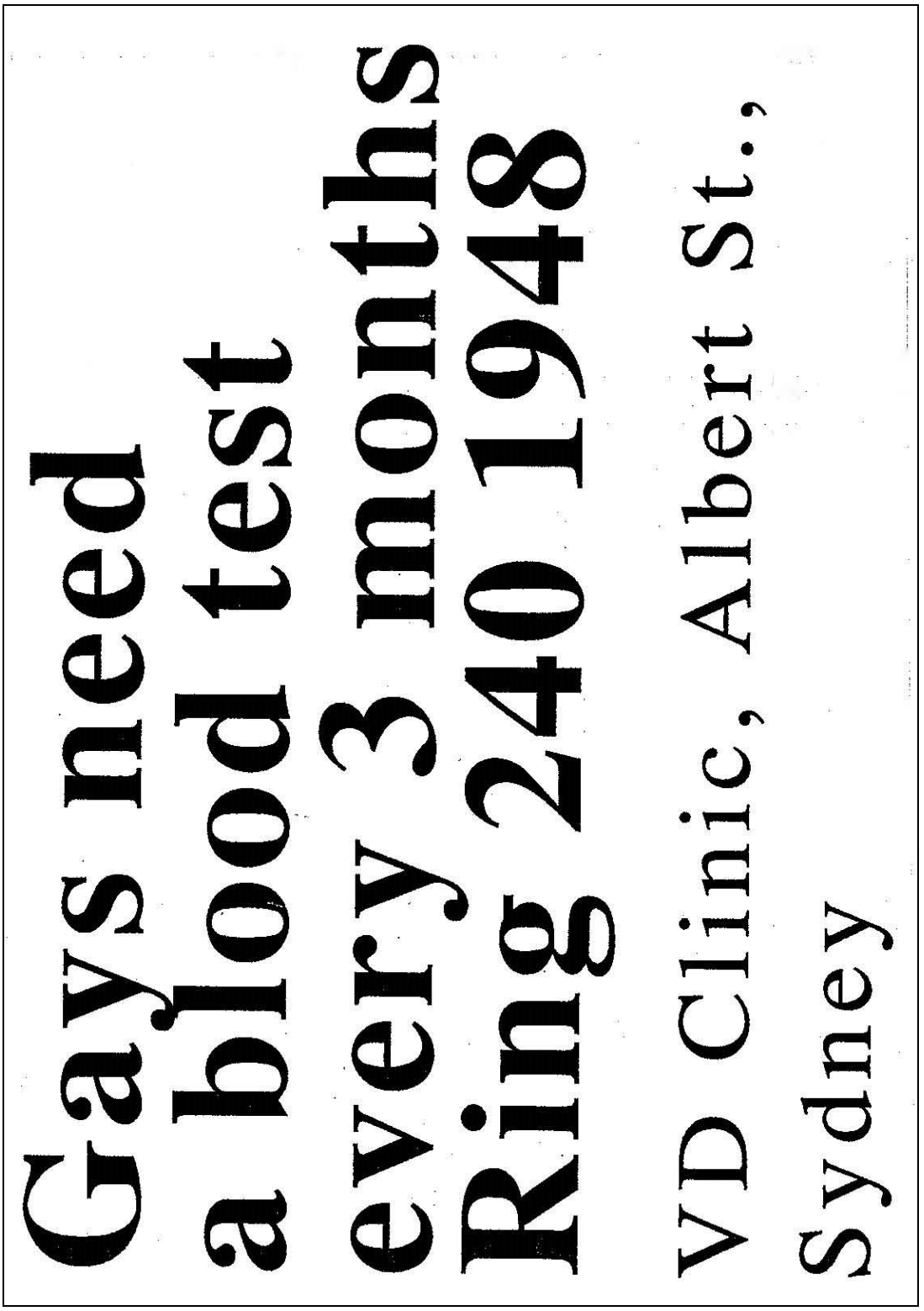
> In mid April we wrote to you (see copy of letter attached) regarding your current policy of employment of lesbian and gay staff members who are open about their sexual preference.
>
> To date we have not received a response from your organisation regarding the above matter. We hope that you will soon be able to reply to our request. However, we will assume that your organisation has not changed its policy since 1976 if no response is forthcoming from you in the near future and we will publish this accordingly.

No answer was received from the Red Cross Society.

… nowadays syphilis is most likely to be picked up from homosexual contacts, and … a significant proportion of those who have homosexual contacts are also married … The sign … would perform a valuable public service to the community.

7.5 Council of City of Sydney
7.5.1 'Gays need a blood test …' poster 7.5.2 Letter from CAMP NSW to Town Clerk, Council of the City of Sydney, 7 September 1976, Exhibit 12. 7.5.3 Letter from Health Commission of New South Wales, 9 September 1976. 7.5.4 Letter from The Council of the City of Sydney to Michael Glass, 1 October 1976. 7.5.5 Letter from CAMP NSW to Town Clerk, Council of the City of Sydney, 12 October 1976. 7.5.6 Letter from the Council of the City of Sydney to Michael Glass, 21 October 1976. 7.5.7 Letter from the Tribunal on Homosexuals and Discrimination to the Lord Mayor of Sydney, Leo Port, 20 October 1976. 7.5.8 Letter from the Council of the City of City to the Tribunal on Homosexuals and Discrimination, 3 November 1976 7.5.9 Today – TWG letters to Town Clerks, Sydney City Council and South Sydney City Council, 15 July 1991; Letters from The Council of the City of Sydney and The Council of the City of South Sydney, 21 August 1991.

7.5.1 Gays Need a Blood Test … [93]



[93] The actual size of the poster was 'quarto', 262mm x 207mm.

7.5.2 Letter from CAMP NSW to the Town Clerk, Council of the City of Sydney, 7 September 1976

EXHIBIT 12

Following a telephone conversation with the head of the Cleansing Department, I hereby formally request the Council's permission to put the attached notice in the Men's toilets in the City Council area, especially the conveniences at Green Park, Fitzroy Gardens and Rushcutters Bay Park.

I would like to point out that the notice does not mention any other organisation than the Government VD Clinic, that nowadays syphilis is most likely to be picked up from homosexual contacts, and that [sic] a significant proportion of those who have homosexual contacts are also married. The accuracy of these statements, and of the poster itself may be verified by contacting the head of the V.D. Clinic, Dr Walker, on telephone number 240 1950.

In the light of these facts, the sign that we propose putting in your toilets would perform a valuable public service to the community. I therefore trust that you will give this request prompt and favourable consideration.

7.5.3 Letter from New South Wales Health Commission, Senior Medical Officer, A M Z Walker, 9 September 1976

To Whom It May Concern

This is to certify that the information on this poster which reads:

Gays need a blood test very 3 months
ring 240 1948
VD Clinic, Albert St.,
Sydney

is correct.

Mr Michael Glass from CAMP NSW is responsible for the format of the poster. In my opinion he has done an excellent job.

I strongly recommend that it be displayed in the appropriate places.

7.5.4 Letter from the Council of the City of Sydney, L P Carter, Town Clerk, 1 October 1976

I refer to your letter of the 7 September, 1976, submitting an application for permission to erect notices in public conveniences for men within the City Council area.

The matter has received the consideration of the Council's officers, and it is recommended that you consult the Division of Health Education, New South Wales Health Commission, Mena House, 225 Macquarie Street, Sydney, in connection with your representations.

7.5.5 Letter from CAMP NSW to L P Carter, Town Clerk, Council of the City of Sydney, 12 October 1976

Thank you for your letter, reference 1952/72 SH/TY, 1 October 1976, about V.D. warning notices that we want to put up in public lavatories. Enclosed you will find an official letter from Dr A.M.Z. Walker, Senior Medical Officer of the Venereal Diseases Clinic, Health Commission of New South Wales.

I trust that with this documentation you will now be able to give prompt and favourable consideration to our request.

7.5.6 Letter from the Council of the City of Sydney, G Joss, Deputy Town Clerk, 21 October 1976

I refer to your letter dated 12 October, 1976, and previous correspondence regarding the erection of notices in public conveniences for men within the City Council area.

While thanking you for your action in drawing the matter to the attention of Council I have to advise that Council does not propose to alter its policy of only displaying material in public conveniences, which is issued by the New South Wales Health Commission.

7.5.7 Tribunal Letter

The Tribunal Collective wrote the following letter to Alderman Leo Port, Lord Mayor of Sydney on 30 October 1976:

Your Reference RD/PT 1952/72.

A panel of prominent people will compose the above tribunal. They will hear evidence of instances of discrimination (specific and general) from homosexual people on the Saturday. There will be counsel for each side in cases presented. On the Sunday the tribunalists will hand down a report, with recommendations, based on the evidence.

The Council of the City of Sydney's refusal to display Venereal Disease warning notices in the public men's toilets in the City Council area; while the New South Wales Health Commission's Senior Medical Officer, Venereal Diseases Clinic, approved and recommended the notice.

We would like to invite the Council of the City of Sydney to submit a written statement outlining its reasons for believing the refusal not to be discriminatory. At a later stage arrangements might be made to present the Council's views orally on the actual day of hearing.

7.5.8 Letter from the Council of the City of Sydney dated, 3 November 1976

Reference 1952/76 HS/IC

The Lord Mayor has directed me to acknowledge receipt of your letter dated 30 October, 1976, and to advise that Council reaffirms the advice furnished to Mr M Glass, CAMP, New South Wales, that Council does not propose to alter its policy of only displaying material in public conveniences which is **issued** by the Health Commission of New South Wales.

7.5.9 Today

Both the Council of the City of Sydney and the South Sydney City Council were approached on 15 July 1991 by the TWG to ascertain what their policy is regarding display of posters:

I hope you can help me with a query about the policies of the Sydney City Council.

In 1976 the former Council refused to display posters (copy enclosed) aimed at combating sexually transmitted disease amongst gay men while displaying such posters aimed at heterosexuals. The matter was raised at the 1976 Tribunal on Homosexuals and Discrimination (relevant extract of proceedings also enclosed).

At present a research group is, as social history, tracing how official and social attitudes may have changed since then. Would your Council be unwilling to collaborate in such a matter today? Any comments you may have would be welcomed.

The Town Clerk, L P Carter, Council of the City of Sydney responded on 21 August 1991 as follows:

DN LET12/KD/8/JH

The contents of your letter dated 15 July 1991, seeking Council's current policy on display posters aimed at combating sexually transmitted disease amongst gay men while displaying such posters aimed at hetersexuals [sic] are noted.

It is advised that a thorough search of Council's records has ascertained that the correspondence appertaining to 1976 has since been destroyed.

Should you wish to forward any posters you propose to display, the matter will be placed before Council for determination.

The TWG wrote to the South Sydney City Council on 15 July 1991 as follows:

I hope you can help me with a query about the policies of the South Sydney City Council.

In 1976 the former Council refused to display posters (copy enclosed) aimed at combating sexually transmitted disease amongst gay men while displaying such poster aimed at heterosexuals. The matter was raised at the 1976 Tribunal on Homosexuals and Discrimination (relevant extract of proceedings also enclosed).

At present a research group is, as social history, tracing how official and social attitudes may have changed since then. Would your Council be unwilling to collaborate in such a matter today? Any comments you may have would be welcomed.

The South Sydney City Council informed the TWG, during three different telephone calls and from three different levels, that: 'Council staff expressed a willingness to collaborate in health information and education'. Later the Town Clerk, J W Bourke of Council informed the TWG by letter dated 21 August 1991, as follows:

I refer to your letter of 15 July 1991 and subsequent discussions with an officer of the Council regarding this Council's policy on sexually transmitted diseases amongst gay men.

Whenever matters concerning this situation require Council's attention advice is sought from the Health Commission [now known as NSW Department of Health] as to the best way to deal with the matter and upon receiving advice the case is dealt with on its merits.

I must point out, however, that Council supports the Annual Gay and Lesbian Mardi Gras in many ways as it does to all community groups.

… women are not capable of handling the vessel in certain situations and men are too harsh with the equipment …

7.6 Boat Hiring Firm
7.6.1 Letter from Boat Hiring Firm, Holidays-A-Float Pty Ltd, Exhibit 7.
7.6.2 Letter from Tribunal on Homosexuals and Discrimination, 20 October 1976.
7.6.3 Presentation of discrimination case to the Tribunal on Homosexuals and Discrimination on 27 November 1976.
7.6.4 Today – ADB, May 1991; TWG letters to General Manager, Holidays-A-Float, 13 April and 29 June 1991; Letter from Manager, Holidays-A-Float Pty Ltd, 3 July 1991.

7.6.1 Letter from Boat Hiring Firm to the Secretary, CAMP NSW, 6 October 1976

EXHIBIT 7

Further to your letter of 14 September 1976 we advise Management has decided on a policy not to hire boats to couples of the same sex. In running a hire boat concern two of our primary concerns are the safety of the hirer and party and the safety of the vessel.

Experience has shown that in many cases women are not capable of handling the vessel in certain situations and men are too harsh with the equipment and are too disorderly.

7.6.2 Tribunal Letter to C D Reynolds, Holidays-A-Float Pty Ltd, 20 October 1976:

A panel of prominent people will compose the above tribunal. They will hear evidence of instances of discrimination (specific and general) from homosexual people on the Saturday. There will be counsel for each side in all cases presented. On the Sunday the tribunalists will hand down a report, with recommendations, based on the evidence.

Your policy on hiring-out boats as stated in your letter dated 6 October 1976, will be presented to the Tribunal as evidence of discrimination against homosexual people.

We would like to invite Holidays-A-Float Pty Ltd to submit a written statement outlining its reasons for believing the policy not to be discriminatory. At a later stage arrangements might be made to present Holidays-A-Float's views orally on the actual day of hearing.

7.6.3 Presentation to the Tribunal

Mathews: I will ask Kym Skinner to come and read a rather extraordinary letter from a boat hiring firm. This one … an inquiry was made to a company that lets out boats for holidays and what Kym is going to read as to

whether that company would be prepared to hire out boats to single sex couples. The letter Kym is about to read is the response to that request.

Skinner: (reads Exhibit 7) (see **7.6.1** page 232).

7.6.4 Today

The ADB informed the TWG that The Board would take a complaint against Holidays-A-Float, if their policy had not changed.

The TWG wrote 13 April 1991 to the General Manager of Holidays-A-Float, as follows:

> In November 1976 the Tribunal on Homosexuals and Discrimination heard evidence on a range of issues where discrimination against homosexual women and men was perceived.
>
> Your policy, at the time, not to hire boats to couples of the same sex was presented to the above Tribunal believing it to be discriminatory against homosexual women and men.
>
> After 15 years, a number of the issues raised before the Tribunal have been rectified, and I mention the NSW Anti-Discrimination legislation as one example. It is the present intention of a number of those who were responsible for the setting up of the Tribunal to compare the situation in 1991 with matters raised in 1976.
>
> Could you please inform us what your current policy is regarding hiring of boats to couples of the same sex. And, if the above 1976 policy is still current, could you also inform us the reasoning behind the maintenance of that policy.

The TWG wrote again on 29 June 1991 to Holidays-A-Float, as follows:

> Attached please find copy of a letter which was forwarded to you in mid April of this year. To date we have not received a reply to the questions contained in the letter mentioned.
>
> We look forward to receiving a response from you. However, if no response is forthcoming within the near future we shall assume that the policy mentioned in our letter dated 13 April has not changed and publish this accordingly.

On 3 July 1991, P R Davico, Manager of Holidays-A-Float P/L responded as follows:

> We are in receipt of your letter dated 29 June 1991, and wish to inform you that the shareholders and management of this company has totally changed since November 1976, futhermore [sic] we do not discriminate against homosexual men and women at all.
>
> The policy of the company is that a deposit/bond is paid by all hirers before commencement of their hire. However a hire that consists of all male, or all females or multiple hires incur a larger deposit/bond. This deters any wilful damage which has been experienced in the past.
>
> Hence we generally welcome all hirers regardless of their sexual or religious beliefs, race, etc. We look forward to seeing you in the future as a prospective hirer and hope this letter ansers [sic] any queries you may have had.

How dare you presume I'm heterosexual. It is immoral to wear badges like that.

7.7 New South Wales Police Department
7.7.1 Statement by Robert William Cotter, 15 November 1976, Exhibit 17.
7.7.2 Presentation of discrimination to the Tribunal on Homosexuals and Discrimination on 27 November 1976.
7.7.3 Today – ADB, May 1991; TWG letters to The Editor, The Evening Post, Goulburn, 15 July 1991 and 7 January 1992; TWG letter to Returned Services League of Australia NSW Branch (RSL), 15 July 1991; Letter from RSL, 14 August 1991; TWG letter to Sue Thompson, Community Relations Police Headquarters, 1 May 1991.

7.7.1 Statement by Robert William Cotter

EXHIBIT 17

Statement by: Robert William Cotter
To: Tribunal on Homosexuals and Discrimination
Identification Code: RWC

A. Police Public Relations Department.

As part of the planning for the Homosexual Solidarity Days in May of this year I went to the Police Public Relations Department to make enquiries concerning a march. I was wearing two badges at the time, one reading 'How dare you presume I'm heterosexual' and the other 'Homosexual Solidarity'. The officer who came to see me asked what these badges meant. I explained they identified me as a homosexual; his tone of voice then changed, (he stopped smiling) and his answers to my questions became very abrupt.

After thanking him for his help and preparing to take my leave he informed me that he wanted me to take my badges off. When I asked why he told me: "It is immoral to wear badges like that."

B. Wreath Laying Ceremony

Permission had been sought and granted to lay a wreath on the Martin Place Cenotaph in memory of all dead homosexuals including the 2 million murdered in Nazi concentration camps, and those who had died as military personnel. The Returned Services League heard of this and objected to our laying of the wreath.

Permission was withdrawn.

The wreath was eventually laid on the steps of the Legislative Assembly. Police (I understand from the Grosvenor Street Station) picked up the wreath and threw it down the stairs where another police officer picked it up and threw it at our feet.

C. The Evening Post [94]

The Area Social worker and myself tried to form a self-help group for gay people in the area. I attempted to place an ad for the group in the local paper. The ad was refused because it contained the word 'homosexual'.

The group was announced a few weeks later over the local radio station and gave the Community Health Centre as one of the contact points. A number of complaints and threats were received by the Head of the Centre and the Social Worker was ordered to drop everything that had to do with the group.

And I make these statements conscientiously believing that same to be true, under provisions of the Oaths Act 1900.

Declared at Glebe
This 15 day of November 1976. (signed R. Cotter)
Before me: [name is illegible]
A Justice of the Peace
for New South Wales.

7.7.2 Presentation to the Tribunal

Mathews: I will ask Bob Cotter to come and read a statement relating to alleged discrimination by the New South Wales police department.

Cotter: Well if I may tender Exhibit 17 which has three cases on it. One against the Police Public Relations department, and one against the RSL, both of which are made in connection to a weekend we had in May called Homosexual Solidarity Days, so I read those two together if the tribunal does not mind. (reads Exhibit 17, "A. Police Public Relations Department", see **7.7.1** page 234). I would like to remind [you] that this is not just an ordinary policeman, but a member of the Public Relations department. Concerning the same weekend (reads Exhibit 17, "B. Wreath Laying Ceremony", see **7.7.1** page 234). The third statement is concerning a group, a self-help group, that I tried to start in the Goulburn area (reads Exhibit 17, "C. The Evening Post", see **7.7.1** page 235).

Mathews: Thank you. I think that this might be an appropriate time to adjourn for lunch. We are already late. Perhaps resume at two o'clock.

7.7.3 Today

A. Police Public Relations Department

According to the ADB the change in the officer's attitude if accompanied by anything more such as refusal to help or whatever could be basis of complaint of denial of service (or lesser) on ground of homosexuality.

The Anti-Discrimination Board has also been conducting a consultation with the gay and lesbian communities, since 1986. Members of the Police Community Liaison staff attend these meetings. Questions of gay bashing, other violence, allegations of entrapment, local resident complaints and the general relationships between gay and lesbian communities and various Police Patrols are openly and frankly discussed. The President of the Board advises the Commissioner of Police of the outcomes of any of these discussions.

---

[94] A Goulburn (New South Wales) Newspaper.

The NSW Police Service set up a Community Liaison unit, in 1987. One of the 'communities' for which the unit had responsibility was Gays and Lesbians. The first consultant was Fred Miller, [95] previously a Member of the Legislative Assembly (MLA) in the NSW Parliament. On his retirement, Ms Sue Thompson was appointed.

There are now nine Police Stations where there is a designated police officer 'sensitive to gay and lesbian issues'. Their brief includes Patrol areas outside that covered by their Station. Theoretically, therefore, any person in NSW may contact one of these officers, Ms Thompson, or any police station to report any harassment or violence to themselves or any other gay man or lesbian woman.

POLICE [96]

The NSW Police Service is working to make our community safer for gays and lesbians

As a resident you might need Police help at some time. Police in Sydney, Newcastle and Wollongong are working to stop violence and harassment against gays and lesbians. Even if you can't identify an attacker, your information could help in a later arrest or in targetting trouble spots.

If you are a victim of crime call the Police immediately on 000 or (02) 281 0000 and report the crime to your local Police.

These police officers are sensitive to gay and lesbian issues:
BALMAIN George Wolow (02) 556 0699
BONDI Brad Scanlon, Evan Bouris, Natalie Salter (02) 30 7060
KINGS CROSS Sharon Holmes (02) 265 6233
MAROUBRA Garry Johnson (02) 349 9299
NEWTOWN Kerry King (02) 550 8199
PADDINGTON Owen Sharwood (02) 265 5000
SURRY HILLS Steve Ford (02) 265 4144
CORRIMAL Det. Mario Marsh (042) 84 2707
NEWCASTLE Bob Oliver, Jo Watts (049) 29 0999
***NB*:** If numbers are engaged ring (02) 281 0000 (police switchboard). If you require a police contact in another area then please phone the above police officers for assistance.
GAY and LESBIAN CONSULTANT: The NSW Police Service has appointed a consultant to deal with problems facing lesbians and gays in relation to police matters generally. If you or your organisation would like to work with the police to solve problems such as bashings or harassment or raise other issues please contact Sue Thompson at the Avery Building on (02) 339 5511 or 339 0277.

B. Wreath Laying Ceremony

The Anti-Discrimination Board would be willing to look at this complaint if lodged against both the RSL and Police.

The TWG wrote the Returned Services League of Australia on 15 July 1991 as follows:

> I hope you can help me with a query about the policies of the RSL.
>
> In 1976 the RSL objected to the laying of a wreath at the Martin Place Cenotaph in memory of the homosexuals who died in Nazi concentration camps. The matter was raised at the 1976 Tribunal on Homosexuals and Discrimination (relevant extract of proceedings enclosed).
>
> At present a research group is tracing, as social history, how social attitudes may have changed since then. Would the RSL similarly be opposed in such a matter today? Any comments you may have would be welcomed.

---

[95] His electorate had been the inner city NSW seat of Bligh which has a high percentage of gay inhabitants.
[96] *Sydney Star Observer*, 4 October 1991.

W G Osmond, Chief Executive Officer, The Returned and Services League of Australia replied on 14 August 1991, as follows:

> Reference: A. Your correspondence of 15 July 1991, concerning Wreath Laying at the Cenotaph.
> B. State Branch correspondence of 22 July, 1991.
>
> Your correspondence was submitted to the State executive Meeting, held 7 August, 1991.
>
> I was requested, by the State Executive, to inform you that the purpose of the Cenotaph is to lay wreaths for our glorious dead and that the RSL adheres to that principle.

C. The Evening Post (Goulburn Newspaper)

The ADB would look at this complaint.

The TWG wrote to the Evening Post in Goulburn on 15 July 1991 as follows:

> I hope you can help me with a query about the policies of your newspaper.
>
> In 1976 the Evening Post rejected an advertisement including the word 'homosexual'. The matter was raised at the 1976 Tribunal on Homosexuals and Discrimination (extract of relevant proceedings enclosed).
>
> At present a research group is, as social history, tracing how social attitudes in this matter have changed since then. Would the Evening Post refuse such an ad today? Any comments you may have would be appreciated.

The TWG wrote again to the Evening Post on 7 January 1992, as follows:

> I enclose copy of a letter and attachments which I sent for your comment some time ago but to which I have not received a reply.
>
> Any comment on your likely policy today towards the matter raised in my original letter would be gratefully received.

No reply was ever received.

… he was trying to direct me toward 'the normal form of sexuality'.

7.8 Rape of Lesbian
7.8.1 Statutory Declaration by … … , 21 November 1976.
7.8.2 Statement by raped lesbian, Exhibit 29.
7.8.3 Presentation of case to the Tribunal on Homosexuals and Discrimination on 27 November 1976.
7.8.4 Today – ADB, May 1991.

7.8.1 Statutory Declaration

I, … [97] Freelance Journalist of … Avenue, … in the State of New South Wales do solemnly and sincerely declare as follows:
1. I am the person referred to as 'Jenny' in the document marked 'Jenny' and further identified by the holograph Jenny and by the signature of the Justice of the Peace before whom this declaration is made.
2. I affirm that the contents of the aforementioned document are a true and accurate record of my experience on the dates mentioned.

And I make this solemn declaration conscientiously believing the same to be true and by virtue of the provisions of the Oaths Act of 1900-1953.

Subscribed and declared at Glebe
this 21 day of November
one thousand nine hundred and 76 (signed …)
before me
Justice of the Peace: [name is illegible]

7.8.2 Statement by raped lesbian

EXHIBIT 29

Statement by: Jenny
To: Tribunal on Homosexuals and Discrimination

On December 11, 1975, at approximately 4 p.m. I was raped at Obelisk Bay. I feel that the fact that I am a lesbian was a contributing factor in the rape, and my lesbianism was one of the principal reasons for my failure to report the matter to the police.

[97] The Tribunal Working Group made a number of attempts to contact 'Jenny' in order to ascertain if anonymity was still required. The Group has been unable to make contact and therefore the name has been removed from the statutory declaration.

By the clothing I was wearing on the particular day, I was identifiable as a lesbian – for instance, I had a slogan sewn onto my jeans.

While I was sun baking on the beach, the man tried to pick me up, and in a fairly abrasive manner, I made it clear that he did not interest me.

Later he followed me around the rocks, and I was raped. From his behaviour during the attack, I got the impression that he was trying to direct me toward 'the normal form of sexuality'.

Although the attack was accompanied by serious threats of violence, he did not in fact do me significant physical damage, and surprised me with a weird sense of consideration.

For example, I informed him that I was not on the pill, and he withdrew so that I would not get pregnant. He did not even get his orgasm for all his trouble.

He was well aware that I considered the attack to be rape, but I really feel, in his own peculiar way he was trying to show me what sex with a man was like.

When the deed was done, he said: "See. That didn't hurt, did it?" I appreciate the difficulty in establishing conclusively whether my lesbianism was a contributing factor in this case. You do not ask a rapist if he is raping you because you are a lesbian.

After that, I went immediately to my friend Denise who had been associated with the Rape Crisis Centre. She asked me if I wanted to report the rape to the police. I had certain reservations about this anyway, because the present system is anti-woman, but I explained that I was unsure how police would treat me as a lesbian, as a woman's sexual conduct is taken into consideration.

Logically, being a lesbian should mean automatic non-consent, but I felt that police may consider a lesbian to be 'a kinky bird who'd be in anything'. She agreed with me on that score.

On December 15, I went to karate teacher, T … S …, for a lesson. We discussed my rape experience, and my fears of going to the police. At this point Tom assumed me to be heterosexual.

Tom has a lot of contact with rape victims, and suggested that I deal with a policeman friend of his, who he assured me would be sympathetic. I then informed Tom that I was a lesbian, and asked how this would affect me in terms of police and court procedure.

In the light of my lesbianism, Tom felt it would be wiser to let the matter drop.

I apologise for anonymity of my report. I realise that my signing this document would increase the validity of my statement, but though I am prepared to come out public as a lesbian, I have not got sufficient strength to come out as a rape victim.

7.8.3 Presentation to the Tribunal

Mathews: We resume from before lunch which was rather before where it should have been because of our time problem and I now ask Robyn Kennedy to come and read Exhibit 29 relating to the rape of a lesbian.

Kennedy: I am reading Exhibit 29 and this is a statement by Jenny to the Tribunal on Homosexuals and Discrimination (reads Exhibit 29, see **7.8.2** see page 238).

Mathews: Thank you. I tender the file containing that original statement.

7.8.4 Today

The ADB informed us that there is nothing the Board could do in this regard.

… I have completely fallen down on my job of bringing you up as a Catholic.

7.9 Mother's Reaction
7.9.1 Statutory declaration by … 23 November 1976.
7.9.2 Mother's reaction, Exhibit 31.
7.9.3 Presentation to the Tribunal on Homosexuals and Discrimination on 27 November 1976.
7.9.4 Today – TWG letters to … December 1990, 29 June 1991 Letter from … , January 1992.

7.9.1 Statutory Declaration

Statutory Declaration

I, … Health Education Officer, Of … Street, … in the State of New South Wales do solemnly and sincerely declare as follows:

1. That the extracts quoted in the document entitled: 'Reactions of a mother after learning of her son's homosexuality' and further identified by the holograph initials MC and by the signature of the Justice of the Peace before whom this declaration was made are from letters sent to me by my mother, Veronica Elaine … of 55 Hannon Street, … Victoria.
2. That, except for minor omissions and alterations, the extracts are quoted faithfully from the original letters.

And I make this solemn declaration conscientiously believing the same to be true and by virtue of the provisions of the Oaths Act of 1900-1953.

Subscribed and declared at …
this 23 day of November
one thousand nine hundred and seventy six
before me (signed …)
Peter Trebilco
Justice of the Peace for NSW

7.9.2 Mother's Reaction

EXHIBIT 31

Statement to: Tribunal on Homosexuals and Discrimination
Re: Reactions of a Mother After Learning of Her Son's Homosexuality

The following are extracts from letters by a mother to her homosexual son.

7 January 1974 … Please look after yourself and think carefully about your way of life. I feel that it's useless to tell you to pray about it, as that doesn't seem to be on your agenda now. However, you are in my thoughts and prayers most of the day and night, so I can only trust that the Lord may listen to a heart-broken mother.

20 February 1974 You asked … why your homosexual activities disturb me. For one thing, it seems that I have completely fallen down on my job of bringing you up as a Catholic. With all your learning, you can't really be so naive as to think it is so unimportant. Does your thinking also justify that bachelors can indulge in sex whenever they choose or that spinsters can be prostitutes? Why do you think you should be any different? Happiness, as you call it, on earth is of secondary consideration to me. Our time here is so short compared to eternity. It doesn't matter whether society accepts, or whether … knows where you stand. God is the only one that matters and you must realise you're offending Him. How do you face your conscience when you don't go to the Sacraments or to Mass?

Apart from that, do you ever stop to think of the effect you might have on your brothers and sisters? For years, you have been their idol and they depended on you for the right advice and treasured any card or letter you sent them. Who do they look up to now? The example we set others will be taken into account on Judgement Day.

You asked how I'm feeling. I was overjoyed to get back to school so that I would have to concentrate on kids from 9 till 4, and not have as much time to think of you. I thought I knew every form of heartbreak, but they were all as nothing. I am longing for the day when you say you've somewhere else to live.

The thing that really gets me … is that you at 21 think you know more than men who have studied for years. I never classed conceit as one of your vices. I can only pray that God, in His mercy, will give you the grace to see the folly of your ways. What has happened to your devotion to Our Lady …?

2 April 1974 I sincerely hope … that you haven't got yourself on the A.B.C. program, and that you find the grace to go to Confession over Easter. Remember … that life is very short, sometimes even shorter than we expect.

8 April 1974 Yes, I did see the Access programme … I fervently hope that you have no wish to take part in any future programmes, as, I'm afraid, that would be the bitter end for me. Woe to them by whom scandal cometh is the appropriate, and most likely mis-quoted quotation, I think.

28 April 1974 To me … you have your loyalties rather twisted. Loyalty to God and your family come before anything else. I hope that your friends will always be around to give support as your family will be.

Yes, certainly my major fear is that relations will find out, as you put it. But I worry about immediate relations and the effects it will have on their lives. It's all very well to take our own happiness at the expense of others, but they are the ones who will have to suffer the taunts of others through no fault of their own. I just can't see how your outlook can change so drastically in such a short time. I thought you had more backbone than to be so easily swayed. Your religion must have only been superficial. Do you ever say your prayers now?

(signed Peter Trebilco, JP) (Holograph – …)

7.9.3 Presentation to the Tribunal

Mathews: And Robyn Kennedy will now read extracts from a mother's letter showing her reactions on learning of her son's homosexuality and then extracts from a grandmother's letter.

Kennedy: The first extract is Exhibit 31 (reads Exhibit 31 – see **7.9.2** page 241). Exhibit 32 is the reactions of a grandmother on learning of her grandson's homosexuality (reads Exhibit 32 – see **7.10.2** page 244).

7.9.4 Today

Repeated requests, beginning in December 1989, were made by letter, telephone and initially a commitment was made to get an updated version for both the mother's and grandmother's (see **7.10.2** page 244) reaction without success. Furthermore requests were also made if anonymity was still required again without getting a response. In January 1992 a letter was received indicating that:

> I have agonised over the Tribunal matter, torn between a belief—which led to my first confirmation—that it should be done and a constantly niggling instinct that it should not. I've only realised that this was the war of resistance being waged and that my general 'the cause comes first' reaction was silencing the instinct.
>
> So I'm going to go with the instinct—or, if it's too late, at least let you know what's been going on.
>
> In other words, I don't want to go beyond my original contribution.
>
> In so far as they are relevant, there's a mixture of reasons: a measure I confess of self-preservation and something complicated about my continuing grieving for Vera [mother] and to some extend, my grandmother.

The town is humming with the scandal, as good people call it.

7.10 Grandmother's Reaction
7.10.1 Statutory Declaration by … 24 November 1976.
7.10.2 Grandmother's reactions, Exhibit 32.
Today – see **7.9.4** page 243.
The presentation to the Tribunal on Homosexuals and Discrimination on 27 November 1976, (see **7.9.3** page 242).

7.10.1 Statutory Declaration

Statutory Declaration

I, … Health Education Officer of … Street …, in the State of New South Wales do solemnly and sincerely declare as follows:

1. That the extracts quoted in the document entitled 'Reactions of a grandmother on learning of her grandson's homosexuality' and further identified by the holograph initials MC and by the signature of the Justice of the Peace before whom this declaration is made are from a letter sent to me by my grandmother, Ellen Therese … of 21 Railway Avenue, … Victoria.
2. That, except for minor omissions and alterations, the extracts are quoted faithfully from the original letter.

And I make this solemn declaration conscientiously believing the same to be true and by virtue of the provisions of the Oaths Act of 1900-1953.

Subscribed and declared at Sydney
this 24 day of November
one thousand nine hundred and seventy six
before me (signed …)
Peter Trebilco
a Justice of Peace for NSW

7.10.2 Grandmother's Reaction

EXHIBIT 32

Statement to: Tribunal on Homosexuals and Discrimination
Re: Reactions of a Grandmother on Learning of her Grandson's Homosexuality

The following are extracts from a letter sent by a grandmother to her homosexual grandson. Letter dated 19 October 1975.

It is with a very sad heart that I pen these few lines. Oh … what has gone wrong with you, you must be badly **brain washed** to be putting this great sorrow on us all. Haven't you any love left for us, especially your parents, sisters and brothers. My heart bleeds for your poor mother. You will never know the sacrifices she has made to educate you, you were her idol, and this is the way you are repaying her. Only a person who has gone mental could do that to my way of thinking.

I didn't have a clue of anything until last Tuesday. Your Dad came up to tell me as he was afraid I may see it on T.V. and being on my own, the shock would be terrible … In the name of all that is holy … why did you go on that programme, [98] degrade yourself and all dear to you and the good family name, dragged into the gutter. I can tell you it is hard for us all to take, the Family are all shocked and furious. I have asked them all to pray for you. For Gods sake and ours keep off T.V. and radio, on that **subject** anyway. What can you hope to achieve by belittling the church and your next of kin. I ask you … in Gods holy name and his blessed Mother, to make a clean break from it all and start a new life. You have the ability to lead such a good career. I am sure if you go to the Priests (you must know many) they will help you. Doesn't our old decent way of life that you were reared with mean anything to you. I guess you will say you have a right to live your own life. Yes you have if its a decent and worthwhile one, not to put a stigma on your family and yourself.

The town is humming with the scandal, as good people call it. Even in the school too, the poor [family name] kids.

I am asking you … for my sake, your Mothers and the poor kids to try and pull yourself back to normal and lead a decent life, make a clean break. It seems tragic to see your talent wasted. I am sure there are many worthwhile things you could do. Stick to your church … you were lucky to be born in it. I wasn't so lucky, but have always been thankful for being accepted into the Catholic faith, it has helped me enormously along the long hard road of life, and the hard knocks.

But I must say, this is the hardest of all, as it would not be Gods will, rather cruel for me at the end of the road. Try and think of others … and not yourself for a change.

That day that your aunties went to see your mother, they were shocked to see how she had aged (little did we know), it all seems so futile and cruel.

May God bless you … and help you. Your broken hearted – Grandma.

(signed Peter Trebilco, JP) (Holograph …)

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[98] 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.

… there is a 'blitz on poofters' this summer!

7.11 Melbourne Gay Liberation
7.11.1 Statement by Melbourne Gay Liberation. 7.11.2 Presentation of the Statement to the Tribunal on Homosexuals and Discrimination on 27 November 1976. 7.11.3 Today – TWG letter to The Victorian Police Commissioner, 15 August 1991; Letter from Chief Inspector, Operations Department, Victoria Police, 5 September 1991. See: Appendix G – Selected print media coverage of police harassment and entrapment of gays at the Black Rock-Sandringham beach area (see page 399).

7.11.1 Melbourne Gay Liberation Statement by Gary Jaynes, 24 November 1976

Enclosed are two submissions (see also **5.4.2** page 191) for the Tribunal.

I won't be at the Tribunal, but I wonder if there might be the opportunity, some time over the weekend, to publicise the fact that:

There is in Melbourne at present a rush of police entrapment of homosexuals. [99]

Five instances have been reported to Gay Liberation from one locality, Sandringham Beach, over the past 2 weekends. Policemen dressed in casual clothes have lured homosexuals into exchanging gazes etc, and then apprehended them for 'loitering for homosexual purposes', a Summary Offence punishable by a fine or up 3 months jail in Victoria. The police have then prised confessions of homosexual intent from the apprehended men, such confessions being necessary to sustain the loitering charge. Police have actually told some of the men that there is a 'blitz on poofters' this summer!

For obvious reasons we have not imposed on the individuals concerned to testify to the Tribunal. But we would like it known as widely as possible that this despicable practice still goes on, that the Police Force leadership in Victoria apparently endorses it – and that public funds are subsidising it.

We wish you well for a successful Tribunal.

7.11.2 Presentation to the Tribunal

Mathews: Now a matter that is not in the program but Ron Austin will read a statement on the problems confronted by Melbourne Gay Liberation.

Austin: This is dated the 24 of November '76 and this was sent to us this week. It is rather self explanatory I think (reads **7.11.1** see page 246).

[99] See Appendix G (page 399): For selected print media coverage of police harassment and entrapment at Black Rock – Sandringham area.

Mathews: Thank you.

7.11.3 Today

The TWG wrote to the Victorian Police Commissioner on 15 August 1991 as follows:

> In November 1976 a Tribunal on Homosexuals and Discrimination heard evidence on a range of issues which were perceived to entail discrimination against homosexual women and men.
>
> Melbourne Gay Liberation alleged that officers of Victoria Police were entrapping homosexual men in the Black Rock-Sandringham beach areas. Officers, dressed in casual clothes, allegedly lured homosexual men into exchanging gazes and then apprehended them for 'loitering for homosexual purposes' and prised confessions out of them. It was also claimed that senior members of Victoria Police condoned, if not endorsed, these practices.
>
> After 15 years, a wide range of issues raised before the Tribunal are simply no longer issues. New South Wales, for example, now has Anti Discrimination legislation. It is the intention of a number of those who were responsible for setting up the Tribunal to contrast the attitudes and practices which prevailed in 1976 with those that prevail now.
>
> Would you please let us now if:
>
> - Victoria Police officers are in any way involved in the entrapment of homosexual men in the Black Rock – Sandringham beach area or anywhere else?
> - 'loitering for homosexual purposes' is still an office in Victoria punishable by a fine or up to 3 months imprisonment?
> - Victoria Police officers receive any training which sensitises them to the rights and needs of the gay community?
> - Victoria Police has any formal mechanisms for liaison with the gay community?

The Chief Inspector, D A Cairns, responded on 5 September 1991 as follows:

> To answer your questions specifically, **Victoria Police officers have never in the past and are not now, involved is so called 'entrapment' of homosexual men** in the Black Rock – Sandringham area or anywhere else. You should be aware the Victoria Supreme Court, Full Court, have found on several occasions that the defence of entrapment as recognised by some authorities, is not part of the law of the State of Victoria [emphasis added].
>
> Loitering for homosexual purposes is no longer an offence in Victoria.
>
> Victoria Police do receive some training to sensitise them to the rights and needs of the gay community. At this time consideration is being given to upgrading the training.
>
> Formal mechanisms for liaison with the gay community are facilitated via the Police and Lesbian/Gay Liaison Committee, of which I am the Chairman.

There is no doubt in my mind that my outspoken views on the necessity for the freeing of Homosexuals from oppression being the utmost urgency in this island state led directly to my dismissal.

7.12 Sacking of Tasmanian Homosexual Activist
7.12.1 Submission to the Tribunal on Homosexuals and Discrimination by the Chairman of the Tasmanian Homosexual Law Reform Group, 20 November 1976, Exhibit 37. 7.12.2 Compulsory conference by the Office of the Tasmanian Chairman of Industrial Boards, Mr O H Pamplin, 23 August 1976. 7.12.3 Presentation of the case to the Tribunal on Homosexuals and Discrimination on 27 November 1976. 7.12.4 Today – TWG letters to The General Manager, Fletcher Jones and Staff (Tasmania) Pty Ltd, 2 May and 31 August 1991; Letter from J A de Koning, Company Secretary, Fletcher Jones, 23 September 1991; TWG letters to J.A. de Koning, 2 October 1991 and 15 January 1992; Letter from J A de Koning, 14 February 1992.

7.12.1 Submission to the Tribunal

EXHIBIT 37

Submission to: Tribunal on Homosexuals and Discrimination
Made by: Peter G Rosier, Chairman, Tasmanian Homosexual Law Reform Group, 20 November 1976

This submission concerns my activities during the last twelve months on behalf of the Tasmanian Homosexual Law Reform Group eventually cumulating in my dismissal from my employment at Fletcher Jones and Staff, 93 York Street, Launceston, Tasmania.

I want to make it clear to the Tribunal from the start that this is in no way an attack on the employment policy of the Fletcher Jones Organisation, rather it is a comment on the prevailing situation in Tasmania in regards to employment and freedom of speech, which I'm sure is the reason for this vital Tribunal.

There is no doubt in my mind that my outspoken views on the necessity for the freeing of Homosexuals from oppression being the utmost urgency in this island state led directly to my dismissal.

I was dismissed (the record of the Compulsory Conference states that the dismissal took place on 26 July 1976) on the 13 of August 1976 and a compulsory conference was subsequently called by the Acting Attorney General, Mr Lowe for the 23 of August. The reason for my dismissal was allegedly for the non-payment of $5.80 in dry cleaning charges which dated back two and a half years, the Advocate for the employers at the hearing later stated that, in fact this was not the reason but that the real reason was serious and although because there was a woman present he preferred not to say what it was, but that he

would ‘tell Mr Pamplin later’ the real reason.

As I have stated before, I considered this to be a blatant infringement of my rights and as you will see from the enclosed copy of Mr Pamplin’s finding handed down two weeks later, that he was told later. No reason was given by the firm for my dismissal at all, even though I am a share holder in the firm itself there was no other reason necessary but for the employer to state that he had been dissatisfied with my work since August 1974.

It may be pertinent to mention that both Mr Pamplin and the employers Advocate, Mr Bennett are past office holders of the supposedly defunct Democratic Labor Party in Tasmania. I have no hesitation in stating that the National Civic Council, underground elements of the Democratic Labor Party and a Hobart based organisation known as the Community Standards Organisation will stop at nothing to prevent the rational public debate of the need for homosexual law reform within this community. Indeed these people have so infiltrated the Industrial Board and the Chamber of Commerce that they are now in a position to be able to intimidate both the employer and the employee should they attempt to state a point of view not in accordance with their own. Basically this is to remove the persons livelihood and his right to further employment in the State of Tasmania.

7.12.2 Compulsory Conference, O H Pamplin, President, 23 August 1976

Tasmania
Office of Chairman of Industrial Boards

Compulsory Conference: In the Matter of an Industrial Dispute Concerning the Dismissal of an Employee at Fletcher Jones and Staff (TAS.) Pty Ltd at Launceston.

The Minister (Hon D A Lowe) acting pursuant to the provisions of Section 50 of the Industrial Relations Act 1975, convened a Compulsory Conference for the purpose of settling the above mentioned dispute and requested me to preside.

The Conference was held in Hobart on Monday the 9 August, 1976 commencing at 2.30 p.m. with the following persons in attendance:–

For the Employers: Messrs. J Bennett and T Campbell

For the Employees: Messrs. J Challis, P Rosier, K Bennett and Mrs C Beveridge

The dispute between the Employer (Fletcher Jones and Staff Pty Ltd) and the organisations representing the employee (afterwards referred to as employee A) arose out of that person’s dismissal from the Company on the 26 July, 1976. Mr Challis representing employee A stated that the dismissed employee had joined the Company on the 10 August, 1974 and up until the time of dismissal no disciplinary action had been taken against him. In fact he had performed his duties well and this had been recognised by the Company paying a bonus for what they termed ‘observed endeavour’ which amounted to a payment of $12.00 over a six week period.

Mr Challis went on to say the reasons he believed the employee’s services were terminated were twofold:

1. The alleged non-payment for dry cleaning services.

2. An approach to the Department of Labour and Industry for arrears of wages which subsequently the Department found in favour of the employee.

In the matter of dry cleaning payments, the Company do allow certain special benefits to staff for dry

cleaning. I understand the employee offered to pay arrears, but could not ascertain from the Company the extent of the debt. I find that no good purpose is served by further detailing this incident because the Company have clearly stated it was in no way a reason for dismissal.

In the second matter, the employee had been paid a Shop Assistant's Margin – first year's experience and I am informed the Department found the margin should have been Shop Assistant – second year's adult experience under the Award of the Drapers Industrial Board and the arrears were duly paid by the Company.

The dismissed employee supported the submissions of Mr Challis and further added that he had been threatened with dismissal because he requested 'time off' to attend a union meeting.

Mr J Bennett on behalf of the employers categorically denied that the dismissal had anything to do with the dry cleaning vouchers, the arrears of wages or a request for 'time off' to attend union meetings. The dismissal was a culmination of several events going back as far as 1974 during which time the employee concerned was at times unsatisfactory in the performance of his duties.

Mr Bennett relied upon the provisions of Clause 7, Contracts of Employment – Award of the Drapers Industrial Board, which states, inter alia:

> With the exception of employees engaged as specified in Clause 5 (Casual Employees) hereof, all employment shall be by week and the employment of an employee will not be terminated except for misconduct or neglect of duty which would justify instant dismissal without at least one week's notice being given by the employer to the employee and the employee shall likewise give to the employer one week's notice of his intention to terminate his employment. If one week's notice be not given by the employer or employee, one week's wages shall be paid or forfeited as the case may be.

Under the above mentioned provisions of the Award the employee was entitled to one week's notice but in this instance the Company had given two weeks. Mr Bennett in support of the Employer's right to terminate the services of an employee, submitted two decisions, No. 417 of 1948 Conciliation Commissioner A R Willis and No. 284 of 1949 Conciliation Commissioner J M Galvin.

Mr Bennett was supported by Mr Campbell.

Three points have been mentioned in support of 'improper dismissal',

Viz., The employee was threatened with dismissal because he requested 'time off' to attend a union meeting.

The employee alleges that arrears of dry cleaning account was used in part to substantiate unsatisfactory work.

The employee was victimised because he was successful in his approach to the Department of Labour for arrears in wages brought about by the Company's incorrect payment under the Award.

On the first point which I must say was not pressed with any vigour by the employee concerned, the Award does not provide for 'time off' to attend a union meeting. During the evidence it was not even made clear if in fact it was a meeting of the union to which the employee belonged.

On the first point raised I find no evidence to support the employee's allegation. If there had been, I would have seen fit to outline the approach of some of the more enlightened employers on matters such as this.

On the second point of the dry cleaning account, I am satisfied that there was some misunderstanding, and the employee, on the evidence produced was quite willing and even made approaches to pay the account

once the amount had been clarified. It is also conceded by the Company that this incident had no part in their decision to terminate employment.

The third point raised is of a very serious nature. Section 60 of the Industrial Relations Act 1975 outlines in detail 'Prohibition of Victimisation'. If I felt there was the slightest indication that some form of victimisation has been inherent in the employer's act, I would order appropriate action.

On the evidence available and having due regard to the submissions made by the respective advocates I am convinced no victimisation occurred.

I find the employers acted within their rights and in accordance with the Award provisions.

7.12.3 Presentation to the Tribunal

Mathews: And now John Greenway to read a statement relating to the sacking in Tasmania of a homosexual. It is Exhibit 37 (see **7.12.1** page 248).

Greenway: This submission is made by the chairman of the Tasmanian Homosexual Law Reform Group, 20 November 1976 (reads Exhibit 37). There is an appendage to this which is a copy of the minutes of the Compulsory Conference of which I will read a couple of pertinent sentences, There was a Compulsory Conference on Monday the 9 August, 1976. The lawyer representing the employees stated that the dismissed employee had joined the company on the 10 August 1974 and up until the time of dismissal, no disciplinary action had been taken against him. In fact he had performed his duties well and this had been recognised by the company paying a bonus for what they termed 'observed endeavour' which amounted to a payment of $12.00 over a six week period. The employers categorically denied that the dismissal had anything to do with the dry cleaning vouchers, the arrears of wages or a request for time off. The dismissal was a culmination of several events going back as far as 1974, during which time the employee concerned was at times unsatisfactory in the performance of his duties. And the president of the tribunal stated that he was convinced that no victimisation occurred and he found that the employers acted within their rights.

Mathews: Thank you. I will tender the file which contains both the statement and the complete record of that compulsory conference.

Egan: Just for the record, the reference on the first page to Mr Bennett, (see page 249) and looking at the decision of the tribunal that dealt with this matter, there are two Bennetts. There is a J Bennett for the employers and a K Bennett representing the employees. I think the first page probably referred to Mr K Bennett for the employees. Certainly it is a matter of public record that Mr K Bennett for the employees has been an officer of the Democratic Labor Party and is an officer of the National Civic Council and I think just for the record and to protect all interested parties that Mr J Bennett for the employers should not be so named as he is on page one. I think the record should show that the gentlemen who has the National Civic Council affiliations is, in fact, Mr K Bennett for the employees.

7.12.4 Today

The TWG wrote to Fletcher Jones and Staff Pty Ltd on 2 May 1991 as follows:

> In November, 1976, a Tribunal on Homosexuality and Discrimination heard evidence on a range of issues where discrimination against homosexual men and women was perceived.
>
> After 14 years, a wide range of issues raised before the Tribunal have been rectified – I mention the NSW Anti Discrimination legislation as one example. It is the intention of a number of those who were responsible for the setting up of the Tribunal to now contrast all the matters raised in 1976.

One issue concerned the dismissal of Mr Peter G Rosier on 26 July, 1976. The matter was referred to a Compulsory Conference, under section 50 of the, then [Tasmanian], Industrial Relations Act, 1975.

The presiding officer at the Compulsory Conference, Mr D H Pamplin summed up his decision on the three reasons put forward by the employer for the dismissal in these terms:

- on the first point of "time off" to attend union meetings, he found no evidence to support the employer's allegation;
- on the second point, the non-payment of outstanding dry cleaning charges was due to some misunderstanding, and was not a part on the employer's decision to terminate Mr Rosier's employment;
- on the third point, Mr Pamplin referred to section 60 of the Industrial Relations Act, 1975, and said that, had there been any evidence of victimisation, he would have ordered appropriate action.

Mr Pamplin found that the employers had acted within their rights under Clause 7 "Contracts of Employment" of the Award of the Drapers Industrial Board. The issue on which this decision was given was not mentioned openly, and the employer's advocate stated that he would "tell Mr Pamplin, later". The reason for this modesty appears to have been the presence of Mrs C Beveridge, advocate for Mr Rosier.

Mr Rosier, in his affidavit to the Tribunal, gave his opinion that it was his open advocacy of homosexual law reform that had lead to his dismissal. He was at the relevant time, Chairman of the Tasmanian Homosexual Law Reform Group.

The reviewers of the Tribunal's work have been advised that there is a new Industrial Relations Act, No. 21 of 1984. Section 47(2) appears to be comparable with the previous Act's provisions. We are also advised that the Drapers Industrial Board has handed down a new Award.

We would value your comments on the probable outcomes of a similar set of circumstances. Would a termination on the grounds of "serious and wilful misconduct" be contemplated if a similar set of conditions arose, presently?

On 31 August 1991 the TWG wrote again to Fletcher Jones and Staff, as follows:

Attached please find copy of a letter which was forwarded to you early in May of this year. To date we have not received a reply to the questions raised in our letter.

We look forward to receiving a response from you. However, if no response is forthcoming within the near future we shall assume that your 1976 attitudes towards employment of openly lesbian and gay staff has not changed. We shall further assume that Fletcher Jones and Staff have no Equal Employment Opportunity policy and publish these matters accordingly.

J A de Koning, Company Secretary, Fletcher Jones and Staff Pty Ltd responded on 23 September 1991 as follows:

I acknowledge receipt of your letter of 31 August, 1991, together with attachment, forwarded to the General Manager of our Launceston, Tasmania store. Please accept my apologies for the lack of previous response. However, upon investigation, it appears we may never have received your original letter.

Naturally, as you no doubt are well aware, a high profile organisation like Fletcher Jones needs to take extreme care when making "public" comment on any issue as instances of misrepresentation are common when such comments are taken out of context.

In view of the above I would appreciate it if you could provide some official background information on the organisation you represent and your position in same. Further, I have noted with concern that your letter appears not to be on official letter-head and is signed on your behalf. Your comments would be appreciated.

I would further appreciate it if all future communications could be addressed to myself at the [Melbourne] address shown.

The TWG responded to the above letter on 2 October 1991, as follows:

> Thank you for your letter of 23 September, 1991; may I reply to your points, in sequence?
>
> I accept the point you make about your company's reputation, and of quoting materials out of context. The Tribunal Working Group is being punctilious about the accuracy and completeness of the whole work.
>
> The Working Group consists of four active members, and has used the advice of a number of experts. In practical terms, the whole Tribunal project was the concept and work of three men, one of whom, Peter de Waal, is the convener of the Working Group.
>
> Dr Sue Wills, a senior lecturer at Macquarie University, was at the Tribunal hearings, and has made the interests of lesbians her work for many years. She is researching the current level of discrimination and [sick] [against] lesbians.
>
> Dr Ian Black, a professor in the History Department, University of New South Wales, was not able to attend the hearings in 1976, but was active before the Tribunal sat; he is the Working Group's authority on objective presentation.
>
> I am a Visiting Fellow in the School of Community Medicine at the University of NSW, and was one of those who gave evidence before the Tribunal. I am a member of one of the Anti Discrimination Board's consultative groups. I was given the evidence from several of the cases before the Tribunal, and contacted your Company for that reason.
>
> Every woman and man connected with the Working Group and the project is homosexual.
>
> The form of the presentation is to be a book, with the working title "Tribunal on Homosexuals and Discrimination, 1976: reviewed 1991. By Peter de Waal, with assistance from Ian Black, Peter Trebilco, Sue Wills".
>
> The proceedings at the Tribunal were straightforward: every person wishing to report on an incident of discrimination submitted a Statutory declaration. If she or he wished, they could also give evidence to the Tribunal, and be subjected to examination by the Counsel assisting and the Tribunalists.
>
> The Tribunalists were:
>
> Dr Jim Cairns, MP, formerly Deputy Prime Minister and Federal Treasurer;
>
> Ms Bridget Gilling, Vice President, Council of Social Services of New South Wales;
>
> Mr Barry Egan, National Secretary, Shop Distributive and Allied Trades Employees Association and Secretary, Australian Workers Union;
>
> Senator Arthur Gietzelt.
>
> The Counsel assisting were Ms Helen Coonan, a solicitor, and Ms Jane Mathews, Barrister-at-law, previously Counsel assisting the Royal Commission on Human Relationships and currently a Justice of the NSW Supreme Court.
>
> The book will present a complete record of the organisation, administration and deliberations of the Tribunal, in a number of Sections. These include interstate cases, and legislation.
>
> After the reciting of the 1976 information, the present situation will be covered; in the case that we asking you to comment on, the Tasmanian legislation has been changed, as far as industrial relations are concerned, but there has been no move to introduce Anti Discrimination legislation. These would be reported, without comment. In the event of your deciding to accede to our request for comments on the outcome of a similar issue coming up as the one I sent you, your reply would be reproduced, in full, again without comment.
>
> The only editorial function the Working Group does intend to take is to draw a reader's attention to remaining areas of discrimination, changes over the past 16 years, and indications of further changes.
>
> I hope this information will answer your reservations; I look forward to your reply,

---

The TWG wrote again to Fletcher Jones and Staff on 15 January 1992 as follows:

> You will recall our previous correspondence, including our request for a statement of your company's

policy on discrimination in the workplace as it applies to presumed homosexuals?

I last wrote, in early October, and have not had a reply.

As the material is nearly all assembled, awaiting publication, I have to advise you that, should we not receive a reply to our request for information, we will be obliged to report in the work that, as no response has been received, it can only be assumed that Fletcher Jones and Staff Pty Ltd have not altered their position on discrimination against homosexuals, and that there is not written company policy to support this stance?

The TWG received the following letter from Fletcher Jones and Staff dated 14 February 1992, as follows:

Further to previous correspondence in relation to the matter of the Company's policy on discrimination in the workplace as it applies to presumed homosexuals, I note that in your final paragraph [100] of your letter dated May 2, 1991 you are seeking comments on our reaction if a similar set of circumstances as in the case of Mr Rosier were applicable today. I would comment that in the case of the dismissal of Mr Rosier that at no time did this company put forward the point that the employee should be dismissed on the basis that 'he was a homosexual' and had openly advocated homosexual law reform. Indeed Mr Pamplin, in his findings, (**7.12.2** page 249) clearly indicated that there had been no evidence of any victimisation by Fletcher Jones in this regard.

I am therefore very happy to confirm that Fletcher Jones does not discriminate against homosexuals [101] in any way, shape or form. I trust this clarifies the matter to your satisfaction.

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[100] 'We would value your comments on the probable outcomes of a similar set of circumstances. Would a termination on the grounds of *serious and wilful misconduct* be contemplated if a similar set of conditions arose, presently?' (see page 252).

[101] It should be noted that there is no evidence, such as an Equal Employment Opportunity policy, that Fletcher Jones has ceased to discriminate against homosexuals, if in fact the company ever did. If an Equal Employment Opportunity policy has not been adopted by the company (which includes either homosexuality or sexual preference) it seems that to use the outcome of a compulsory conference in 1976 to imply that, in 1992, ... *Fletcher Jones does not discriminate against homosexuals* … is without foundation.

They had kissed on arrival and were talking quietly and hugging one another in an affectionate and sisterly way.

7.13 Treatment of Lesbians by Sydney Hotel
7.13.1 Statutory Declaration by Robyn Plaister, 24 November 1976.
7.13.2 Alleged discrimination against two lesbians by hotel proprietor, Exhibit 36.
7.13.3 Presentation to the Tribunal on Homosexuals and Discrimination on 27 November 1976.
7.13.4 Today – ADB, May 1991.

7.13.1 Statutory Declaration

Statutory Declaration

I, Robyn Plaister, Teacher, of 94 Booth Street, Annandale in the State of New South Wales do solemnly and sincerely declare as follows:

1. The two women referred to in the document entitled: 'Discrimination against lesbians' and further identified by my signature and that of the Justice of the Peace before whom this declaration is made are known to me.
2. The two women are afraid to sign their names to such a statement.
3. The facts of the case described in the document already referred to are known to me.
4. The facts in the document are accurate.

And I make this solemn declaration conscientiously believing the same to be true and by virtue of the provisions of the Oaths Act of 1900-1953.

Subscribed and declared at Sydney
this 24 day of November
one thousand nine hundred and seventy six
before me (signed R Plaister)
Peter Trebilco
a Justice of the Peace for NSW

7.13.2 Discrimination Against Lesbians

EXHIBIT 36

Discrimination Against Lesbians

Statement to: Tribunal on Homosexuals and Discrimination

It is taken for granted that heterosexual couples are allowed to be seen together in public. Lesbians are not allowed the same freedom.

In September 1974 two women were having a drink in a lounge in a city hotel. They were sitting at the bar

on bar stools. They had kissed on arrival and were talking quietly and hugging one another in an affectionate and sisterly way.

A man drinking at the bar was talking loudly enough to be overheard by everyone in the room. He appeared to be on good terms with the manager. At one stage he announced very loudly that he wanted to do a 'wee wee'. This behaviour was apparently acceptable to the management.

The two women were treated differently. Their gay conversation with one another was interrupted by the manager who asked them to leave. They asked for a reason. He said he did not have to give a reason. The two women asked for a drink but the barmaid had been given orders to ignore them and not serve them.

Annoyed that they could not be served the women informed the manager that if he was discriminating against them because they were lesbians they would call the police and lay charges against the hotel.

The women were again refused service and asked to leave. They telephoned the police and refused to leave until the police should come and lay charges against the hotel for discriminating against customers on the grounds of sex.

The police arrived and refused to charge the hotel management. They insisted that the women leave. When the women continued to refuse the police dragged one woman down the marble staircase and pushed her into the paddy wagon causing bruises which were attested to by a doctor the following day. The other women could not bear the police to touch her and walked just fast enough to avoid being pushed. Her pleas to the police not to hurt her friend were ignored.

The police did not tell the women they were being arrested, just forced them into the wagon and took them to Central Police Station. At the station the women were subjected to the gibes, laughter and stares of other policemen who came into the room specially to have a look at the lesbians. The women were put into separate cells and had to wait some time before the prison matron would make a phone call on their behalf to a friend who could raise their bail of $50 each.

On the way out when the friend arrived with bail, the women found out what they had been charged with. Both were charged with failure to leave licensed premises upon the request of the publican, and one was charged with indecent language, with having called the police, 'fucking cunts'. As a feminist that woman would never have used the word 'cunt' as a term of abuse.

The case came before the magistrate in December 1974 and all charges were dismissed in accordance with Section 556A of the Crimes Act. But the finger prints remain on record and the discrimination still leaves a nasty taste. The two women feel certain that had they been a heterosexual couple under exactly the same circumstances they would have been able to continue their evening in the hotel without harassment.

(signed Peter Trebilco J.P. and R plaister)

7.13.3 Presentation to the Tribunal

Mathews: The last statement amongst these miscellaneous cases is one relating to the treatment of two lesbians by a city hotel and I will ask Cecily Davis to read that to us.

Davis: (reads Exhibit 36 see **7.13.2** page 255).

Mathews: Thank you.

7.13.4 Today

The ADB would take a complaint against the Hotelier.

… the town has been informed that anyone who has had contact with Dianna or I will not be allowed to congregate in a public place …

7.14 Treatment of Lesbians in Tasmanian Town
7.14.1 Submission to the Tribunal on Homosexuals and Discrimination, Exhibit 38.
7.14.2 Statement by lesbian being discriminated against in Derby, Tasmania.
7.14.3 Presentation of Statement to the Tribunal on Homosexuals and Discrimination.
7.14.4 Today – TWG letters to The Mayor, Ringarooma Council, 15 August, 25 September and 18 November 1991; Letter from J.E. Martin, Council Clerk, Ringarooma Municipal Council, 12 December 1991.

7.14.1 Submission to the Tribunal [102]

EXHIBIT 38

This submission on behalf of Ms. Lazarus deals with a group of young people who are attempting to establish themselves in a small mining town on the North East Coast of Tasmania.

More specifically it deals with Ms. Lazarus and her partner and their nine year old daughter. These two women were the principle organisers of the feminist conference held in Tasmania during the Easter long weekend; consequent to objections as to the standards of sanitary arrangements that had been made the conference received national coverage by the media.

Their organising of this conference brought them into conflict with the local Health Officer, the Ringarooma Municipal Council and a minority religious group in the area.

At the time of the conference both women stated publicly that they were lesbians and since then have been the victims of a vicious campaign of innuendo and ridicule.

We are of the opinion that the religious sect may believe that the couple are not suitable people to have the care and upbringing of their child, an unfortunately widely held view of many professed but misguided christians.

Due to the general rural depression in the area, the population have become over the past decade progressively apathetic and isolationist and it would seem are unable to come to terms with the quite rapid change in the public's attitude towards peoples' rights to choose to live, if they wish in an 'alternative lifestyle'.

[102] Submission to the Tribunal on Homosexuals and Discrimination made by the Chairman of the Tasmanian Homosexual Law Reform Group, Peter G Rosier, on behalf of Ms Ann Lazarus, c/- Post Office, Derby, Tasmania, 20 November 1976.

The two women, having [sic] [have] no male to protect them fear physical violence and more importantly intimidation from the local Town Clerk and the Health Officer.

We request that the Tribunal see fit to issue a strong condemnation of this quite blatant evidence of discrimination and if possible to bring it to the attention of the Tasmanian Municipal Association.

7.14.2 Statement by Anne Lazarus, 15 October 1976

I would like to draw your attention to an instance of discrimination that I am in the middle of facing here in Derby.

A few weeks ago, a friend who lives in the town and I became ill and as we were on the mend we noticed that we were slightly jaundiced. We remembered that my daughter had been vomiting a few weeks earlier and fearing hepatitis we went to a doctor in Scotsdale and informed everyone who had eaten and drunk with us and they all had gammaglobulin shots. We made a point of asking the doctor if we were likely to infect anybody else and he said no. We informed the local doctor straight away and also the bush nursing sister. There are also two elderly women in the town for whom we do odd jobs and we informed the bush nursing sister of our superficial contact with them.

Our doctor informed us of an outbreak at a special school in Launceston and as my daughter had been playing with a student from that school we assumed that to be the source. He also informed us of some cases in Branxholm, a town 8 miles away.

All very straight forward and we had thought no more of it until our septic tank chose to block up. We called in a local man to have it pumped out and he turned up the next day in a most abusive temper to tell us that he would not do it. The local doctor had informed him that he would be running a grave risk especially as he had a young family. We tried to reason with him and pointed out that any human waste, if not handled properly, posed the risk of infectious hepatitis. He was not interested and implied that none of the other local contractors would touch it either. We rang them up to make sure but found out that he was right.

We then contacted some people in Scotsdale who advertise in the local paper to empty septic tanks. They had been informed by our Council Clerk and Health Inspector that they could not do it without going to ridiculous lengths to dispose of the waste which they were not prepared to do. As one man put it: ‘he couldn’t stick his neck out’.

I took my problem to a local councillor whom I knew not to be prejudiced against us. From what we already knew of the matter and from subsequent enquiries it is obvious that the Council Clerk and Public Health Inspector are conveying to the townspeople the impression that we are the cause of an epidemic of hepatitis because we are unhygienic and irresponsible in that we sought no medical advice, ignoring totally that there are cases in the neighbouring towns of Winnaleagh, Ringarooma, Ledgerwood and Scotsdale and that one of the cases was also a student of the aforementioned special school in Launceston and also ignoring the fact that there are known cases before us. Now, a week and a half after he knew of our suspected hepatitis, the local doctor is insisting that everyone in the town have the gammaglobulin shots. The Council Clerk has closed down the Town Hall with a notice outside explaining that this is due to an outbreak of hepatitis. The rest of the town has been informed that anyone who has had contact with Dianna or I will not be allowed to congregate in a public place although nobody has bothered to inform us or our immediate circle of friends.

I phoned the doctor who treated us to ask if he was satisfied with our behaviour as regards precautions and told him of local events. He was very angry with the actions of the Council Clerk and phoned him to tell him:

(i) that he was by no means convinced that it had been hepatitis;

(ii) that he considered the actions taken 'panic measures' and also a deliberate smear campaign against us.

A friend of mine was in the Council offices at the time and as the Council Clerk put the phone down, he informed her that the doctor had just rang to confirm that it was hepatitis!

I am extremely worried at the moment about our future as we cannot get our septic tank emptied and I fear that the Health Inspector will use this as a way to condemn our house and effectively remove us from the town. It seems to me amazing that the doctor and the Health Inspector should work towards creating a health hazard.

This may seem to be the thoughts of a paranoid person but you must remember that I live in this situation and I base my fears on past dealings with these Council officers and on many other tales that have come to me of what they have said to the public which I will not repeat to you as they probably could not be proved. I also look at my present situation. At the moment there are no cases of hepatitis in Derby, and those emergency measures have been taken whereas in Branxholm, Winnaleagh, Ringarooma, Ledgerwood and Scotsdale none of these ridiculous steps have been taken. I also fear very much that local people who have previously either supported us or at least have not been against us and have treated us as normal human beings with a right to choose our own lifestyle, may turn against us in the light of professional and medical opinion. I am hoping that a few more enlightened people in the town and surrounds are going to see that reason prevails but I can only wait and see.

7.14.3 Presentation to the Tribunal

Coonan: Moving to matter 39, which is Robyn Kennedy, the treatment of lesbians in a Tasmanian town.

Egan: Could the record show that I must withdraw at this stage, but I will be here tomorrow.

Coonan: Sorry?

Egan: Just for the record, that I will not be here for this matter, I must go, but I will be here tomorrow morning.

Coonan: Thank you.

Kennedy: This is Exhibit 38, and the first part of this exhibit is a statement by the Tasmanian Homosexual Law Reform Group (see **7.14.1** page 258) which gives the background to this discrimination case. The second part is a statement by Anne Lazarus (see **7.14.2** page 259) who is one of the women concerned. (Reads **7.14.1**). The second part is a statement by Anne Lazarus, which concerns the discrimination. (Reads **7.14.2**).

Coonan: Thank you Robyn.

7.14.4 Today

On the 15 August 1991 the TWG wrote to the Mayor of Ringarooma Council as follows:

In November 1976 a Tribunal on Homosexuals and Discrimination heard evidence from a range of people who had experienced what they believed to be discrimination because they were homosexual women and men.

On such person was Anne Lazarus, a principle organiser of a lesbian feminist conference to be held at

Derby over Easter 1976. In her testimony to the Tribunal, she stated that she and her partner had taken the precaution of having gammaglobulin shots because they feared they may have contracted hepatitis, several cases of which had been reported in the towns of Winneleagh, Ringarooma, Ledgerwood, Scotsdale and Launceston. Others who had been in direct contact with the women were also given shots. Their difficulties with the then Council Clerk and Health Inspector began when they sought to employ local contractors to unblock their septic tank. According to the testimony given to the Tribunal, Council Officers imposed extraordinary requirements on any contractors who agreed to undertake the job, closed down the Town Hall, claimed an outbreak of hepatitis, and informed the town that anyone who had contact with the women would not be allowed to congregate in public places. This, despite that fact that the Scotsdale doctor the women had seen informed the Council Clerk that he was by no means convinced that the women did in fact have hepatitis. The women believed that the action of the Council officers was unwarranted and a deliberate attempt to provoke hostility to the women because they were lesbians and organising a lesbian feminist conference at Derby.

After 15 years, a wide range of issues raised before the Tribunal are simply no longer issues. New South Wales, for example, now has Anti Discrimination legislation which makes it unlawful to discriminate on the grounds of homosexuality. It is the intention of a number of those who were responsible for setting up the Tribunal to contrast the attitudes and practices which prevailed in 1976 with those that prevail now.

We would appreciate it if you would let us know:

- what the attitude of the Council and its officers would be towards the holding of a lesbian feminist conference within its boundaries?

- whether Council officers would assist a homosexual rate payer experiencing difficulties with the disposal of sewage;

- how Council officers would handle information that homosexual rate payers may have hepatitis.

The TWG wrote again, on 25 September 1991, to the Mayor, Ringarooma Council:

I attached a copy of the letter I wrote to you on 15 August, 1991. I would appreciate some indication of whether you think you will be able to reply to our request for information in the near future.

And again the TWG wrote, on 18 November 1991, to the Mayor, Ringarooma Council:

I am writing to remind you of my request for your comments on allegations of discrimination against homosexual women presented to the November 1976 Tribunal on Homosexuals and Discrimination.

May I assume, and report to the Tribunal Working Group accordingly, that should a similar set of circumstances now arise, Officers of the Ringarooma Council would behave in a similar way?

In the event of our not hearing from you, we will record our letters in the printed report, for publication.

The Council Clerk, J E Martin of the Ringarooma Municipal Council, responded on 12 December 1991 as follows:

I refer to your letter of 15 August 1991 and your following letter of 18 November, 1991, which were tabled at respective Council Meetings on Monday September 9 and Monday 9 December, 1991.

At the September Council Meeting, Council resolved to make no comment on matters raised in your letter of 15 August due to the period of time elapsed since 1976 the accompanying change over of staff and the apparent incorrectness of allegations made.

Following your more recent letter including the threat of reporting unsubstantiated assumptions the following is provided for your information:–

1. Information gained from Councils [sic] Health Surveyor of 1976 Mr F Horak indicates that the testimony made, in regards to council officers and involvement, by Anne Lazarus to be completely without foundation. In fact Mr Horak stated that despite Council's intended assistance, Anne Lazarus and others, at times were most uncooperative.

2. In regards to questions raised in your letter of 15 August, the following is provided:–

(a) Council would basically hold no objections towards the holding of a Lesbian Feminist conference within it's boundaries so long as any activities – conference is carried out according to the Legislative requirements.

(b) Council would assist a homosexual ratepayer experiencing difficulties with the disposal of sewerage by assisting with advice on how to overcome difficulties in accordance with any appropriate legislation and common sense principles.

(c) For any case of Hepatitis notified within the Municipality investigations may be made for any causes and appropriate follow up action in accordance with the Public Health Act 1962.

Hopefully the above will assist you in your investigation.

On 21 April 1992 the TWG responded as follows:

With reference to your letter of 12 December 1991 would you please convey to the members of the Ringarooma Municipal Council the thanks of the Tribunal Working Group for addressing the questions raised in our letters of August and November 1991.

It was precisely because the Council had had no opportunity to answer the allegations made about the behaviour of some of its officers to the 1976 Tribunal that we felt obliged to press Council to take the opportunity we offered it in 1991 to do just that.

… I am a homosexual. DON'T PUT ME DOWN.

7.15 Personal Statement by Male Homosexual

Coonan: As our final evidence before the Tribunal, could I ask Ron Austin to please make a personal statement.

Austin: As we are running very late, I will make this as brief as possible. But it seemed to me that in presenting evidence today, most of the evidence revolves around specific issues, and fairly large issues, and it did seem to involve the personal daily life of homosexual women and men. So, I am presenting to you, as briefly as I can and as quickly as I can, what it means to me to be homosexual in this society as I go about my daily affairs. At the start of every day I have to think of what I shall wear, what I will be doing, and who I may meet, or may possibly meet. Will I have to run the gauntlet of derision and insult: on the station and in the trains, or when walking down the street or in a shop? The put down of me as a homosexual person is always present. I have to think of how I can be honest and maintain a sense of my own worth.

My Family
I have no sense of acceptance of my lifestyle from my family. They love me, but cannot and do not want to know that part of me which they can't accept, or understand. Some members of my family would put me down and I have long given up the fight for their acceptance of who and what I am.

Work
This is the most oppressive area in my daily life. I may be seen to be a homosexual, or thought to be, but as long as I don't say so, I will keep my job. My employer would sack me immediately, if I were to say that I was a homosexual. I work with young people, and have to tolerate their overt jokes and insults, their put-downs. I can't say I am homosexual, I can't discuss **me** with them.

Social Life
Here again, fear of put-down. In so many social situations the decision has to be made, will I come out again. One does this time and time again as a homosexual person. You are constantly put in the position of having to come out, of having to say, "I am a homosexual. DON'T PUT ME DOWN." Will I come out again? Will I confront the person telling homosexual jokes, the person who is discriminatory and oppressive in attitude. Could I relate freely with my lover, freely and openly, in this particular social situation?

The Law
The law is always there, threatening. It would seem that the individuals responsible for enforcing the law act in accordance with their own prejudices. The law not only discriminates against me; it denies me, totally, the function of my sexuality.

Relationships
In my everyday life, I meet a lot of people, heterosexual people, with whom I would like to relate, in a free and open way, but more often than not, their fear of homosexuality prevents a free and happy exchange. Personal relationships are made very difficult by outside pressures. The internalisation of discrimination and oppression that each person brings to a relationship creates enormous difficulties in relating freely and lovingly to each

other.

The result of all this discrimination and oppression on me requires enormous energy and strength of me, everyday, to maintain my sense of who I am, just to be me, to be myself. Thank you.

Coonan: Thank you Ron. I do not know whether I am speaking somewhat out of place, but I would like to thank everybody for coming today and for your contribution. And it certainly has been a most profound experience for me and I am sure I speak for all the tribunalists in saying so. It has been in many ways, a very sobering day to have presented to you just case after case of discrimination such that, even though you felt it exists, you are not confronted with it if you are not living the sort, living out the sort of problems that Ron has described. So, it is obviously not my place to say any more, other than to thank everybody for coming and also on behalf of CAMP to thank very much the tribunalists.

Applause!

Cairns: I feel I would like to make just a couple of remarks, which I am sure although we have not discussed it, the rest of those on the tribunal would share. I have been very impressed by the quality of the submissions made by CAMP NSW, by the quality of the evidence given, by those who have appeared before us and I feel sure that the community in NSW and in Australia cannot ignore what we have heard here today. It will be our responsibility to make a more full report about this, not only tomorrow I think, but in some greater detail later on. Many things have been revealed today that demand attention. On the face of them as presented to us, they demand attention by the government of NSW without delay and I am sure those matters can be easily made available to the government if they are not already available. And I want to express my appreciation, and I am sure it is shared by all of us, for the sincerity in the presentation of the evidence before us today by all those who have appeared here.

Coonan: Thank you.

Applause!

7.15.1 Today

The following is an edited version of a recording made by Ron Austin and transcribed in May 1991:

Personal Statement by Ron Austin

I would like to start by relating an incident that happened to me a couple of weeks ago.

I had a dental appointment in Glebe Point Road and I had some time to spare and had come from town. I was walking along Glebe Point Road, book in my hand, and thinking my thoughts and observing the passers-by. Two young people were approaching me. I noticed them, I must have looked at them. They were two young men. I like looking at young men. They are lovely, as a rule, to look at. But I had many things going on in my mind at the time. As they got closer I heard one of them say ‘queer cunt’. And in that moment I thought, oh, that is very common coarse conversation they are having between them. And as they passed there was the remark ‘poofter’. I know very well that they were commenting on me but I didn’t pick it up initially. I sort of wasn’t prepared for it.

My Family
It seems I have a better relationship with my family. My family have accepted me regardless and I probably have been pretty difficult to deal with at times. I think what has happened is they have become more used to me. And I have become more used to them too, more comfortable with who I am and that has made it much

easier for me to deal with them.

Work
My commitment to self realisation, to who I really am, started coming out at work. Even in the work situation, albeit that I retired nearly two years ago, things improved continually. There was always an element of verbal gay bashing but I sort of won through, I guess through familiarity, through their acceptance of me as a person whom they knew for a long time. Any new people who came into the centre, I earned their respect too.

With family and with work a lot of the change was the change in me as a person, in being able to deal with what I was meeting on a daily basis.

Social Life
Mixing in the community, meeting people, well I think there has been change there too. Ignorance still prevails in a way but the people I mix with now, my gay friends that I have known for years, I'm very comfortable with. It is a wonderful life I suppose. It's a family, the real family that supports you. You know it's there, you feel comfortable with it, you have worked through lots of things together. There are unhappinesses and happinesses, there are joys and sorrows. We have shared all these things and we have a kind of familiarity and a comfortableness that in my mind is real family.

Law
A lot can be said about the law. There has been change but the law doesn't change the way people think. The way the law is executed can often help the way people think. The law just doesn't make sense to me. There is no mercy in it as far as I can see. There is no spirit of the law, it is just the letter of the law all the way. But OK, the law is changed in regard to us. We're legal now, but as far as I was concerned I was always legitimate. And we have anti-discrimination law. I suppose one of the changes that we see is in the institutions, even in the police. The institutions, by and large, have to be seen to be non-discriminatory. Whether in fact the individual members which make up those institutions are any more enlightened is another matter.

Relationships
I haven't all that many straight friends. Those I have, if they have parties or dinner parties, I'm invited and I'm meeting their friends and they are all the kind of people who take me as I am. They are sometimes quite interested in some of the things that I have done and where I have been as a gay person and what it is to be gay. They are genuinely interested.

On a personal level, if I feel oppressed these days, if anyone starts verbal poofter bashing around me I just tell them to piss off, or I go away. I have lived too long to put up with that kind of shit from people. What have I got to lose? At sixty two, I can tell people to piss off.

The changes that I perceive most having taken place in the intervening years are the changes that have happened to me as a person having come to terms with me as a gay person.

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8. Tribunal Findings and Recommendations

8.1 Findings of the Tribunal

The following day Sunday the 28 November 1976 there was a summing up by Dr Jim Cairns:

The inquiry by the Tribunal on Homosexuals and Discrimination took place in Sydney on November 27 and 28, 1976. At this stage the Tribunal desires to make known its findings and a report of these findings.

The Tribunal emphasises that the subject of homosexuals and discrimination is an important, complex and difficult one; and that this inquiry may have to be followed up by further investigation and the calling of further evidence.

The Tribunal sees the pursuit of maximum individual freedom of belief, expression, action and life-style consistent with the freedom of others to be an intrinsically desirable goal. Homosexuals are a sub-group within the main group such as women, migrants, prisoners, mental patients, commune dwellers, pot-smokers, atheists, Aboriginals and others who suffer negative discrimination, oppression and repression.

It has long been recognised that repression of sexuality has existed. There are many problems of heterosexual repression but homosexuals suffer more severely. There is a general tendency to accept homosexuality as long as it is 'invisible, secret or hidden'. This was made clear in evidence in the case of schools, the army, the Post Office, and it certainly would be found in government departments, service industries, churches, trade unions and private employment.

Discrimination takes two forms:
- Legal
- Social

- **Legal discrimination** is in the form of laws against homosexuals as such, e.g. the Crimes Act, the Summary Offences Act, and a second category which is in the form of laws which discriminate against non-married people. e.g. Public Service Act, the Income Tax Act, Superannuation Act, Stamp Duties Act and various State Duty Acts.

In addition there is the interpretation and administration of the law by all forms of government and the discretionary powers of public officials.

- **Social discrimination** by authorities e.g. police, media, churches, the medical profession, service industries, government departments, private employers, etc.

Further, there is social discrimination by the general public, e.g. families, neighbours and individuals. Most societies have an inhibited and repressive attitude towards all sexuality. Homosexuals are seen as practising a life-style which is unnatural, a threat to the survival of the nuclear family, non-procreative, non-conformist and possibly violent. Generally, society has come to accept that people can practise their sexuality privately. Public outrage expresses itself only when sex becomes a public issue. This is applied with particular severity to homosexuals.

The Tribunal found that there is a general tendency to ignore homosexuality as long as it is 'invisible', secret, or kept quiet. Homosexuality is punishable only when it comes to public notice. In every case brought to our notice, it was public knowledge that invoked retribution to homosexuals. Doubtless however, this is part of the general attitude to sexuality. To a very significant extent however, extra-marital heterosexual activity was tolerated, even if 'invisible', or hidden or performed privately in accepted conditions. Admittedly there is some discrimination against homosexuality when it is private but the whole weight of society is applied to homosexuals when their sexuality is known or acknowledged. The punitive aspect against homosexuals takes many forms. They face the taunts of their relatives, the police, public administration and people generally. Again, they face blackmail and prosecution which is rarely if ever applied to heterosexuals. Their livelihood is threatened, their civil rights curtailed and their private lives are constantly under scrutiny. The Tribunal finds that most of those who discriminate against homosexuals do not any longer rely on the Bible or upon the will or command of God, but upon public opinion. Public opinion is against homosexuality, that is wrong. But today public opinion seems to rely especially upon doctors, psychologists and psychiatrists. The university has taken the place of the cathedral. This 'democratic' argument against homosexuality is modern and effective. Evidence was given that this view (that the public is against homosexuality) is probably correct. But it is necessary to point out the significance of militant, repressive pressure groups, which, as in the case of a church in Mosman, a school in Eastwood and doubtless in many other places, appear to have been able to bring about the dismissal of a church secretary and a teacher, both with excellent work records, who had apparently support in the area. It has been pointed out that community views are not independently arrived at, especially in the case of discrimination, when often the basis of action is gossip or prejudice. It becomes clear in evidence that where attitudes are formed towards homosexuality, it is rarely the needs and feeling of the homosexual that are taken into account: it is always the needs of his family or the public.

The Tribunal finds that community attitudes arise principally from an inability to understand sexuality as an integral part, but only one facet, of human experience. Rarely is there any genuine effort to promote discussion and understanding of sexuality. Rather there are dictatorial and prurient directives and bar-room type talk. Any effort therefore to promote discussion of homosexuality is ineffective, decried or ridiculed. The general public is thus denied an opportunity to understand sexuality and especially homosexuality. In the circumstances, it is wrong simply to accept community values or attitudes to judge the issue of homosexuality or the behaviour of homosexuals. In fact, community attitudes are based on an inadequate understanding of homosexuality and inadequate opportunity to obtain it. It appears that a reason that people wish homosexuality, if it occurs at all, to be 'invisible', is that 'it can be learned and passed on; that homosexuals can be created', that 'your child is a target for homosexuals'. This view is held despite that fact that no evidence on whether homosexuality is acquired or not is taken into account. The attitude is based on uninformed fear and prejudice. This view is undoubtedly adopted by judges as well as militant pressure groups acting against homosexuals. This argument becomes irrelevant when homosexuality comes to be seen as one of a whole range of accepted life-styles and thus ceases to be a threat to society.

It may be claimed that people have the right to discriminate against homosexuals or other people like women, blacks, atheists or communists. In the case of teachers, the Tribunal was able to examine the matter. Parents and others claim that they had a right to refuse to have their children taught by a homosexual person, although they readily accepted a heterosexual teacher even though such a teacher may not necessarily be a good teacher. They appear to do so because they believe that their children would be seduced by a homosexual or be taught to be homosexual. There is no evidence that homosexuals are more likely to seduce or mis-teach a student than is a heterosexual – indeed, probably much less likely.

Evidence was given that the same standards and law should apply to homosexuals as to heterosexuals. Firstly for example, are they good teachers or not? Evidence was given that homosexuals are no more or less likely to be good teachers than are heterosexuals. They may be more conscientious than the average, more likely to be understanding and sympathetic to individual needs and the problem of others, and more conscious of the needs and problems than the average person. It was also put to the Tribunal that children should be educated so that they can better understand sexuality and life-styles different from their own. It was put to the Tribunal that this equips individuals far better to choose and to protect themselves against seduction and undue influences of so

many other kinds which are exerted upon them.

The Tribunal accepts this view. It recognises however, that in contemporary society, children as well as adults are unable to obtain an adequate knowledge of sexuality and ways of living different from their own, and so are vulnerable to undue influences of many kinds. It is difficult to deny therefore, that some protection is justified. In the case of homosexuality, it is reasonable to apply the same laws and standards to homosexuals as to other people.

Evidence was given that it is desirable to exclude the sexual component as such, altogether from laws and standards. What should be wrong and unlawful is the use of force or undue or unequal influence against another person. The Tribunal accepts this view. Its application would require new laws to define and protect human rights and the amendment of many other laws.

8.2 Tribunal Recommendations

The Tribunal Recommends:

- The enactment of a Human Rights Bill at the Federal and State levels which would include the elimination of all forms of discrimination on grounds of sexual orientation. (As advised by the New South Wales Attorney General, we note with satisfaction that some legislators are already moving in this direction, for example, Mr John Dowd, Liberal Member for Lane Cove, NSW).

- The amendment and/or repeal of existing acts and regulations so that sexuality in all forms is eliminated from the law and only violence and undue influence remains an offence.

- That there be a significant increase in community knowledge and therefore understanding, of sexuality and especially of homosexuality and change in community opinion and action.

- There should be an examination of existing materials on sexuality and personal development being used in educational establishments. This material should not merely be confined to contemporary human and sexual relations but should examine the many and varied forms of human and sexual relations and their consequences. All references with a sex/sexuality bias should be eliminated.

- That there should be a broadening of the education of doctors, especially psychiatrists, psychologists and all others who exercise authority or make decisions about the lives of others, so that the existing sexual bias is eliminated.

- Practitioners of alternative life-styles should be brought to the teaching of courses in personal development and in all other relevant areas.

- Action should be taken to prevent the censorship of publicity about legitimate activities of homosexuals.

- State authorities should take action to prevent discrimination against and persecution of homosexuals in jails and in other institutions.

The Tribunal notes that there are other areas on which further evidence is required before a recommendation can be made, and would welcome further evidence at a future occasion.

The Tribunal is disturbed at the way in which the Mental Health Act is administered in New South Wales in respect of persons found not guilty on grounds of mental ill health, and later found to be sane and no longer needing to be detained. On the evidence presented to the Tribunal it appears that Sandra Willson still detained in a NSW jail, long after having been found sane, should be released.

Tribunalists

Dr Jim Cairns, MP
Mr Barry Egan
Senator Arthur Gietzelt
Ms Bridget Gilling

Cairns – Tribunalist: So I conclude the report by thanking Helen Coonan, and Jane Mathews who assisted the Tribunal. I express our appreciation for the manner in which the evidence was given by the witnesses. Our appreciation for the effective work done by CAMP NSW; and our thanks to the staff of the University of NSW who made this auditorium available. Thank you.

Applause!

Cairns: Now if any of the media happen to be interested, the Tribunal would be pleased to answer any questions.

Clohesy – Witness: Before they do, I would like to say just a few words. And I find it very difficult to speak following the presentation of such a sensitive and wide ranging report. Two days out of the lives of the four people on the platform is a lot of time and I think the homosexual movement has taken a great step forward today with the support given to us by these prominent people, support which obviously is based on such sensitivity and insight. I do not really think we could express our thanks adequately. But let us try, by another round of applause.

Standing Ovation!

Cairns: Well if the, as I said, the press happen to be here and interested we will be happy to answer any questions or to elaborate on what we have said.

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9. Search for Tribunalists

9.1 Form Letter to Potential Tribunalists

CAMP NSW
for homosexual liberation

Discrimination Tribunal

(Form Letter)

Dear …

CAMP is pressing the New South Wales Government to introduce anti-discrimination legislation which protects the rights of homosexuals.

As part of our education program around this topic, we have decided to hold a **Discrimination Tribunal**.

This would involve a panel of five Tribunalists, hearing evidence on instances of discrimination (specific and general) from homosexual people. Having heard the evidence, they would hand down a judgement, consisting of recommendations, based on the evidence presented.

So far as time is concerned, we envisage two possibilities:

(a) one and a half days of a week-end: Saturday to hear evidence; part of Sunday to deliver judgement;

(b) just one day of a week-end, with both evidence being heard (details of the cases could be distributed prior to the day) and judgement delivered on that day.

Since education and lobbying are the main purposes of the exercise, the media will be invited. The Tribunal would be held in a hall in the central city area of Sydney.

9.2 People Approached to Be Tribunalists [103]

Persons Approached	Responses
Barry Egan * . . . . . . National Secretary Shop and Allied Employees Association; Secretary	

[103] * Denotes that this person accepted to be a Tribunalist.
Denotes that this person accepted to be Counsel assisting the Tribunalist.
§ New South Wales, *Parliamentary Debates*, forty-fifth parliament, second session, 10 November 1976, p. 2651.

Australian Workers Union	
Anne Deveson . . . . . Royal Commissioner on Human Relationships	Called on 26 August 1976 to inform us that she was sorry but not able to to accept.
Caroline Jones . . . . . Journalist ABC Television	Informed us that she would be filming for ABC Four Corners in Tonga at the time the Tribunal was planned. Otherwise she would have been very happy to be a Tribunalist.
Ita Buttrose . . . . . Editor, Australian Women's Weekly, 1975-1976; Editor in Chief, Australian Consolidated Press, Women's Magazines, 1976-1977.	Other commitments.
Betty Archdale . . . . . Principal, Abbotsleigh Girls School, Wahroonga.	Not interested.
Dr Jim Cairns * . . . . . Former Federal Deputy Prime Minister and Treasurer.	Called us on 25 August 1976 and told us that he would be very happy to accept being a Tribunalist.
Justicce Mary Gaudron . . . . . Australian Conciliation and Arbitration Commission.	Justice Gaudron informed us on 6 September 1976: "Thank you very much for your kind invitation to participate in your discrimination Tribunal. As from time to time I have to decide claims of discrimination in the industrial area, I think it necessary to decline your offer in case such participation lead persons to think I may have prejudged issues which might arise before me. I trust you will have a successful weekend, and would be very pleased to receive copies of any reports or findings which may be published ."
Senator Arthur Gietzelt * . . . . . Federal ALP Shadow Minister.	Called us on 24 August 1976 to inform us that he would be happy to accept being a Tribunalist.
Bridget Gilling * . . . . . Vice President of the New South Wales Council of Social Service.	Called on 3 September 1976 to accept being a Tribunalist.
Senator Kathy Martin . . . . . Assistant Federal Government Whip and Senator for Queensland.	Informed us on 16 September 1976 that she would be unable to be a Tribunalist because on the scheduled day she will be attending a Medical Womens Graduates Association seminar in Queensland.
Justice Roma Mitchell . . . . . Justice of the South Australian Supreme Court.	Her letter dated 21 September 1976 states: "Thank you for your invitation to me to be a member of a Tribunal to be held on the 27-28 November 1976, the purpose of which is to persuade the New South Wales Government to introduce anti-discrimination legislation which protects the rights of homosexuals. As a judge of the Supreme Court of South Australia I cannot be involved in any activity the purpose of which is to suggest to the Government of another State how it should act.

	I therefore regret that I am unable to accept the invitation."
Joan Pilone . . . . . Alderwoman of Sydney City Council	On 14 October 1976 Alderwoman Pilone contacted us indicating that she was very interested in being a Tribunalist. But she feared that her attempt to get pre-selection for the Liberal party would be even more jeopardised were she to participate. There was a lengthy discussion about there being a connection between discrimination against women and homosexuals.
Dr Marie Bashir . . . . . (Lady Shehadie, Wife of Sir Nicholas Shehadie) Director, Rivendell Adolescent Unit	We were contacted by Lady Shehadie on 13 October 1976 indicating that she was very sorry that she could not participate as a Tribunalist because she and her husband Nick had to open something for the refugees in the country.
Jean Skuse . . . . . General Secretary, Australian Council of Churches.	Jean Skuse wrote to us on 27 September 1976 saying: "Thank you for your invitation to participate in the Tribunal to be held on the weekend of November 27 to 28. Unfortunately, I cannot accept as I will be in Canada, but give you my assurance that I would have been interested to do so had I been in Sydney. I really think you have thought of a good educational process and I wish the venture every success."
Michael Tate . . . . . Member of the Catholic Commission for Justice and Peace, and Constitutional Lecturer at University of Tasmania.	Telephone conversation of 21 October 1976 with Michael Tate indicated that his involvement with the Tribunal would jeopardise the favourable reaction gained in the Commission's statement. Also suggested as chairman of the ALP Legal Committee to refer this matter to the Law Reform Commission for the Attorney General's attention.
Dr Barbara Thiering . . . . . Lecturer Moore Theological College, Sydney.	We called Dr Thiering 7 October 1976 and she indicated that it would be extremely difficult for her to attend as a Tribunalist because her 'boss' at the College is Alan Cole and his attitude towards homosexuality is extremely negative.
Tom Uren . . . . . Deputy Federal Opposition leader.	Tom Uren wrote to us on 26 August 1976 saying: "Thank you for your recent letter of 17th August, inviting me to participate in the proposed discrimination Tribunal. I will be only too pleased to give my moral support but regret that as my schedule of commitments is so heavy that I am unable to accept your invitation to be one of the Tribunalists."
The Hon Margaret Davis . . . . . Liberal member of the New South Wales Legislative Assembly.	In October 1976 Margaret Davis accepted to be a Tribunalist. However, in her subsequent personal explanation in the NSW Legislative Assembly § on 10 November 1976 she withdrew this by stating: "I seek the indulgence of the House to make a personal explanation. Today a document was circulated in the form of an invitation to attend the Tribunal on Homosexuals and Discrimination. On that document I was shown as a member of the Tribunal, together with certain other persons of various political affiliations, including some from the extreme left. May I say that I never agreed to sit with those members upon such a Tribunal, and I have indicated to the organisers that I will not serve on it. I have

	no objection to serving on Tribunals provided I am consulted as to the membership of the Tribunal and I agree to serve with them."
Jane Mathews # . . . . . Barrister, Royal Commission on Human Relationships.	Accepted orally to be counsel assisting the Tribunal.
Helen Coonan # . . . . . Lawyer.	Accepted orally to be counsel assisting the Tribunal.

10. Tribunal Publicity

10.1 Pre Tribunal Publicity

The following article appeared in *Speaking Volumes* the newsletter of Melbourne Gay Liberation, Adelaide University Gay Society, and Dr Duncan Bookshop October 1976

Tribunal on Homosexuals and Discrimination
27-28 November 1976

This Tribunal will be held in Sir John Clancy Auditorium of the University of New South Wales. The purpose is to educate the community about the present situation of homosexuals in our society and to obtain proposals for action.

A panel of Tribunalists will hear evidence of instances of discrimination (specific and general) from homosexual people on the Saturday. There will be a counsel for each side in all cases presented. On the Sunday the Tribunalists will hand down a report, with recommendations, based on the evidence.

So far Dr Jim Cairns MP (former Deputy Prime Minister of Australia) and Ms Bridget Gilling (prominent social worker and Vice-president of the NSW Council of Social Service) have agreed to act as Tribunalists. We are awaiting replies from four distinguished people from other areas of the community.

Ms Jane Mathews, counsel assisting the Royal Commission on Human Relationships, and Ms Helen Coonan, feminist solicitor and activist, have agreed to act as counsel at the Tribunal.

Attached is an outline of the expenditure we estimate for the Tribunal. We are approaching you people to request a contribution however small or large, towards the costs. We hope you will be able to assist this educational and necessary forum.

We especially ask for help from homosexual groups. This forum will occur during a crucial period of legislative changes in NSW and it should not be allowed to fail from want of a modest amount of money.

Remember, we are the only ones who can help ourselves.

Estimated Expenditure

Stationery	$200.00
Postage (invitations)	300.00
Postage (Tribunal reports)	300.00
Printing (excl. reports) *	100.00
Fares (Tribunalists)	150.00
Catering	100.00
Recording (incl. tapes)	100.00
Advertising	500.00
Posters	60.00
Handbills	60.00
Total	**$1,880.00**

* the form in which the report of the proceedings will be printed is as yet undecided we have excluded this significant cost.

John Greenway
for The Executive of CAMP NSW, Box 5074 GPO Sydney 2001.

* *

Please contribute to the Tribunal on Homosexuals and Discrimination – 27-28 November 1976

Contributions to:
The Executive of CAMP NSW
Box 5074 GPO
Sydney 2001.

***Speaking Volumes* – October 1976**

Feminist and Gay Newszine from Duncan Revolutionary Bookshop,
140 King Williams Road, Hyde Park, South Australia 5061

You perhaps will ask why a tribunal, why not a homosexual conference, why not an anti-discrimination seminar or workshop for that matter. Having attended a number of the above gatherings, I always went away with the feeling that very little active education of 'straight society' about our discrimination and oppression had taken place. That negative feeling of not having 'done' anything, became suddenly very positive in my mind. I also was inspired by the involvement of Jean-Paul Sartre, whom I admire, in the Vietnam atrocities tribunal held in Stockholm. This made me aware of the value of holding our own tribunal. By doing that we could draw attention to the discrimination and oppression suffered by homosexual people.

The New South Wales Government is being pressed to introduce anti-discrimination legislation which protects the rights of homosexual people. As part of our education programme around this topic, CAMP has decided to hold a Tribunal on Homosexuals and Discrimination.

This will involve a panel of five tribunalists. So far we have confirmation from three, who, because of CAMP's valuable work with them in the past, are only too willing to participate in the bringing forward of discrimination against homosexuals. They are **Jim Cairns**, MP and former Deputy Prime Minister; Senator **Arthur Gietzelt**, ALP Shadow Minister, and **Bridget Gilling**, Vice President of the NSW Council for Social Services. The Tribunal will be hearing evidence on Saturday 27 November 1976 of instances of discrimination (specific and general) from homosexual people. On Sunday the tribunal will hand down judgement, consisting of a report and recommendations, based on the evidence presented.

The Tribunal being a large scale education programme, we feel the media will play a very large role. Therefore it should be present most of the time the taking of evidence goes on. However, people who feel that they are unable to give evidence while the media are present can demand that the 'court be closed'. We hope that a very large number of people will attend the tribunal; this includes guests who are especially invited. Lists of people to be invited are at present being drawn up.

If you can think of some person that you feel would get some benefit out of the tribunal, then let us know.

How to Get Involved in the Tribunal

a) If you wish to give oral evidence before the tribunal about homosexual discrimination, however trivial you might think it is, or on behalf of someone else, then contact us straight away.

b) You may only wish to give written evidence of your homosexual discrimination case. If that is so, then contact us immediately. We can help you document your case.

If you like to do either (a) or (b) there will be no need to disclose your name or address in public. We guarantee complete confidentiality.

c) You may feel that you are not able to give oral evidence because of your shyness for example. We will have counsel assisting the tribunal, who have great experience in making people feel at ease.

d) You may only like to come and listen to the various discrimination cases that will be presented to the tribunal. Tell all your friends about the importance of the tribunal, because the outcome of it will put the New South Wales Government and for that matter the Australian Government on the right track.

e) Donate some funds towards the running of the Tribunal. CAMP's treasurer will keep separate accounts for the tribunal so at any time you will be able to find out what the financial position is.

Peter de Waal,
Actions Group,
C A M P N S W,
Box 5074, GPO
SYDNEY NSW 2001
02 827 3063

CAMP Queensland Article

Campaign Against Moral Persecution (Queensland Division), October, Newsletter
GPO Box 2374 (379 George Street) Brisbane 4001, Phone 221 9373

The New South Wales Government is being pressed to introduce anti-discrimination legislation which protects the rights of homosexual people. As part of our education programme around this topic, CAMP has decided to hold a Tribunal on Homosexuals and Discrimination.

This will involve a panel of five people. So far we have confirmation from three who, because of CAMP's valuable work with them in the past, are only too willing to participate in the bringing forward of discrimination against homosexuals. They are **Jim Cairns**, MP and former Deputy Prime Minister; **Senator Arthur Gietzelt**, ALP Shadow Minister and **Bridget Gilling**, Vice President of the New South Wales Council for Social Services. The tribunal will be hearing evidence on Saturday 27 November 1976 of instances of discrimination (specific and general) from homosexual people. On Sunday the tribunal will hand down judgment, consisting of a report and recommendations, based on the evidence presented.

The tribunal being a large scale education programme, we feel that the media will play a very important part. Therefore it should be present most of the time the taking of evidence goes on. However, people who feel they are unable to give evidence while the media is present can demand that the 'court be cleared'.

The tribunal will take place at the Sir John Clancy Auditorium, University of New South Wales.

We hope a very large number of people will attend the tribunal; this includes guests who are specially invited. Lists of people to be invited are at present being drawn up. If you can think of some person that you feel would get some benefit out of the tribunal, then let us know.

How to get Involved in the Tribunal:

a) If you wish to give oral evidence before the tribunal about homosexual discrimination, however trivial you might think it is, or on behalf of someone else, then contact us straight away.

b) You may only wish to give written evidence of your homosexual discrimination case. If that is so, then contact us immediately. We can help you document your case.

If you would like to do either (**a**) or (**b**) there will be no need to disclose your name or address in public. We guarantee complete confidentiality.

c) You may feel that you are not able to give oral evidence because of your shyness for example. We will have counsel assisting the tribunal, who have great experience in making people feel at ease.

d) You may only like to come and listen to the various discrimination cases that will be presented to the tribunal. Tell all your friends about the importance of the tribunal, because the outcome of it will be put to the New South Wales Government and for that matter the Australian Government.

e) Donate some funds towards the running of the tribunal.

Billeting:

Arrangements can be made to billet Queensland gay people who wish to attend the Tribunal. Further Information on Tribunal can be Obtained from:

Roger Sawkins
356 Milron Road,
Auchenflower
221 9178 (Work) 371 5587 (Home)

CAMP NSW
GPO Box 5074
Sydney 2001

Article in Humanist Society's Viewpoints

Viewpoints, New South Wales Humanist Society, Vol. 14, No. 8,
October 1976, page 5

Discrimination Against Homosexuals

CAMP has decided to hold a Tribunal on Homosexuals and Discrimination comprising a panel of five. So far

the following have indicated their willingness to participate in the panel: JIM CAIRNS, MP, erstwhile Deputy Prime Minister; Senator ARTHUR GIETZELT, ALP Shadow Minister and BRIDGET GILLING, Vice President of the New South Wales Council for Social Services. Evidence will be taken on Saturday, November 27 next of instances of discrimination (specific and general) from homosexual people. On Sunday the Tribunal will hand down judgement, consisting of a report and recommendations, based on the evidence presented.

Tribunal Invitation October 1976

You are invited to

Tribunal on Homosexuals and Discrimination

Sir John Clancy Auditorium
University of New South Wales

27-28 November 1976

R.S.V.P. 20 November

On Saturday 27 November, from 10am to 5pm, a panel of tribunalists will hear evidence of discrimination (specific and general) from homosexual people. There will be counsel for each side in all cases presented.

On Sunday 28 November, at 3pm, the tribunalists will hand down a report, with recommendations, based on the evidence they have heard.

You are invited to be present during this educational forum.

Tribunalists

Hon Jim Cairns, MP, Former Deputy Prime Minister and Treasurer of Australia.

Hon Margaret A E Davis, Liberal Member of Legislative Council of New South Wales.

Mr Barry Egan, National Secretary, Shop Distributive and Allied Employees Association; Secretary, Australian Workers Union.

Senator Arthur Gietzelt, Labor Member of the Senate, Parliament of the Commonwealth of Australia; ALP Shadow Minister.

Ms Bridget Gilling, Vice-President Council of Social Service of New South Wales.

Counsel

Ms Helen Coonan, BA LLB, solicitor

Ms Jane Mathews, BA LLB, barrister; Counsel assisting the Royal Commission on Human Relationships.

2nd Newsletter **Melbourne Gay Teachers' Group** 10th October 1976

Saturday 27-28 November Tribunal on Homosexuals and Discrimination at the Sir John Clancy Auditorium, University of New South Wales. For details write to Peter de Waal, CAMP NSW, Box 5074, Sydney, 2001. See article within.

Tribunal on Homosexuals and Discrimination The NSW Government is being pressed to introduce anti-discrimination legislation which protects the rights of homosexual people. As part of the education programme around this, CAMP NSW has decided to hold a Tribunal on Homosexuals and Discrimination – modelled on the Stockholm Vietnam atrocities tribunal organised by Sartre and Bertrand Russell in the late 60s.

Three of the five tribunalists are Jim Cairns, Senator Arthur Gietzelt and Bridget Gilling (Vice President of NSW Council of Social Services). They will hear evidence on Saturday 27th November of instances of discrimination (specific and general) from homosexual people. On Sunday the Tribunal will hand down judgement, consisting of a report and recommendations, based on the evidence presented.

The media will be encouraged to report the proceedings fully, but anyone wishing to give evidence without disclosing their identity will be free to demand the 'court be closed'. Alternatively you may give written evidence only, or have someone give evidence on your behalf. In any case, complete confidentiality will be guaranteed any one wishing it.

It is hoped that a very large number of people will attend the Tribunal; this includes guests who are especially invited. If you can think of some person who you feel would get some benefit out of the Tribunal, then let CAMP NSW know.

Letter to the Nation Review Newspaper

D-Notices
INC Pty Ltd
102 Glover Street
Cremorne Junction

Dear Nation Review People,

Could we please have a special heading for our ads? The enclosed D-Notice is the first of a series which will run from now to the end of November; and hopefully, as interest is generated, for a much longer period. There may also be others who would like to use such a heading.

DISCRIMINATION is what we homosexuals are getting plenty of and we're certainly not alone in the community – can we have a heading too?

If it's too much we shall just have to accuse you of discrimination and settle for DOINGS, I suppose.

Peter de Waal, for
Tribunal Collective
18 October 1976

Lay-out forwarded to the Nation Review Newspaper

DISCRIMINATION
SUFFERING OPPRESSION? TRIBUNAL
ON HOMOSEXUALS AND
DISCRIMINATION NEEDS EVIDENCE.
27-28 NOVEMBER. EVERYONE
WELCOME. CAMP NSW
BOX 5074 SYDNEY
2001 (A.H.) (02)827 3063

DISCRIMINATION [104]

SUFFERING oppression? Tribunal on homosexuals and discrimination needs evidence. 27-28 november. Everyone welcome. CAMP NSW, box 5074, Sydney 2001. (A.H.) (02) 827.3063

DISCRIMINATION [105]

SUFFERING oppression? Tribunal on homosexuals and discrimination needs evidence. 27-28 november. Everyone welcome. CAMP NSW, box 5074, Sydney 2001. (A.H.) (02) 827.3063

DISCRIMINATION [106]

SUFFERING oppression? Tribunal on homosexuals and discrimination needs evidence. 27-28 november. Everyone welcome. CAMP NSW, Box 5074, Sydney, 2001. A.H. (02)827.3063

Campaign Newspaper Article [107]

Jim Cairns on Gay Tribunal

Former Deputy Prime Minister Jim Cairns will be one of five VIPs who will act as tribunalists when gay people give testimony at the Tribunal on Homosexuals and Discrimination set for the weekend 27-28 November at the Sir John Clancy Auditorium, University of New South Wales

Confidentiality, if sought, will be guaranteed, according to de Waal, who said the findings will be aimed at the NSW and Australian Governments.

Modelled on the Vietnam atrocities tribunal held in Stockholm, the two-day meeting is sponsored by the Campaign Against Moral Persecution (CAMP).

Joining Cairns will be Senator Arthur Gietzelt, ALP Shadow Minister, Bridget Gilling, vice-president of the NSW Council for Social Services, and two other tribunalists yet to be named. The tribunal will hear evidence from gay people the first day and come up with a judgement, consisting of a report and recommendations, on Sunday.

CAMP Actions Group member Peter de Waal said the tribunal is a large scale education program which will be used to press the NSW Government into introducing anti-discrimination legislation which will protect the rights of homosexuals. Persons interested in giving testimony or hearing evidence are invited to attend. Written evidence as well as oral evidence is being solicited, as are contributions towards the staging of the event.

Arrangements for billeting interstate gay people wishing to attend the tribunal can be made by contacting the CAMP Billeting Collective, Box 5074 GPO, Sydney 2001 or by telephoning de Waal at (02) 827 3063 at home or Terry Goulden, (02) 666-6110 (work).

CAMP News Bulletin [108] 3 November 1976

Latest Tribunal News The stage is set for the Tribunal on Homosexuals and Discrimination on November 27 and 28 at the Sir John Clancy Auditorium, University of New South Wales. The tribunalists will be Jim Cairns, Margaret Davis, Barry Egan, Arthur Gietzelt and Bridget Gilling. Helen Coonan and Jane Mathews complete the cast, acting as counsel. So far, 15 cases of discrimination have been fully researched and

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[104] *Nation Review*, 'D-Notices', 22-28 October 1976 p. 22. Actual size 20mm x 43mm.
[105] *Nation Review*, 'D-Notices', 29 October – 4 November 1976, p. 46. Actual size 19mm x 42mm.
[106] *Nation Review*, 'D-Notices', 5-11 November 1976, p. 70. Actual size 18mm x 42mm.
[107] *Campaign*, October-November 1976, p. 4.
[108] This was distributed in CAMP NSW's Coffee Shop, 33a Glebe Point Road, Glebe.

documented to present as evidence. Contact Peter de Waal if you know of any further cases of discrimination.

Keep the evening free on the 27th for the Tribunal Dance at the Glebe Town Hall. (It will help pay our debts.) It should be good if it is anything like last Saturday night's fund raising dance. Talking of funds, we need $1,500 to float the Tribunal, so if you have any spare cash …

Insight

Newsletter of Acceptance/Sydney: Catholic Homosexual Movement,
PO Box 222, Haymarket NSW 2000, Phone: (02) 31 4830, November 1976,

SERIOUS: : : :CAMP NSW are holding a tribunal on HOMOSEXUALS AND DISCRIMINATION on Nov. 27 and 28. More details., I think, in Campaign. If you have evidence you wish to be considered please contact Peter de Waal, on 827 3063 after hours. The Tribunal will be held at the Sir John Clancy Auditorium, Uni of NSW.

Article in Humanist Society's Viewpoints

Viewpoints, New South Wales Humanist Society, Vol. 14, No. 9,
November 1976.

Tribunal on Homosexuals and Discrimination – 27-28 November, 1976
This tribunal will be held in Sir John Clancy Auditorium at University of New South Wales. The purpose is to educate the community about the present situation of homosexuals in our society, and obtain proposals for action. Donations needed to offset costs. Please forward to: CAMP NSW, Box 5074, G.P.O. Sydney, 2001.

Society Five Newsletter Melbourne November/December 1976

Tribunal on Homosexuals and Discrimination

The Tribunal, held in Sydney on the weekend of November 27/28, ended by calling for the decriminalisation of homosexuality and a wider public understanding of the problems of Gay people. With the NSW Government being pressed to introduce anti-discrimination legislation which would protect the rights of homosexual people, the Tribunal was organised by CAMP NSW as part of its education program around this topic. The Tribunal Board included the former Deputy Prime Minister, Dr Jim Cairns; the Secretary of the Australian Workers' Union, Mr Barry Egan; NSW Liberal MLC Mrs Margaret Davis, social workers and lawyers. After hearing evidence of discrimination against both male and female homosexuals, the Tribunal Board found that Gays were subject to far-reaching social and legal discrimination from areas such as the police, the media, churches and government departments, as well as from the general public. The organisers said later they hoped the Tribunal's report would help the case homosexuals were preparing for the legislation by the NSW Government.

Tribunal Collective Press Release

The 7 November 1976 press release (see page 289) was forwarded to the following media outlets:

Nation Review	Richard Walsh, Box 86, Cremorne Junction 2090
Nation Review	John Pemberton
National Times	Elizabeth Wynhausen

Direct Action	Box 151, Glebe 2037
Tribune	4 Dixon Street, Sydney 2000
Transmedia	Box 102 Cammeray 2062
Radio 2KY	News Editor, Box 546 Potts Point 2011
Radio 2WL	News Editor, Edward Street, Wollongong 2500
Radio 2WL	Brian Surters
Newcastle Morning Herald	Chief of Staff, 28-30 Bolton Street, Newcastle
Newcastle Morning Herald	News Editor
Illawarra Daily Mercury	Chief of Staff, Kiera Street, Wollongong
Illawarra Daily Mercury	News Editor
NBN 3	News Editor, Box 750L, Newcastle 2300
WIN 4	News Editor, Box 1800, Wollongong 2500
This Day Tonight	ABC, Box 365 Canberra City 2601
TV News	ABC
Radio News	ABC
Special Projects	ABC
Radio 2CA	News Editor, Box 163 Canberra City 2601
Cleo Magazine	GPO Box 4088, Sydney 2001
The Bulletin	GPO Box 4088, Sydney 2001
POL Magazine	Editor, 57-59 Regent Street, Chippendale 2008
Catholic Weekly	104 Campbell Street, Surry Hills 2010
Southern Cross	Box Q 109 Queen Victoria Building 2000
Arena	Student Union, Macquarie University, North Ryde 2113
Honi Soit	University of Sydney 2006
Interpolator	Mitchell CAE, Bathurst 2795
Axis (National U)	97 Drummond Street, Carlton 3053
Newswit	NSWIT, Box 38 Brickfield Hill 2000
Tertangala	Student Representative Council (SRC) Office, University of Wollongong 2500
Tharunka	University of NSW, Box 1 Kensington 2033
Woroni	SRC Office, ANU, Box 4 Canberra 2600
Council of Civil Liberties	Box 201, Glebe 2037
Council of Social Service of NSW	381 Pitt Street, Sydney 2000
Forum Magazine	Box 256 Paddington 2021
Humanist Society	17 Latona Street, Winston Hills 2153
Leichhardt Local	Box 171, Glebe 2037
Monitor	Box 181, Civic Square 2608
Campaign	?
Alternative News Service	97 Drummond Street, Carlton 3053
Womens News Service	97 Drummond Street, Carlton 3053
Horan, Wall and Walker	Box 8, Surry Hills 2010
Nic Nac	?
The Age	Melbourne 3000
Digger	?
The Herald	Melbourne 3000
Sun Pictorial	Melbourne 3000
West Australian	Perth 6000
Adelaide Advertiser	Adelaide 5000
Brisbane Courier Mail	Brisbane 4000
Adelaide News	Adelaide 5000
TVT 6	Hobart 7000
BTQ 7	Brisbane 4000
TVW 7	Tuart Hill 6060

HSV 7	Melbourne 3000
ADS 7	North Terrace 5000
GTV 9	Richmond 3121
NWS 9	North Adelaide 5006
Channel 0	Nunawading 3131
QTQ 9	Brisbane 4000
Channel 0	Brisbane 4000
Radio 3AK	Richmond 3121
SAS 10	Gilberton 5081
Radio 3AW	Melbourne 3000
Radio 3DB-LK	Melbourne 3000
Radio 3UZ	Melbourne 3000
Radio 3XY	Melbourne 3000
Radio 4BH	Brisbane 4000
Radio 4BK	Brisbane 4000
Radio 4IP	Brisbane 4000
Radio 5DN	North Adelaide 5006
Radio 5AD	Adelaide 5000
Radio 6IX	Tuart Hill 6060
Radio 7HT	Hobart 7000
Radio 6KY-NA	Tuart Hill 6060
Radio 7HO	Hobart 7000
Tasmanian Broadcasting Network	Burnie 7320
Australian Church Record	Melbourne 3000
Canberra Times	Canberra 2600
Church Scene	Melbourne 3000
Australian Presbyterian News	?
Catholic Leader	Brisbane 4000
Education NSW Teachers Federation	2000

News Releases to be Hand Delivered

Sydney Morning Herald	Chief of Staff
Sydney Morning Herald	News Editor
Sydney Morning Herald	Alan Gill
The Australian	News Editor
The Australian	John Lapsley
The Sun	Chief of Staff
The Sun	News Editor
Daily Mirror	Chief of Staff
Daily Mirror	News Editor
Daily Mirror	Suzy
Daily Telegraph	Chief of Staff
Daily Telegraph	News Editor
Daily Telegraph	Ann Beveridge
National Times	Chief of Staff
National Times	News Editor
National Times	Anne Summers
ABC	This Day Tonight
ABC	TV News
ABC	Radio News
ABC	Special Radio Projects
ABC	AM
PM	ABC

ABC	Lateline (RJ Debus)
ABC	Australian Women's Broadcasting Cooperative
ABC	Four Corners
ABC	Monday Conference
ABC	Newsvoice
ABC	Radio 2JJ
ABC	Bill Dowsett
Channel 10	Eyewitness News
Channel 10	Mike Walsh
Channel 10	Sonia Humphreys
Channel 10	Warren McStoker
Channel 10	Family Circle
Channel 7	National News
Channel 7	Eleven AM
Channel 9	News Centre Nine
Channel 9	A Current Affair
Channel 9	Mike Schildberger
Channel 9	Face the Nation
Radio 2CH	News Editor, 47 York Street, Sydney
Radio 2CH	Roger Bush, 47 York Street, Sydney
Radio 2UE	News Editor, 237 Miller Street, North Sydney News Editor
Radio 2UE	Steve Raymond, 237 Miller Street, North Sydney
Radio 2UE	Vincent Smith, 237 Miller Street, North Sydney
Radio 2UE	Ian Parry-Okeden, 237 Miller Street, North Sydney
Radio 2UW	News Editor , 365 Kent Street, Sydney
Radio 2UW	Bill Holmes (John Laws Show), 365 Kent Street, Sydney
Radio 2UW	Mike Jeffreys, 365 Kent Street, Sydney
Radio 2SM	News Editor , 257 Clarence Street, Sydney
Radio 2SM	Bob Rogers, 257 Clarence Street, Sydney
Radio 2SM	Brian White, 257 Clarence Street, Sydney
Radio 2SM	Steve Liebmann, 257 Clarence Street, Sydney
Radio 2GB	News Editor , Cnr Sussex and Liverpool Streets, Sydney
Radio 2GB	Malcolm Elliott, Cnr Sussex and Liverpool Streets, Sydney
Radio 2GB	Cnr Sussex and Liverpool Streets, Sydney, Macquarie Broadcasting Network

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Tribunal Press Release 7 November 1976 **For Immediate Release**

P R E S S R E L E A S E **P R E S S R E L E A S E** **P R E S S R E L E A S E**

This Tribunal will be held in the Sir John Clancy Auditorium, University of New South Wales. The purpose is to educate the community about the present situation of homosexuals in our society, and to obtain proposals for action.

Between **10 am and 5 pm** on the Saturday, a panel of tribunalists will hear evidence of instances of discrimination (specific and general) from homosexual people. There will be counsel for each side in all cases presented. At **3 pm** on the Sunday, the tribunalists will hand down a report, with recommendations, based on the evidence.

TRIBUNALISTS

* Hon Jim CAIRNS, MP, former Deputy Prime Minister and Treasurer of Australia.
* Hon Margaret DAVIS, Liberal Member, Legislative Council of New South Wales.

* Mr Barry EGAN, National Secretary, Shop Distributive and Allied Employees Association; Secretary, Australian Workers Union.
* Senator Arthur GIETZELT, ALP Shadow Minister and Senator for NSW
* Ms Bridget GILLING, Vice-President, NSW Council of Social Service.

COUNSEL

* Ms Helen COONAN, B.A., LL.B., Solicitor.
* Ms Jane MATHEWS, B.A., LL.B., Barrister, Counsel assisting the Royal Commission on Human Relationships.

Facilities will be provided for the media if we are advised of needs in advance.
For further information: Peter de Waal 02 827 3063.
Mike Clohesy 02 827 3063 02 633 3099

Nation Review D-Notice 7 November 1976

The following D-Notice was forwarded to the Nation Review:

DISCRIMINATION JIM CAIRNS MARGARET DAVIS BARRY EGAN ARTHUR GIETZELT BRIDGET GILLING ARE THE TRIBUNAL ON HOMOSEXUALS AND DISCRIMINATION 10AM TO 5PM 27 NOVEMBER FINDINGS PRESENTED 3PM 28 NOVEMBER CLANCY AUDITORIUM UNI NSW CAMP NSW. Box 5074 GPO SYDNEY 2001	**DISCRIMINATION** [109] **JIM** Cairns, Margaret Davis, Barry Egan, Arthur Gietzelt, Bridget Gilling are the tribunal on homosexuals and discrimination 10 am to 5 pm, 27 november. Findings presented 3 pm 28 november, Clancy auditorium, Uni NSW, CAMP NSW.

Advertisements for Tribunal

On 10 November 1976 the following layout of an advertisement to promote the Tribunal was forwarded to:

The National Times, The Sydney Morning Herald, The Australian

[109] *Nation Review*, 'D-Notices', 12-18 November 1976, p. 94. Actual size 24mm x 43mm.

TRIBUNAL ON HOMOSEXUALS AND DISCRIMINATION [110]
An examination of the situation of homosexuals today
27-28 November. Saturday 10-5; Sunday 3.
Sir John Clancy Auditorium University of New South Wales.

Tribunalists (to hear evidence and present findings):
Dr Jim **Cairns**, MP and former Deputy Prime Minister
Hon Margaret **Davis**, Liberal Legislative Councillor
Mr Barry **Egan**, Australian Workers Union
Senator Arthur **Gietzelt**, ALP Shadow Minister
Ms Bridget **Gilling**, Vice-President Council of Social Service
Counsel assisting the Tribunal:
Ms Helen **Coonan**, solicitor
Ms Jane **Mathews**, barrister, counsel assisting Royal Commission on Human Relationships
Information and donations: CAMP NSW Box 5074 GPO Sydney
02 660 0061/02 827 3063

NSW Parliamentary debates [111]

The Hon Margaret Davis:

> I seek the indulgence of the House to make a personal explanation. Today a document was circulated in the form of an invitation to attend the Tribunal on Homosexuals and Discrimination. On that document I was shown as a member of the tribunal, together with certain other persons of various political affiliations, including some from the extreme left. May I say that I never agreed to sit with those members upon such a tribunal, and I have indicated to the organisers that I will not serve on it. I have no objection to serving on tribunals provided I am consulted as to the membership of the tribunal and I agree to serve with them.

CAMP News Bulletin 17 November 1976

Our first bulletin was a sell-out, or at any rate, a hand-out so here goes with our second attempt to bring you all the news that's fit to print.

TRIBUNAL NEWS Everything progressing smoothly. It's not too late to research additional discrimination cases, so if you have any ideas, ring Peter de Waal on 827 3063. We are expecting a few people to drift in from interstate, so if you can help out with accommodation, ring Peter or Terry Goulden on 666 6110 (work). The tribunal is free for one and all, but be warned, we will be trundling wheelbarrows down the aisles for donations.

Still Desperately Short Of Funds For The Tribunal, So Please Help.

Advertisements in Newspapers

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[110] Notes for Newspapers: Please highlight the following parts of the advertisement in descending order of prominence: 1. Tribunal on Homosexuals and Discrimination; 2. Tribunalists/Counsel; 3. Surnames of tribunalists and counsel; To be inserted during weekend 13-14 November 1976.

[111] NSW, *Parliamentary Debates*, Legislative Assembly, Forty-fifth Parliament, Second Session, p. 2651, 10 November 1976.

TRIBUNAL on HOMOSEXUALS and DISCRIMINATION [112]

An examination of the situation of homosexuals today.

27-28 November. Saturday 10-5; Sunday 3.
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Mr Barry **EGAN**, Australian Workers Union
Senator Arthur **GIETZELT**, ALP Shadow Minister
Ms Bridget **GILLING**, Vice-President Council of Social Service
COUNSEL assisting the Tribunal:
Ms Helen **COONAN**, solicitor
Ms Jane **MATHEWS**, barrister, counsel assisting Royal Commission on Human Relationships

Information and donations: CAMP NSW Box 5074 GPO Sydney (02) 660 0061/(02) 827 3063

TRIBUNAL ON HOMOSEXUALS AND DISCRIMINATION [113]

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Ms Helen Coonan, solicitor.
Ms Jane Mathews, barrister, counsel assisting Royal Commission on Human Relationships.

Information:
CAMP NSW. 33a Glebe Point Road., Glebe.
02 660 0061/02 827 3063.

TRIBUNAL ON HOMOSEXUALS AND DISCRIMINATION [114]

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November 27-28. Saturday 10-5; Sunday 3.
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Ms Bridget Gilling, Vice-President Council of Social Service.
Counsel assisting the Tribunal:
Ms Helen Coonan, solicitor.
Ms Jane Mathews, barrister, counsel assisting Royal Commission on Human Relationships.

Information:
CAMP NSW*, 33a Glebe Pt. Rd., Glebe.*
02 660 0061/02 827 3063

Nation Review Article [115]

RIGHT ON GAY PEOPLE!

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[112] *The Australian*, Saturday, 13 November 1976, p. 10. Actual size being: 75mm x 105mm.
[113] *The Sydney Morning Herald*, Saturday, 13 November, 1976, p. 10. Actual size being 70mm x 100mm.
[114] *The National Times*, 15-20 November, 1976, p. 20. Actual size being: 72mm x 100mm.
[115] *Nation Review*, 12-18 November 1976, p. 80.

Cecily Davis in Sydney

THE SYDNEY Tribunal on Homosexuals and Discrimination organised by CAMP NSW this month promises to be one of the most positive events to come out of the gay movement for some time.

All the heavies will be at the Sir John Clancy auditorium (NSW university) on saturday and sunday, 27-28 november – Jim Cairns, Margaret Davis, Barry Egan, Arthur Gietzelt and Bridget Gilling as tribunalists, with Helen Coonan and Jane Mathews as counsel. After hearing evidence, the tribunalists will be compiling reports and recommendations which will be submitted to state and federal governments with a view to the introduction of anti-discrimination legislation.

The weekend session is the brainchild of Peter de Waal, a member of the executive committee of CAMP NSW: 'I was inspired by the success of the Vietnam atrocities tribunal held in Stockholm, in which Jean-Paul Sartre and Bertrand Russell were involved … we have thought very seriously about the people we have invited to be tribunalists and counsel. We have been careful to draw people involved in important areas of life, and to balance all political sides'.

The tribunal will be examining cases of discrimination in such areas as adoption legislation, superannuation, home loans, the lesbian mother losing custody of her children, and employment. So far, de Waal has fully researched and documented 15 cases, with several others in the pipeline.

De Waal sees the tribunal as an ideal way of educating straight society via press and television coverage. The media should have a ball with the tribunal, as they do with all public homosexual flag waving events, but for once the ball will be in the gay court.

Nation Review Advertisement [116]

TRIBUNAL
ON HOMOSEXUALS
AND DISCRIMINATION

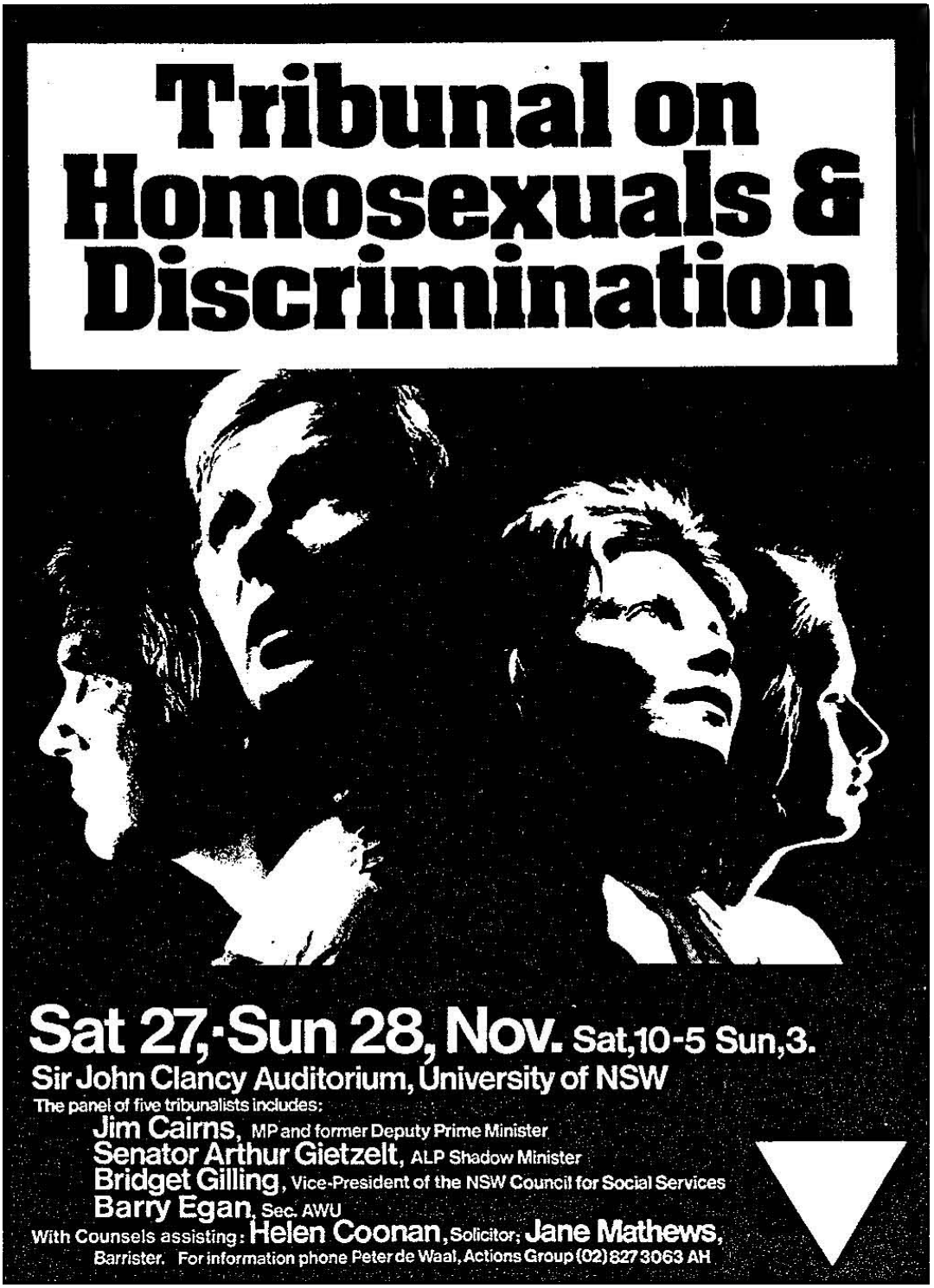
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Ms Bridget Gilling, Vice President Council of Social Service.
Counsel assisting the Tribunal:
Ms Helen Coonan, solicitor.
Ms Jane Mathews, barrister, counsel assisting Royal Commission on Human Relationships.

Information:
CAMP NSW, 33a Glebe Pt. Rd., Glebe.
02 660 0061/02 827 3063

[116] *Nation Review*, 19-25 November 1976, p. 105. Actual size being: 83mm x 100mm.

Tribunal poster [117]



[117] Five tribunalists are mentioned on the poster while only four names appear. This happened because the Hon Margaret Davis, NSW Liberal MLC withdrew at the last minute. Laurie Bebbington, Women's Department, Australian Union of Students, was informed of this change (see page 228, 320). She deleted the name but did not change the number on the poster lay-out. The actual size of the poster is 445mm x 620mm.

Poster Distribution

One poster for each organisation was distributed as follows:

Rural Bank
Annet and Denny
Dutch Church
Balmain Newsagent
State Library of NSW
In the window at 16 Terry Street Balmain
Peter Bonsall-Boone's car
NSW Council of Social Service
Council of Civil Liberties
Humanist Society
Royal Commission on Human Relationships
A Self Help Organisation and Groups (ASHOG)
Leichhardt Women's Health Centre
Liverpool Women's Health Centre
Aboriginal Medical Service
Elsie
Inner City Regional Council for Social Development
Outer Western Regional Council for Social Development
Marrickville C.I.S.
Matraville Health Centre
Nic Nac
Redfern House (Community Health Centre)
S.S.W.C.
Wayside Chapel
Womens House
Seahorse Club
Glebe Community Care Centre
Everywoman Press
Neighbourhood Information and Development Project
Delvena Women's Shelter
Citizens Commission on Human Rights
Media: Forum, Pol, Cleo, Bulletin
One each to the four tribunalists
One each to counsel assisting
Two to the National Library
Two to the Tribunal File

A further 91 posters were distributed by inclusion in the 21 November 1976 (see page 295) press release. The same distribution list was used as for the 7 November 1976 news release.

The remainder of the posters were pasted-up on 21 November 1976 around the city and suburbs.

Tribunal Collective News Release 21 November 1976

N e w s R e l e a s e For Immediate Release **N e w s R e l e a s e**

Coinciding with the introduction into the NSW Parliament this week of the Anti-Discrimination Bill is the Tribunal on Homosexuals and discrimination.

CAMP NSW today expressed its delight at the inclusion of homosexuals in the Bill. It congratulated the Premier, Mr Wran, on putting New South Wales a step ahead of most other parts of the world in this regard.

The **Tribunal on Homosexuals and Discrimination**, CAMP said, will demonstrate clearly the need for the Anti-Discrimination Bill. By bringing into the open the many types of discrimination suffered by homosexuals, the Tribunal will attempt to influence community attitudes.

Those against whom **allegations of discrimination** will be made include:
Qantas Airways Ltd, Sydney City Council, NSW Department of Education, and a Queensland College of Advanced Education. The policy of the Department of Defence on homosexuals is to be presented as evidence of discrimination, as are various Acts of Parliament. Two other of the nearly forty cases to be presented concern prisoners currently held in NSW prisons.

The Tribunalists will hear the evidence between **10am and 5pm** on Saturday. At **3pm** on Sunday they will hand down a report with recommendations for further action. The media and public are invited to be present on **both days**. **A Press Conference** will be held with the Tribunalists in the Sir John Clancy Auditorium following the presentation of the report.

Facilities will be provided for the media on both days if required.

Further information: Peter de Waal 02 827 3063
Mike Clohesy 02 827 3063 02 633 3099
(if unanswered Sunday evening try 02 660 0080)

The Tribunalists are:
Dr Jim Cairns, MP and former Deputy Prime Minister of Australia.
Mr Barry Egan, Shop Distributive and Allied Employees Association; Australian Workers Union.
Senator Arthur Gietzelt, ALP Shadow Minister and Senator for New South Wales.
Ms Bridget Gilling, Vice-President NSW Council of Social Service.
Counsel assisting the Tribunal (to take opposing sides) are:
Ms Helen Coonan, Solicitor.
Ms Jane Mathews, Barrister; counsel assisting the Royal Commission on Human Relationships.

The Hon Margaret Davis, MLC has withdrawn from the Tribunal (see page 291).

Tribunal Coverage [118]

Newsmakers – This Week
A tribunal on homosexuals and discrimination will be held at the University of NSW on Saturday and Sunday. Tribunalists include **DR JIM CAIRNS**, **BARRY EGAN**, secretary of the Australian Workers Union and **Senator ARTHUR GIETZELT**.

Direct Action [119]

Socialist Calendar
Nov 27-28, Sat 10-5, Sun 3 pm **Tribunal on Homosexuals and Discrimination**. Sir John Clancy Auditorium, University of New South Wales.

News Weekly [120]

CAMP Tribunal

MR Barry Egan, who already wears two hats, as the National secretary of the Shop Distributive Association, and NSW secretary of the Australian Workers Union, is nothing if not versatile.

During the Whitlam administration, he served on the National Advisory Committee for International Women's Year – a position not unconnected with the fact that the SDA has a large female membership.

Later this month, Mr Egan appears in a different role.

He is one of six tribunalists to hear evidence of discrimination from homosexual people.

The tribunal, organised by CAMP (Campaign Against Moral Persecution), is to be held in Sydney on November 27 and 28.

The tribunalists include Dr Jim Cairns, Senator Arthur Gietzelt, Ms Bridget Gilling, former president

[118] *The Australian*, Monday, November 22 1976, p. 2. Actual size being: 25mm x 42mm.
[119] *Direct Action*, November 25 1976, p. 11. Actual size being: 83mm x 10mm.
[120] *News Weekly*, November 24 1976, p. 3. Actual size being: 97mm x 80mm.

of the NSW Humanist Society, and the Hon Margaret Davis, a Liberal MLC from New South Wales.

What relationship Mr Egan's tribunal appearance has to his union activities is not clear.

Tribunal Advertisement [121]

TRIBUNAL
ON HOMOSEXUALS
AND DISCRIMINATION
An examination of the situation of homosexuals today.
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Tribunalists (to hear evidence and present findings):

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Senator Arthur Gietzelt, ALP Shadow Minister.
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Counsel assisting the Tribunal:
Ms Helen Coonan, solicitor.
Ms Jane Mathews, barrister, counsel assisting Royal Commission on Human Relationships.

Information:
CAMP NSW, 33a Glebe Pt. Rd., Glebe.
02 660 0061/02 827 3063.

Sydney Morning Herald [122]

Is it a private sin?

Churches and Churchmen by Alan Gill

The case of teacher, Mr Mike Clohesy, and similar incidents will be raised in a Tribunal, entitled Homosexuals and Discrimination, to be held tomorrow and Sunday at the University of NSW.

The three Tribunalists will be Dr Jim Cairns, the former Deputy Prime Minister; The Hon Margaret Davis, a Liberal MLC; and Mr Barry Egan, secretary of the Shop Distributive and Allied Employees Association and secretary of the Australian Workers' Union.

Miss Jane Mathews, a barrister who served as counsel assisting the Royal Commission on Human Relationships, will be one of two counsel assisting the Tribunal.

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[121] *The Sydney Morning Herald*, Monday, 22 November 1976, p. 12. Actual size being: 70mm x 100mm.
[122] *The Sydney Morning Herald*, Friday 26 November 1976, p. 12. This is part of a larger article. The relevant secion measure: 28mm x 58mm.

Tribunal Program (Printed on double sided pink A4, 210mm x 297mm paper)

SUNDAY 28 NOVEMBER

3 pm: Tribunalists hand down their report.

* * * *

As a self-help group, CAMP's finances come solely from donations. We would be grateful for any help that you are able to give us with the expenses of the Tribunal. A donation box is located in the foyer.

To assist with the expenses of the Tribunal, A DANCE is to be held Saturday evening (27th) at Glebe Town Hall, commencing 8 pm. **All are welcome**.

* * * *

So that we can advise you when the Tribunal proceedings are published, and to obtain some evaluation of our advertising efforts, we would appreciate your completing the name register in the foyer.

* * * *

We extend our thanks to those who have assisted with the Tribunal to date:
Women's Department, Australian Union of Students
Patch's Restaurant
CAMP Queensland
Clover Women's Club
Two Townsville women
David Conolly
Melbourne Gay Teachers' Group
Club 19 Canberra
Males Against Sexism (Melbourne)
Margaret Flynn
Society of Friends

* * * * *

We thank you sincerely for supporting the Tribunal by your attendance.

CAMP NSW Box 5074 GPO SYDNEY 2001 02 660 601

WELCOME TO
THE FIRST EVER

Tribunal on Homosexuals and Discrimination

TRIBUNALISTS

Hon. Jim Cairns, M.P.	former Deputy Prime Minister.
Mr. Barry Egan,	National Secretary, Shop Distributive and Allied Employees Association; Secretary, Australian Workers Union.
Senator Arthur Gietzelt,	A.L.P. Shadow Minister; Senator for New South Wales.
Ms Bridget Gilling,	Vice-President, N.S.W. Council of Social Service.

COUNSEL

Ms Helen Coonan,	lawyer.
Ms Jane Mathews,	lawyer.

Sir John Clancy Auditorium
University of New South Wales
27 - 28 November 1976

TRIBUNAL TIMETABLE

SATURDAY 27 NOVEMBER

SESSION ONE 10 am - 11.20 am
WELCOME
* HOMOSEXUALS AND RELIGIOUS GROUPS
Sacking of Peter Bonsall-Boone
Festival of Light publication
Church of England Report on Homosexuality
+ Advertisement in Manly Daily
HOMOSEXUALS AND GOVERNMENT
* Policy of Department of Defence
+ Sacking of Helen Pasley by Department of Defence
* Crimes Act, New South Wales
* Summary Offences Act, New South Wales
+ Victoria, threat to Public Servant
+ N.S.W. Health Commission, article on homosexuals and V.D.

MORNING TEA 11.20 am - 11.40 am

SESSION TWO 11.40 am - 1 pm
+ MISCELLANEOUS CASES
Refusal to print lesbian issue of Refractory Girl
Comments by Professor Leonie Kramer
Interview of homosexual by PMG (now Australia Post)
Sacking of Helen Pasley by Red Cross
Actions of Council of City of Sydney
Actions of Public Transport Commission
* HOMOSEXUAL FAMILIES
Qantas Airways
Australian Public Service Act and Regulations
New South Wales Public Service Act and Regulations
Australia, Income Tax Assessment Act (inc. Medibank)
Australia, Superannuation Act
New South Wales, Superannuation Act
New South Wales, Stamp Duties Act
+ MISCELLANEOUS CASES
Boat hiring firm
N.S.W. Police Department
Martin Place Cenotaph
Goulburn homosexual group
Rape of lesbian
Sacking of policewoman, Western Australia
Mother's reaction
Grandmother's reaction
LUNCH 1 pm - 2 pm

SESSION THREE 2 pm - 3.20 pm
+ MISCELLANEOUS CASES
Sacking of Tasmanian homosexual activist
Treatment of lesbians by hotel
HOMOSEXUALS IN EDUCATION
* Sacking of Michael Clohesy
* Personal Development programme, N.S.W.
* Pamela Stein, Teacher
+ South Australia, Education Department circular
* Kelvin Grove CAE (Queensland)
AFTERNOON TEA 3.20 pm - 3.40 pm

SESSION FOUR 3.40 pm - 5 pm
* HOMOSEXUALS AND CHILDREN
N.S.W. Adoption Law Review Committee
N.S.W. Adoption of Children Act
S.A., Custody to lesbian mother
Victoria, Custody to homosexual father
+ Treatment of lesbians in Tasmanian town
HOMOSEXUALS IN PRISON
+ Male prisoner, New South Wales
* Sandra Willson, female prisoner, New South Wales
+ Personal statement by male homosexual

*** to be cross-examined**
+ to be read

Correction [123]

Corrections	
Mrs Margaret Davis, MLC, will not be participating in the tribunal on homosexual and discrimination at the University of NSW today and tomorrow, as reported in the Herald yesterday. She said yesterday that she had notified her withdrawal on November 10.	The annual Queen Street Fair at Woollahra is being held today. A report published yesterday said in error that the fair was to be held yesterday.

[123] *The Sydney Morning Herald*, Saturday 27 November 1976, p. 2. The actual size being: 39mm x 43mm.

10.2 Post Tribunal Publicity

The Age [124]

End sexual bias by education: inquiry

SYDNEY. – Psychiatrists and other doctors should be educated to remove their sexual bias, according to the findings of an inquiry into discrimination against homosexuals.

Dr Jim Cairns, former Deputy Prime Minister, handed down the findings at the University of New South Wales yesterday.

"A broad educational programme should be encouraged for doctors, psychiatrists and all who make decisions about others so that all sexual bias is eliminated, he said.

State authorities should take action against the persecution of homosexuals in jails and other institutions.

Legislation should be enacted to remove all forms of discrimination against homosexuals.

Amendments should be made to existing acts and regulations to eliminate all forms of sexual bias."

The inquiry was made by Dr Cairns with the secretary of the Australian Workers' Union, Barry Egan, New South Wales Labor senator, Arthur Gietzelt and vice-president of the NSW Council of Social Service, Bridget Gilling.

Tribunal Collective Press Release

The 29 November 1976 press release (see page 302) was forwarded to the following homosexual groups:

Australia
- Outreach MCC
- Patchwork Newsletter
- Purple Press
- Society Five Newsletter
- Acceptance Newsletter
- CAMP Qld Newsletter
- CAMP WA
- Speaking Volumes
- Campaign Newspaper

USA and Canada
- Advocate
- The Body Politic
- Gay Sunshine
- Haworth Press
- Homosexual Information Service
- Info Data Bank
- The Lesbian Tide
- National Gay Task Force

New Zealand
- CHE (Christchurch)
- GLF (Christchurch)
- GLF (Wellington)
- Gay News
- Circle (Wellington)
- Circle (Christchurch)
- History Press

United Kingdom and Europe
- Gay News Germany
- Gay International Right
- Flikkerfront (the Netherlands)
- De Rooie Flikkers (the Netherlands)
- COC (the Netherlands)
- Gay News (England)
- CHE Newsletter
- CHE Youth News
- GGASLITE
- SMG News (Scotland)
- Spare Rib

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[124] *The Age*, (Melbourne) 29 November 1976. Actual size being: 83mm x 86mm.

29 November 1976 **P R E S S R E L E A S E – For Immediate Release to All Gay Media.**

The first ever Tribunal on Homosexuals and Discrimination was held in Sydney, Australia on the 27 and 28 November 1976.

The Tribunal was the brainchild of Peter de Waal and was convened by the Actions Group of CAMP NSW. Peter's reasons for holding a tribunal were: 'Having attended a number of Homosexual conferences and seminars I always went away with the feeling that very little active education of 'straight society' about our discrimination and oppression had taken place. That negative feeling of not having 'done' anything, became suddenly very positive in my mind. I was also inspired by the involvement of Jean-Paul SARTRE, whom I admire, in the Vietnam atrocities tribunal held in Stockholm. This made me aware of the value of holding our own tribunal. By doing that we could draw attention to the discrimination and oppression suffered by homosexual people'.

The Tribunal consisted of four well known public figures:

The Hon Dr Jim CAIRNS, Member of the Australian Parliament and Former DEPUTY PRIME MINISTER of Australia.

Senator Arthur GIETZELT, Senator for New South Wales and Shadow Minister of the Australian Labor Party.

Ms Bridget GILLING, Vice-President of the New South Wales Council of Social Service.

Mr Barry EGAN, National Secretary of the Shop Distributive and Allied Employees Assoc.; Secretary of the Australian Workers Union.

Counsel assisting the Tribunal (taking opposing sides) were:

Ms Helen COONAN, Solicitor and feminist activist.

Ms Jane MATHEWS, Barrister and counsel assisting the Royal Commission on Human Relationships.

On the first day of the Tribunal 44 documented cases of discrimination were submitted. Where the cases were not presented personally or were anonymous (to preclude victimisation) they were accompanied by a signed statutory declaration attesting to their authenticity. Many cases were accompanied by statements in reply by the alleged discriminators.

The enclosed programme will give you the list of cases presented (see: **Tribunal Program**, page 295).

The second day was spent by the Tribunalists in drawing up a statement of findings which was made public at the afternoon session. A copy of the findings is enclosed.

The Tribunalists called particular attention to the case of Sandra Willson (currently in a NSW prison) and called on the NSW Government to release her immediately. Enclosed is a copy of the statement made to the Tribunal on her behalf. We hope that you will be able to bring this case to the notice of your readers and support our efforts to secure her release. Please write to the Hon Neville Wran, Premier of NSW, State Office Block, Macquarie Street, SYDNEY NSW 2000 AUSTRALIA or to the Agent-General of NSW in London or the NSW Government Commissioner in New York or to any Australian Embassy or High Commission.

The Tribunalist's recommendation for ongoing inquiries will be taken up by CAMP NSW and we hope to present further public forums of a similar nature.

The proceedings of the Tribunal will be printed and you will advised the details of this when they are available.

For further information write to: CAMP NSW
GPO BOX 5074
SYDNEY NSW 2001
AUSTRALIA

or telephone Peter de WAAL/Mike CLOHESY on (International) 61 2 827-3063
(National) 02 827-3063

Terry GOULDEN/John GREENWAY on (International) 61 2 587-8524
(National) 02 587-8524

Article in Aequus – Christchurch

AEQUUS, Gay Liberation Front, Vol. 3 No. 10., December 1976,
PO Box 1717, Christchurch,

Sydney – Australia

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Senator Arthur GIETZELT, Senator for New South Wales and Shadow Minister of the Australian Labor Party.

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alleged discriminators.

The enclosed programme (see: 'Tribunal Program', page 295) will give you a list of cases presented.

The second day was spent by the Tribunalists in drawing up a statement of findings (see 'Tribunal Findings', page 268) which was made public at the afternoon session. A copy of these findings is enclosed.

Article in Sydney's Red and Lavender

Red and Lavender, Newsletter of the Socialist Lesbian/Male Homosexuals,
No.2. January 1, 1977.

Tribunal on Homosexuals and Discrimination

By any liberal's standards, the CAMP's Tribunal on Homosexuals and Discrimination (November 27-28, 1976) was a success. Since Sydney Gay Liberation has withered to virtually nothing, the CAMP has replaced it as the main gay liberation group in Sydney. CAMP = gay liberation? Yes, the radical rhetoric that was once the characteristic of Gay Liberation, of militant liberalism with a dash of radical feminism, is now put more vocally by the CAMP. Most of the submissions were full of moral indignation and plea (sic) for equality that marked Gay Liberation in the good old days.

And just as Gay Liberation's message was well received by the student and young petit-bourgeoisie, so the CAMP's message to the liberal bourgeoisie (as represented by the four tribunalists) was well received. The report of the four was couched in liberal principles and advocated liberal solutions. All of which socialists support, let's remember 'Manifesto of the Socialist Homosexuals'. Indeed one of the recommendations was to eliminate sexuality from laws so that only violence and undue influence remain offences, a position more advanced than most social democrats or even homosexual law reformers.

But from a socialist viewpoint, the Tribunal had a number of weaknesses.

a. Its very assumption was that by attracting media attention people would be exposed to our ideas and lose their prejudice once they realised how oppressed we are. Apart from depending on the generosity of the media (and on this particular instance the devaluation of the $ occurred on the Sunday, becoming **the** news item of the week – the crisis of capitalism strikes again!), this assumes that social change occurs through moral outrage from the oppressed and a moral reawakening of the oppressor. It was a plea for tolerance.

b. The composition of the panel reflected the political perspective of the liberal, native bourgeoisie (Cairns, Gilling) and the aristocracy of labor (Egan, Gietzelt); the dominant conservative fraction (sic) was not represented. Strategic conceptions based on appealing to the liberal bourgeoisie can easily end up as an extra-parliamentary tail of the reformist Labor Party. So the Tribunal was noticeably not a venture to forge alliances with the working class for homosexual liberation.

c. There was no opportunity for audience participation. Albeit there were few homosexuals in the large auditorium, but none of us had the chance to question the witnesses or (heaven forbid) the panellists. Everything was structured in advance, down to the green tablecloths and tribunalists' name plates, for the benefit of the media. 'Social change' through respectable community leaders not mass action and grass-roots struggle.

Craig (Johnson)

Article in Scottish SMG News

SMG News, Monthly from the Scottish Minorities Group, January 1977.

A QUESTION FOR US Some people at the AGM felt that, Sandra Willson's lesbianism being apparently incidental to her case, it was inappropriate for SMG officially to express support. Others felt that her being a lesbian gave the case sufficient gay 'connotations'. Others again declared that SMG should support her on the grounds of sheer humanity.

As it turns out, her lesbianism is far from incidental to her case. But that does not dispose of an issue of principle involved, namely, whether SMG should give its support to causes which do not, at least in a plainly discernible way, fall within the compass of SMG's own goal of promoting the rights and welfare of homosexuals. Should SMG be ready to take an official line on, say, racism, devolution, or the overthrow of capitalism? Or should it stand aside from attempts to connect up radical causes into a single chorus of protest? A lot of people will probably incline to the following view: that the community of interest SMG has with other radical causes is a matter of degree, varying from case to case, and that the support it gives should vary accordingly. There is, for example, likely to be a much bigger overlap of gaols between SMG and women's liberation than between SMG and vegetarianism (or are gay liberation and animal liberation indissolubly linked?) Even so, hard cases will remain. Try, for instance, working out how far gay liberation and the movement for abortion on demand encompass, or ought to encompass, each other's goals.

A MODEL FOR US **SMG News** has taken its account of Sandra Willson's case from evidence presented to a Tribunal on Homosexuals and Discrimination, staged in Sydney, Australia, at the end of November. The Tribunal, modelled on the Vietnam war crimes tribunal staged in Stockholm some years ago with the support of Bertrand Russell and Jean-Paul Sartre – was devised by the New South Wales branch of CAMP (Australian equivalent of SMG) as a new way of bringing before the public the oppression suffered by homosexuals. The Tribunal was composed of four well-known public figures, including a former deputy prime minister of Australia, and considered 44 documented cases of alleged discrimination. It is a challenging thought to envisage such a Tribunal transplanted to Scotland. Who are the public figures here who might be prepared to participate?

Article in Humanist Society's Viewpoints

Viewpoints, New South Wales Humanist Society, Vol. 15, No. 1, January 1977.

Tribunal on Homosexuals and Discrimination

The inquiry by the Tribunal on Homosexuals and Discrimination took place in Sydney on November 27 and 28, 1976. At this stage the Tribunal desires to make known its findings and a report on those findings.

The tribunal emphasises that the subject of homosexuals and discrimination is an important, complex and difficult one; and that this inquiry may have to be followed up by further investigation and the calling of further evidence.

'The Tribunal Recommends' (For complete details see page 271)

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11. Tribunal Finances

Estimated tribunal costs

May 1976 Estimated Tribunal Expenditure [125]

Stationery	$200.00
Postage: Before Tribunal (includes invitations)	300.00
Postage: After Tribunal (reports)	300.00
Printing Before Tribunal [126]	100.00
Fares (one tribunalist from Hobart) [127]	160.00
Catering	100.00
Recording Equipment (including cost of cassette tapes)	100.00
Advertising	500.00
Posters	60.00
Handbills	60.00
Total	**1,880.00**

Donations received

Patches Restaurant	$50.00	From various people:		
CAMP QLD	50.00	• advertising	24.80	
Clover Women's Club	50.00	• postage	31.09	
Two Townsville Women	10.00	• estimated value for tribunal post lay-out	40.00	
Cecily Davis	10.00			95.89
Mick Sullivan	20.00	Society Five (Melbourne)		10.00
David Conolly	20.00	Lay-out for the Tribunal poster		40.00
Melbourne Gay Teachers' Group	22.00	Goulburn CAE Student Union		10.00
Club 19, Canberra	20.00	AUS – Women's Department:		
Males Against Sexism (Melbourne)	20.00	• supply and printing of 1500 tribunal invitations;		
Anonymous – three separate ones totaling	11.00	• posting of 800 invitations on 5 November 1976;		
Margaret Flynn	10.00	• supply and printing of 500 posters		
Ian Hawkins (Melbourne)	5.00			**453.89**
Society of Friends (Sydney)	20.00			
Dennis Altman	20.00			

Letters to gain financial support for the tribunal

Dear … …,

This Tribunal will be held in the Sir John Clancy Auditorium at the University of New South Wales. The purpose is to educate the community about the present situation of homosexuals in our society, and to obtain proposals for action.

A panel of Tribunalists will hear evidence of instances of discrimination (specific and general) from homosexual people on the Saturday. There will be counsel for each side in all cases presented. On the Sunday

[125] See page 331, for further information regarding Tribunal costs.

[126] The form in which the report of the proceedings will be printed is as yet undecided hence we have excluded this significant cost.

[127] The tribunal organisers had strong hopes that Michael Tate, (see page 276) who at the time was a member of the Catholic Commission for Justice and Peace and constitutional lecturer at the University of Tasmania and later became ALP Senator for Tasmania and now is the Australian Ambassador to the Netherlands and Holy See, would be a tribunalist.

the Tribunalists will hand down a report, with recommendations, based on the evidence.

So far Dr Jim Cairns MP (former Deputy Prime Minister of Australia), Senator Arthur Gietzelt (ALP Shadow Minister), and Ms Bridget Gilling (prominent Social Worker and Vice-President of NSW Council of Social Service) have agreed to act as Tribunalists. We are awaiting replies from other distinguished people from other areas of the community.

Ms Jane Mathews, counsel assisting the Royal Commission on Human Relationships and Ms Helen Coonan, feminist solicitor and activist have agreed to act as counsel at the Tribunal.

Attached is an outline of the expenditure we estimate for the Tribunal. We are approaching your organisation to request a contribution however small or large, towards the costs. We hope you will be able to assist this educational and necessary forum.

Section below added to letters to homosexual groups and businesses to gain financial support.

We especially ask for help from homosexual groups and businesses. This forum comes at too crucial a time to allow it to flounder from want of a modest amount of money. Remember we are the only ones who can help ourselves.

OR

This forum will occur during a crucial period of legislative changes in NSW and should not be allowed to fail for want of a modest amount of money. Remember, we are the only ones who can help ourselves.

for: The Executive of
CAMP NSW
October 1976

The above form letter was forwarded to the following:

bold print denotes: financial response
italic print denotes: correspondence only

Acceptance/Canberra
Dickson ACT 2602

Acceptance/Melbourne
Carlton South VIC 3053

Acceptance/Sydney
Haymarket NSW 2000

Acceptance/West
Blacktown NSW 2148

Acceptance/Wollongong
Fairy Meadow NSW 2519

Athletic Steam Club
Bondi Junction NSW 2022

The Barrel Inn

Potts Point NSW 2011

Bath 253
Darlinghurst NSW 2010

Boomerang Social Club
Broadway NSW 2007

CAMP Northwest
Mount Isa QLD 4825

CAMP (Queensland)
Brisbane QLD 4001
($50.00)

CAMP (WA)
Perth WA 6001

Campaign Publishing Co. Pty Ltd

Brickfield Hill NSW 2000

CAMPUS CAMP
St Lucia QLD 4067

Carousel Cabaret
Kings Cross NSW 2011

Chameleons
Paddington NSW 2021

Chutzpah
Darlington NSW 2008

Cell One
Canberra City ACT 2601

Clover Womens Club
St. Leonards NSW 2065

($50.00)

Club Castello
Kings Cross NSW 2011

Club 19
Civic Square ACT 2608
($20.00)

The Club R65
Royal Exchange NSW 2000

The Company 8
Burwood North NSW 2134

Dr Duncan Bookshop
Hyde Park SA 5061

Gay Group
Macquarie University

Gay Liberation (Melbourne)
Fitzroy VIC 3065

Gay Liberation (Sydney)
Darlington NSW 2008

Gay Mens Group
Adelaide SA 5001

Gay Society
Armidale NSW 2350

Gay Womens Group
Armidale NSW 2350

Kelvin Grove Homosexuals and Lesbian Student Teachers Group
Kelvin Grove QLD 4059

Kensington Karate Club
Kensington NSW 2033

King Steam
Sydney NSW 2000

Lesbian Political Action Group
Melbourne VIC 3000

Gay Teachers and Students Group Fitzroy VIC 3065
($22.00)

Melbourne Uni Gay Society
Parkville VIC 3052

The Pastor MCC Adelaide
Westbourne Park SA 5041

The Pastor MCC Brisbane
Jindalee QLD 4074

The Pastor MCC Gold Coast
Mermaid Beach QLD 4218

The Pastor MCC Melbourne
Melbourne VIC 3001

The Pastor MCC Newcastle
Warners Bay NSW 2282

Board of Directors MCC Sydney
Paddington NSW 2021

Nanna's Coffee House
Darlinghurst NSW 2010

Patch's Night Club
33 Oxford Street
($50.00)

Patchwork
C/- Camp Club
Brisbane QLD 4000

The Polynesian Club
Sydney NSW 2001

Roo Bike Club
Rozelle NSW 2039

Society Five
Melbourne VIC 3001
($10.00)

Southern Pacific Motor Club
Rozelle NSW 2039

Traffic Light Wine Bar
Paddington NSW 2021

WAGS
Warrawong NSW 2502

The Student Representative Council Goulburn College of Advanced Education Goulburn NSW 2580 ($10.00)

The Student Representative Council
Kuring-gai College of Advanced Education
Lindfield NSW 2070

Student Representative Council
Alexander Mackie College of Advanced Education
Paddington NSW 2021

Student Representative Council
Macquarie University

Student Representative Council
Milperra College of Advanced Education
Milperra NSW 2214

Student Representative Council
Nepean College of Advanced Education
Wentworthville NSW 2145

Student Representative Council
Sydney Teachers College of Advanced Education
Sydney University

Student Representative Council
University of New South Wales
Kensington NSW 2033

Council for Civil Liberties
Glebe NSW 2037

NSW Council of Churches
Artarmon NSW 2064

Festival of Light
Sydney South NSW 2000

Humanist Society
Winston Hills NSW 2153

Privacy Committee
Sydney NSW 2000

Society of Friends
Castle Hill NSW 2154

($20.00) Amalgamated Metal Workers	Union Sydney NSW 2000	*Australian Council of Churches* *Brickfield Hill NSW 2000*

Unions contacted for financial assistance for the Tribunal

The following unions were contacted by telephone:

AMWU	Teachers Federation
FED and FA	Meat Employers
MWU	Union of Postal Clerks and Telegraphists
Seamen	Postal Technicians
Waterside Workers	Actors and Actors Equity
Firemen and Deckhands	Theatrical and Amusement
Painters and Dockers	Water Board Employees
ARU – Rail Federal Office	Sewerage Employees
AFUCE	

Tribunal letter to unions

Dear … …,

CAMP is conducting the Tribunal on homosexuals and discrimination to educate the community about the situation of homosexuals in Australia today, and to elicit some proposals for action.

From 10am to 5pm on Saturday 27th, a panel of tribunalists will hear evidence of discrimination (specific and general) from homosexual people, at the Sir John Clancy Auditorium, University of New South Wales. There will be counsel for both sides in all case presented. At 3pm Sunday 28th, the tribunalists will hand down a report, with recommendations, based on the evidence they have heard.

Dr Jim Cairns; Hon Margaret Davis, Liberal MLC; Mr Barry Egan, AWU; Senator Arthur Gietzelt; Ms Bridget Gilling are the tribunalists; Ms Helen Coonan, solicitor; Ms Jane Mathews, barrister are the counsel.

Staging this educational forum is expensive. We have obtained some help in this regard but need much more. We would very much like to have the support of the union movement in this project and so are requesting your financial assistance.

Enclosed is a statement of our estimated expenditure. The items marked with an asterisk are still outstanding. We do hope that your union will be able to give us your support. Cheques could be made payable to CAMP Lobby Ltd.

With thanks and best wishes.

Mike Clohesy
Secretary CAMP NSW
9 November 1976

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12. Tribunal Correspondence

12.1 Pre Tribunal Correspondence

Immigration

Background

London 3 September 1975

Secretary CAMP
33a Glebe Point Road Glebe

I am writing to request your assistance or any advice you could give, in a situation that is causing me great anxiety.

I shall try to briefly detail the problem: I am an Australian National and have been over here in London since ‘72 on a working holiday. About one and half years ago I met John (Cummaskey) and we have since shared a pair-bond relationship, which we are determined should continue. John is English, 25 years old, and had completed 2 and half years of a three year nursing course, but in the last four years has been employed in clerical work and as section manager in a Supermarket.

I am now anxious to return home and of course wish to have John accompany me.

In June this year I completed sponsorship forms for unassisted immigration for John and had my brother make out a guarantee of accommodation on John’s behalf and had them forwarded to the Dept. of Labor and Immigration in Spring Street, Melbourne. Last week I received a letter of refusal from the Dept., which stated that they currently only allow people in certain work categories or certain other cases where very strong compassionate grounds existed.

This situation is worrying us both desperately, as it would seem that if we fail to make some arrangements very soon, we will be permanently separated by the respective authorities; whilst this situation will not apply to a hetro-sexual couple.

Aubrey Koelmeyer

CAMP NSW Letter to Peter Wilenski, Secretary Department of Labor and Immigration, 21 September 1975

I write seeking your intervention on behalf of the Englishman mentioned in the enclosed letter. We have discovered, by telegraph, that his name is John **Cummaskey** and that he was born on 30 September 1950.

The case obviously fits in the very strong compassionate circumstances category of current immigration intake policy, but they have been, as the letter shows, very reluctant to spell this out. We hope that this case and the others we have referred to you will lead to a broadening of departmental policy to include the partners of alternative (to the nuclear family) families.

We thank you for your time and interest and look forward to the news that the couple involved will be able to continue their relationship.

Department of Immigration letter, from Peter Wilenski, 15 October 1975

Thank you very much for your letter of 21 September 1975. I have received the case of Mr Cummaskey and, without commenting on the general questions that you have raised, have decided that subject to the usual checks carried out on all migrants, his entry into Australia will be approved.

CAMP NSW Letter to prospective immigrant John Cummaskey and partner Aubrey Koelmeyer, 23 October 1975

Isn't it wonderful news from the Secretary of the Immigration Department? We are very glad to have had a hand in continuing your happiness together. Our success in this venture shows the advantage of political activity, since it is through that we have made contact and established the good faith of the Secretary of the Department.

We hope that things go smoothly from now on and that you are soon here in Australia. The address above is actually CAMPs address. I have given you my personal address before for speed of communication. We will be anxious to hear from you when you arrive.

Bon voyage.

Letter from CAMP NSW to Aubrey Koelmeyer and John Cummaskey, 23 December 1975

Delighted to hear that you've made it to Australia safe and sound.

Unfortunately, with the decision which the greed and self-interest of middle Australians led them to make on 13 December, things won't be as smooth as we'd hoped. The Secretary of the Immigration Department, with whom we had established contact and were dealing, has been unceremoniously dumped from his position by the conservative government. So, the thing to do now is to make the application for permanent residency in the usual manner. It may well be that there will be no difficulty, particularly since we've managed to get John into the country. If, however, there is any trouble, get in touch with us immediately, and we will see what political pots we can stir: there are still a couple left!

Hoping very much that things work out all right.

Tribunal Collective letter to Aubrey Koelmeyer and John Cummaskey, 14 September 1976

CAMP is in the process of organising a Tribunal on Homosexuals and Discrimination, which will have a panel of five, well known figures, as Tribunalists. They will hear evidence of homosexual discrimination on Saturday 27 November 1976. On the following Sunday the Tribunal will hand down judgement, consisting of a report and recommendations, based on the evidence presented.

The New South Wales and Australian Governments are being pressed to introduce anti-discrimination legislation which will protect the rights of homosexuals. By holding the Tribunal we will be able to show the Governments that we indeed are discriminated against. Furthermore the Tribunal will have educational value in presenting discrimination to the invited politicians and other prominent people in the community.

There are two ways in which homosexuals are able to participate in the Tribunal:

a) Oral evidence before the Tribunal.

b) Written evidence which will be presented to the Tribunal before the actual sitting, but will never the less be part of their final deliberations.

In neither of the above cases is it necessary to disclose names in public. We in fact guarantee complete confidentiality.

Now at last I am coming to my question! We would be very pleased if you people could put into writing the discrimination you felt when you went through when you applied to come to Australia together. We feel this is a special instance of discrimination which should be brought to the attention of the Tribunal.

Sydney Churchman Acts Against Homosexual

Background

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.

Tribunal Collective letter to Jeremy Fisher, 14 September 1976

Many thanks for the letter which I received the other day regarding your library search.

But now another matter! CAMP is in the process of organising a Tribunal on Homosexuals and Discrimination, which will have a panel of five Tribunalists. (so far we have Jim Cairns, Senator Arthur Gietzelt and Bridget Gilling). They will hear evidence of homosexual discrimination on Saturday 27 November 1976. On the following Sunday the Tribunal will hand down judgement, consisting of a report and recommendations, based on the evidence presented.

The New South Wales and Australian Governments are being pressed to introduce anti-discrimination legislation which will protect the rights of homosexuals. By holding the Tribunal we will be able to show the Governments that we indeed are discriminated against. Furthermore the Tribunal will have educational value in presenting discrimination to the invited politicians and other prominent people in the community.

There are two ways in which homosexuals are able to participate in the Tribunal:

a) Oral evidence before the Tribunal.

b) Written evidence which will be presented to the Tribunal before the actual sitting, but will never the less be part of their final deliberations.

In neither of the above cases is it necessary to disclose names in public. We in fact guarantee complete confidentiality.

Now at last I am coming to my question! We would be very pleased if you either put in writing or appear to describe the discrimination you went through when you were dismissed from Robert Menzies College. [128] We feel this is a special instance of discrimination which should be brought to the attention of the Tribunal.

Letter from Jeremy Fisher, 19 September 1976

Thank you for your letter of 14 September concerning the Tribunal on Homosexuals and Discrimination.

I have thought deeply about the question you put to me in that letter and I am prepared to submit evidence to the Tribunal on my exclusion from Robert Menzies College. However I do require a very large degree of confidentiality. I realise that your integrity is unquestioned, and so is that of Mike Clohesy and Ron Austin, but I would like to receive strong assurance from you that it will not be possible for there to be any public knowledge of the fact that I will be submitting evidence to the Tribunal.

My present occupation makes a great deal of undetectable activity necessary, but, more than that, I do not wish to again fall victim to the types of pressures that accompanied the incident that you wish me to submit evidence upon. I realise that your letter guarantees complete confidentiality but, frankly, that is not yet enough. I would like to know a little more about the circumstances in which my evidence shall be presented and how the findings of the Tribunal will be, in time, made public.

I await your reply.

Letter to Jeremy Fisher, 24 September 1976

Thank you for your letter, and of course we understand your concern. We have worked out a way in which you could give evidence, and remain completely anonymous at the same time. The details of this are a little complex, so we wondered if you could give Ron (Austin) a ring and he will explain it. Mike, Ron and I are the only ones who know that you might be giving evidence – the only other one who need know is Peter Trebilco, a long standing member of CAMP whose services we need in order to guarantee you confidentiality. If you decide to go through with providing evidence, you need only, from here on in, deal with Ron [Austin] and Peter [Trebilco].

Many thanks for your willingness to help Jeremy.

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[128] See for example: *Sydney Morning Herald*, 19 June 1973, p.2, 'Ban on student in hostel brings reaction'; *Daily Telegraph*, 20 June 1973, p. 11, 'Building uni ban'; *Nation Review*, 22-28 June 1973, p. 1128, 'The day the sun stands still'; *National U*, 25 June 1973, p. 3, 'Union stand on expulsion of gay'; *The Australian*, 30 June 1973, p. 5, 'Student expulsion inquiry'; *The Sydney Morning Herald*, 14 July 1973, p. 6, 'Trouble at Macquarie'.

Female prisoner

Background

In 1959, when she was 20 years old, she shot a stranger dead. She was acquitted of murder on the grounds of insanity, and confined to a psychiatric hospital at the Governor's pleasure. In 1971, a panel of psychiatrists determined that she was sane, and she was transferred from Parramatta Psychiatric Hospital to jail. The average term for persons sentenced to life after conviction for murder in New South Wales is 13 years. Sandra has been confined for 17 years – longer than any woman in Australia – although she has applied for release in every year since she was judged sane. In 1971 Sandra Willson was declared sane. In 1976 Sandra Willson is still in prison. **Sandra is still in jail for two reasons**: She has survived every attempt to crush her will. She does not repent her lesbianism.

Tribunal Collective letter to Sandra Willson (through Wendy Bacon), **19 September 1976**

The other day I was listening to Sue Bellamy, who is part of a team of lecturers in my politics course at Macquarie University. She had given a very good lecture on the oppression of women, at the end she started talking about you Sandra, and you being in prison. She gave an outline of the circumstances you went through with your lover in the past. Being very much involved in organising a Tribunal on Homosexuals and Discrimination, I started to think if there would be any value in presenting your case to the Tribunal. After asking around, I was put in contact with Wendy Bacon and as a result I am writing to you.

Some background information about CAMP NSW, it has been in existence for nearly six years now. We are a homosexual rights organisation, very politically active. One of our main aims is to change societal attitudes towards homosexuals and homosexuality. Over the past few years we have been able to build-up a certain amount of respect within the community. (We are not very happy with the connotations the word respect has, but at times, in order to get people on-side, one has to rely on it.) CAMP operates a centre in Glebe which provides the homosexual community with a non-rip-off place where they can be themselves. From the centre we also operate a 'phone counseling service, which is staffed by voluntary homosexuals, on a nightly basis from 6pm to 10pm. The calls received at 'Phone a Friend' range from simple information to crisis intervention. We saw the necessity to organise a homosexual 'phone service about three years ago, it then became very clear that other existing 'phone services were not willing or able to deal with problems that homosexuals face in the community. Since the beginning of CAMP NSW we have had our own journal CAMP INK, in which we spread the news about our oppression, to society at large; it appears four times per year. Another way by which we help to keep contact with our members and the community is through the monthly newsletter.

The New South Wales Government is being pressed to introduce anti-discrimination legislation which protects the rights of homosexuals. As part of our education program, CAMP has decided to hold a Homosexuals and Discrimination Tribunal.

This will involve a panel of five Tribunalists. So far we have confirmation from three who, because of CAMP's valuable work in the past, are only too willing to participate in the bringing forward of discrimination against homosexuals. They are Jim Cairns, MP and former Deputy Prime Minister; Senator Arthur Gietzelt, ALP Shadow Minister and Bridget Gilling, Vice-President of the Council of Social Services. The Tribunal will be hearing evidence on Saturday 27 November 1976 of instances of discrimination (specific and general) from homosexual people. On Sunday the Tribunal will hand down judgement, consisting of a report and recommendations, based on the evidence presented.

The aims of the Tribunal are to bring forward cases of homosexual discrimination and through this hopefully educate politicians and prominent people in the community. By having 'important' people as Tribunalists, we feel that the media will take notice of our oppression and thereby press the Government and community to come to terms with a far too long forgotten minority.

Sandra we are hoping that the Tribunal might be of some assistance to you in the following way:

By writing a paper about your homosexual discrimination and it being presented to the Tribunal through us.

or

By you writing a paper and one of your friends presenting it orally on the day of the hearing.

Please understand that it is not our intention to prejudice your position in the future. The thought of you making a contribution was spontaneous and our only thought was that this might help you personally and the homosexual movement in general.

Letter from Australian Union of Students, Women's Officer, 11 October 1976

Laurie Bebbington, Australian Union of Students, Women's Officer wrote the following letter to the secretary of CAMP NSW:

After talking to you on the phone last Friday I examined our budget closely and I believe we could afford to print a poster for you, as well as the other assistance mentioned. Please contact me soon concerning this.

Enclosed is a cheque as part payment for publications from CAMP. Please forward it to the relevant person.

Letter to Premier of New South Wales, 23 October 1976

May we put two proposals to you, with the intention of cementing the warm relationship already established.

It would seem most appropriate that there be one of your officers to whom CAMP NSW could immediately refer, so saving much of your time, but still ensuring close liaison. This officer might be from your personal staff, rather than from your Departmental staff, as most of our communication will tend to be personal, rather than official.

The second proposal concerns the Tribunal on homosexuals and discrimination on 27-28 November 1976. We are asking that every incident of discrimination be supported by statutory declaration, but the verbal evidence, examination and questions by members of the Tribunal and counsel will not be recorded. We have arranged for audio recording, but this will be a raw record, and transcribing it presents a problem that we cannot solve from our own resources. We are seeking the services of a transcription typist, who could provide an unedited, uncorrected typescript of the verbatim record. This would provide us with the raw material from which to produce an edited version of the proceedings; this would be of considerable value to those people concerned with the Discrimination Bill and with Criminal Law Revision. Your being able to assist by providing the services of a transcription typist would be of great encouragement to us.

Tribunal Letter to Laurie Bebbington, Women's Officer, Australian Union of Students, 30 October 1976

The Tribunal Collective wrote the following letter:

Enclosed please find the layout for our invitation to the tribunal which will serve as official invitation and hand-out.

The paper size we have used is A4 and we hope that it can be reproduced on the same size because of our envelope size.

The spacing on the invitation is important because we want to fold it like to found it with the top part folded out.

We are not sure what process will be used to produce the invitation, therefore we do not know what

perhaps could be done with the top third. Perhaps some kind of border could go around it. *

If possible we would like pink paper (because of pink triangle) or "lesbians are everywhere" poster colour. If neither of these are possible than we leave it to your own taste.

We are very sorry that we had to leave you so little time, but we have had a lot of trouble getting the last woman Tribunalist.

Mike Clohesy will ring you sometime on Monday to finalise arrangements re sending the invitations to us and including them in your mailings.

The design for the poster is in progress and hopefully we will be able to forward it to you soon.

* doodled example of border enclosed.

ps many thanks for the poster offer!

Tribunal Letter to Laurie Bebbington, Women's Officer, Australian Union of Students, 9 November 1976

The Tribunal Collective wrote the following letter:

Many, many thanks for the beaut job done on the invitations.

Some where in this mess you will have found the layout for the poster, we are very excited about the look of it.

Some printing instructions are attached to the cover of the layout, our big wish is that the triangle will come out in pink if that is at all possible. Perhaps the remainder of the poster would look best in black and white, but we leave that up to you.

If you have any further problems you could give me a ring 02 827 3063 or Mike on his usual number 633 3099 (work).

The best address for sending the poster back to would perhaps be ours: 16 Terry Street, Balmain, which has the 827 3063 attached to it.

Many thanks again, and we are looking forward to the end product.

Telex to Laurie Bebbington, Women's Officer, Australian Union of Students, 10 November 1976

Terry Goulden, a Tribunal Collective member telexed the following:

Re: Discrimination Tribunal Poster

Confirming my phone call yesterday please delete any reference to Margaret Davis from poster. Mike and Peter send their love.

Letter from Premier of New South Wales, 12 November 1976

I have received your letter of 23 October 1976, in which you raise two matters for my consideration.

In the first matter you have asked if an Officer of my staff could be made available as a liaison officer between your organisation and myself. Whilst I can see your reason for such a request I do not feel that I should appoint one particular person of my staff as a liaison officer, because they are usually in and out of the office all the time and may not be available at any particular time.

On the other hand, however, either one of my Private Secretary, Mr Orton or my Assistant Private Secretary, Mr Berghofer, is usually available and they can be contacted on 20576. Please feel free to give them a ring whenever the need should arise and they will be happy to pass on any message.

You also asked if it would be possible to make available the services of a Transcription typist at a proposed Tribunal on homosexuals and discrimination on the 27 and 28 November, 1976. I do regret that it will not be possible to accede to this request, because as Public Servants there are restrictions on their employment in areas outside the Public Service.

12.2 Post Tribunal Correspondence

Tribunal letters to professional media organisations

Australian Journalists' Association
93 Clarence Street
Sydney NSW 2000

New Journalists' Association
Haymarket
NSW 2000

Press Council of Australia
44 Margaret Street
Sydney 2000

We, the Tribunal on Homosexuals and Discrimination, held an inquiry in Sydney on the 27 and 28 November 1976. We were presented with 44 cases of discrimination against homosexuals.

We enclose a copy of the findings of the Tribunal, and draw your attention to the section that covers the media in particular the recommendation:

Action should be taken to prevent the censorship of publicity about legitimate activities of homosexuals

We invite you to take action in cooperation with the Tribunal and the Executive of CAMP NSW to implement the intent of the recommendations generally and the quoted recommendation in particular.

Signed:
Jim Cairns MP
Barry Egan
Bridget Gilling
(Senator) Arthur Gietzelt

Tribunal letter to the Federal Treasurer

We, the Tribunal on Homosexuals and Discrimination, meeting on the 27 and 28 November, 1976 found that legal discrimination against homosexuals exists in the form of laws which discriminate against non-married people.

Particular instances of this form of discrimination are the Income Tax Assessment Act and the Australian Superannuation Act.

We call upon you to act urgently to repeal and amend the discriminatory sections of these Acts in

discussion with the Tribunal and the Executive of CAMP NSW.

We enclose a copy of our findings and recommendations for your information.

We await your earliest reply.

Signed:
Jim Cairns MP
Barry Egan
Senator Arthur Gietzelt
Bridget Gilling

Tribunal letters to deans of medicine

Dean, Faculty of Medicine, University of New South Wales, Kensington NSW 2033

Dean, Faculty of Medicine, University of Newcastle, Shortland NSW 2308

Dean, Faculty of Medicine, University of Sydney 2006

We, the Tribunal on Homosexuals and Discrimination, convened in Sydney on 27 and 28 November 1976, and heard 44 cases of evidence of discrimination.

In our findings, we determined that social discrimination occurs through the action of authorities such as the medical profession.

Our recommendations include the following:

That there be a significant increase in community knowledge and therefore understanding, of sexuality and especially of homosexuality and change in community opinion and action.

That there should be a broadening of the education of doctors, especially psychiatrists, psychologists and all other who exercise authority or make decisions about the lives of others, so that the existing sexual bias is eliminated.

That practitioners of alternative life-styles should be brought to the teaching of courses in personal development and in all other relevant areas.

A copy of the complete report and findings is enclosed, and we urge you to take up contact with the Tribunal and the executive of CAMP NSW in order to discuss the implementation of the intent of the recommendations generally, and the quoted recommendations in particular.

We await your earliest reply.

Signed:
Jim Cairns MP
Barry Egan
Bridget Gilling
(Senator) Arthur Gietzelt

Tribunal letter to Health Commission of NSW

Director
Division of Health Education, Health Commission of NSW
Box 4235 GPO
Sydney NSW 2001

We, the Tribunal on Homosexuals and Discrimination, held an inquiry in Sydney on 27-28 November

1976. We were presented with, and conducted cross-examination on, 44 cases of alleged discrimination against homosexuals.

We would draw your attention to those recommendations of the Tribunal which concern education, viz.:

That there should be an examination of existing material on sexuality and personal development being used in educational establishments. This material should not merely be confined to contemporary human and sexual relations but should examine the many and varied forms of human and sexual relations and their consequences. All references with a sex/sexuality bias should be eliminated.

That practitioners of alternative life-styles should be brought to the teaching of courses in personal development and in all other relevant areas.

We call upon you to act in accordance with these recommendations in discussion with the Tribunal and the executive of CAMP NSW.

While we draw your particular attention to the above matters, we enclose a copy of the full report of the Tribunal for your information.

Signed:
Jim Cairns MP
Barry Egan
Bridget Gilling
(Senator) Arthur Gietzelt

Tribunal letter to Bob Ellicott, Federal Attorney General

In the evidence presented to us on the 27 November 1976, and our deliberations which took place the following day we found that:

Legal discrimination is in the form of laws against homosexual as such.

We further found that:

The Tribunal sees the pursuit of maximum individual freedom of belief, expression, action and life-style consistent with the freedom of others to be an intrinsically desirable goal.

At the Tribunal hearing we also recommended:

The enactment of a Human Rights Bill at the Federal and State Level which would include the elimination of all forms of discrimination on grounds of sexual orientation.

We urge you to act upon the above findings and recommendations in conjunction with the Tribunal and the executive of CAMP NSW.

We await your earliest reply.

Signed:
Jim Cairns MP
Barry Egan
(Senator) Arthur Gietzelt
Bridget Gilling

Tribunal letter to the Director, NSW Institute of Psychiatry

We, the Tribunal on Homosexuals and Discrimination, convened on the 27 and 28 November 1976, and

heard 44 cases of discrimination. In our findings we determined that social discrimination occurs through the action of authorities such as the medical profession. We found that those who discriminate rely on public opinion, which in turn relies on doctors, psychologists and psychiatrists. It is therefore important that such persons are fully informed.

We enclose a copy of the findings and draw your particular attention to the recommendations. Relevant sections read:

1) That there be a significant increase in community knowledge and therefore understanding, of sexuality and especially homosexuality and change in community opinion and action.

2) That there should be a broadening of the education of doctors, especially psychiatrists, psychologists and all others who exercise authority or make decisions about the lives of others, so that the existing sexual bias be eliminated.

3) Practitioners of alternative life-styles should be brought to the teaching of courses in personal development and in all other relevant areas.

We invite you to take up contact with the Tribunal and the executive of CAMP NSW in order to discuss the implementation of the intent of the recommendations generally and the quoted recommendations in particular.

Signed:
Jim Cairns MP
Barry Egan
(Senator) Arthur Gietzelt
Bridget Gilling

Tribunal letter to Rex Jackson, NSW Minister for Youth and Community Services

We, the Tribunal on Homosexuals and Discrimination, convened in Sydney on 27 and 28 November 1976, of the 44 cases presented, a number related to discrimination in jails and institutions.

We enclose a copy of the findings of the Tribunal and specifically draw your attention to the recommendations. The last one in particular reads:

State authorities should take action to prevent discrimination against persecution of homosexuals in jails and in other institutions.

We invite you to take up action in conjunction with the Tribunal and the Executive of CAMP NSW, to implement the intent of the recommendations generally, and the quoted recommendations in particular.

We await your earliest reply.

Signed:
Jim Cairns MP
Barry Egan
(Senator) Arthur Gietzelt
Bridget Gilling

Tribunal letter to Malcolm Fraser, Prime Minister

We enclose a copy of the full report of the Tribunal for your information and action.

The Tribunal held its inquiry in Sydney on 27 and 28 November 1976. It heard 44 cases of alleged discrimination.

Signed:
Jim Cairns MP
Barry Egan
Bridget Gilling
Arthur Gietzelt

being the Tribunal on Homosexuals and Discrimination

Tribunal letters to the Federal and NSW Ministers for Education

We, the Tribunal on Homosexuals and Discrimination, held an inquiry in Sydney on 27 and 28 November 1976. We were presented with, and conducted cross-examination on, 44 cases of alleged discrimination against homosexuals.

We draw your attention to the section of the report on our findings which concerns education, viz.:

It may be claimed that people have the right to discriminate against homosexuals or other people like women, blacks, atheists or communists. In the case of teachers, the Tribunal was able to examine the matter. Parents and others claim they have a right to refuse to have their children taught by a homosexual person, even though they readily accepted a heterosexual teacher, although such a teacher may not necessarily be a good teacher. They appear to do so because they believe that their children would be seduced by a homosexual or taught to be homosexual. There is no evidence that homosexuals are more likely to seduce or mis-teach a student than is a heterosexual – indeed, probably much less likely.

Evidence was given that the same standards and law should apply to homosexuals as to heterosexuals. Firstly for example, are they good teachers or not? Evidence was given that homosexuals are no more or less likely to be good teachers than are heterosexuals. They may be more conscientious than the average; more likely to be understanding and sympathetic to individual needs and the problems of others, and more conscious of the needs and problems than the average person. It was also put to the Tribunal that children should be educated so that they can better understand sexuality and life-styles different from their own. It was put to the Tribunal that this equips individuals far better to choose and to protect themselves against seduction and undue influences of so many other kinds which are exerted upon them.

The Tribunal accepts this view. It recognises however, that in contemporary society, children as well as adults are unable to obtain an adequate knowledge of sexuality and of ways of living different from their own, and so are vulnerable to undue influences of many kinds. It is difficult to deny therefore, that some protection is justified. In the case of homosexuality, it is reasonable to apply the same laws and standards to homosexuals as to other people.

The Tribunal recommends:

That there should be an examination of existing material on sexuality and personal development being used in educational establishments. This material should not merely be confined to contemporary human and sexual relations but should examine the many and varied forms of human and sexual relations and their consequences. All references with a sex/sexuality bias should be eliminated.

That practitioners of alternative life-styles should be brought to the teaching of courses in personal development and in all other relevant areas.

We call upon you to act urgently in accordance with these recommendations in discussion with the Tribunal and the executive of CAMP NSW.

While we draw your particular attention to the above matters, we enclose a copy of the full report of the Tribunal for your information.

Signed: Jim Cairns MP; Barry Egan; Bridget Gilling; (Senator) Arthur Gietzelt.

Tribunal letter to Ron Mulock, NSW Minister for Justice

We, the Tribunal on Homosexuals and Discrimination, convened in Sydney on 27 and 28 November 1976. Of the 44 cases presented to us, a number related to discrimination in jails, with specific evidence.

We enclose a copy of the findings of the Tribunal. We specifically draw your attention to the recommendations which reads:

State authorities should take action to prevent discrimination against and persecution of homosexuals in jails and in other institutions.

We invite you to take action in conjunction with the Tribunal and the executive of CAMP NSW, to implement the intent of the recommendations generally, and the quoted recommendation in particular.

We await your earliest reply.

Signed:
Jim Cairns MP
Barry Egan
Bridget Gilling
(Senator) Arthur Gietzelt

Tribunal letter to Frank Walker, NSW Attorney-General

In the evidence presented to us on the 27 November 1976 and our deliberations which took place the following day we found that:

Legal discrimination is in the form of laws against homosexuals as such, e.g. the Crimes Act.

We further found that:

Evidence was given that it is desirable to exclude the sexual component as such, altogether from laws and standards. What should be wrong and unlawful is the use of force or undue or unequal influence against another person. The Tribunal accepts this view. Its application would require new laws to define and protect human rights and the amendment of many other laws.

We also recommended that:

The Amendment and/or repeal of existing acts and regulations so that sexuality in all forms is eliminated from the law and only violence and undue influence remains an offence.

We urge you to act upon the above findings and recommendation in conjunction with the Tribunal and the Executive of CAMP NSW.

Signed:
Jim Cairns MP
Barry Egan
Bridget Gilling
(Senator) Arthur Gietzelt

Tribunal letters to NSW Premier and Attorney General

In the evidence presented to us on the 27 November 1976, and our deliberations which took place the following day we found that:

Legal discrimination is in the form of laws against homosexuals as such.

We further stated that :

The Tribunal sees the pursuit of maximum individual freedom of belief, expression, action and life-style consistent with the freedom of others to be an intrinsically desirable goal.

At the Tribunal hearing we also recommended:

The enactment of a Human Rights Bill at the Federal and State level which would include the elimination of all forms of discrimination on grounds of sexual orientation.

We urge you to act upon the above findings and recommendation in conjunction with the Tribunal and the Executive of CAMP NSW.

We await your earliest reply.

Signed:
Jim Cairns MP
Barry Egan
(Senator) Arthur Gietzelt
Bridget Gilling

Tribunal letters to Federal Public Service Minister and NSW Premier

We, the Tribunal on Homosexuals and Discrimination, meeting on the 27 and 28 of November, 1976 found that legal discrimination against homosexuals exists in the form of laws which discriminate against non-married people.

A particular instance of this form of discrimination is the Public Service Act and regulations.

We call upon you to act urgently to repeal and amend the discriminatory sections of this Act and its regulations in discussion with the Tribunal and the Executive of CAMP NSW.

We enclose a copy of our findings and recommendations for your information

We await your earliest reply.

Signed:
Jim Cairns MP
Barry Egan
(Senator) Arthur Gietzelt
Bridget Gilling

Tribunal letter to Ron Mulock, NSW Minister for Justice

We, the Tribunal on Homosexuals and Discrimination, convened in Sydney on November 27 and 28 1976. Of the 44 cases presented, a number related to legal discrimination particularly in the Summary Offences Act, and evidence was produced of specific instances. A copy of this evidence was sent to you in November 1976.

We enclose a copy of the findings of the Tribunal, and draw your particular attention to the Recommendations. The second Recommendation reads:

The enactment and/or repeal of existing Acts and regulations so that sexuality in all forms is eliminated from the laws and only violence and undue influence remains an offence.

We invite you to take urgent action in co-operation with the Tribunal and the Executive of CAMP NSW to implement the intent of the recommendations generally, and the quoted recommendations in general.

We await your earliest reply.

Signed:
Jim Cairns MP
Barry Egan
(Senator) Arthur Gietzelt
Bridget Gilling

Tribunal letter to Neville Wran, NSW Premier

We enclose a copy of the full report and findings of the Tribunal for your information and action.

The Tribunal held its inquiry in Sydney on 27 and 28 November 1976. It heard 44 cases of alleged discrimination.

Signed:
Jim Cairns MP
Barry Egan
Bridget Gilling
Arthur Gietzelt

being the Tribunal on Homosexuals and Discrimination

Tribunal letters to NSW Premier and Treasurer, Jack Renshaw

We, the Tribunal on Homosexuals and Discrimination, meeting on the 27 and 28 November, 1976 found that legal discrimination against homosexuals exist in the form of laws which discriminate against non-married people.

A particular instance of this form of discrimination is the Superannuation Act (administered by the Treasurer) and the Stamp Duties Act (administered by the Premier).

We call upon you to act urgently to repeal and amend the discriminatory sections of these Acts in discussion with the Tribunal and the Executive of CAMP NSW.

We await your earliest reply.

Signed:
Jim Cairns MP
Barry Egan
Senator Arthur Gietzelt
Bridget Gilling

Tribunal Collective letter to Margaret Snape, poster designer, 2 December 1976

We do not know how to thank you for designing the poster for the above Tribunal.

We have had a very good response to your poster and many people have asked us who had done the design.

The tribunal was a great success despite the absence of the media, perhaps if they would have been there they would have treated the Tribunal as a joke any way.

Once again Margaret many many thanks for what you have done for us

Enclosed you will find one of your posters, perhaps you like to keep it for posterity; also we have enclosed a copy of the Tribunalists findings and recommendations.

Tribunal Letter to Laurie Bebbington, Women's Officer, Australian Union of Students, 2 December 1976

The Tribunal Collective wrote the following letter:

> We would like to thank you for supplying the invitations and posters for the above tribunal. We are not sure what we would have done had you not been willing and able to help us. Many, many thanks.
>
> We feel that the tribunal was a great success despite the media not being interested. Perhaps for once the homosexual community has done something very respectable which the media could not use to ridicule us.
>
> We are in the process of transcribing the whole tribunal proceedings and will let you know when it is available. In the meantime we have enclosed a copy of the tribunalists findings and recommendations.

Tribunal Collective letter to the Royal Commission into NSW Prisons, 15 December 1976

> We have pleasure in presenting the findings of the recently held Tribunal on Homosexuals and Discrimination.
>
> We would like to draw particular attention to the final paragraph on page four of the findings, regarding prisoner Sandra Willson.
>
> Arrangements could be made to forward to you a copy of the evidence presented at the above Tribunal on behalf of Sandra Willson.
>
> Hoping this will be of assistance to you.

Letter from the Royal Commission into NSW Prisons, 29 December 1976

ref: 76/585

> Thank you for forwarding a copy of the findings of the recently held Tribunal on Homosexuals and Discrimination.

Tribunal Collective letter to Royal Commission on Human Relationships

> As requested by the Commissioners, enclosed is a set of copies of evidence presented to the Tribunal on homosexuals and discrimination, together with the report handed down by the Tribunal. The enclosed program sets out information on the Tribunal and the procedure.
>
> The Tribunal is to have an on-going function, and as requested by them in the report, will meet again in the first half of next year.
>
> For further information, don't hesitate to contact me on 633 3099 (work) or Peter de Waal on 827 3063 (he's there most of the time now Uni is over).

Letter from Royal Commission on Human Relationships, 10 December 1976

Ref. 75/1351

> Thank you for your letter and copies of evidence and report relating to the Tribunal. We are grateful to have this for our records and on behalf of the Commissioners I would like to thank you for sending the material to us.

Letter to Tribunal Collective from Ginny Vida, Media Director, National Gay Task Force, 10 December 1976 [129]

We were very interested in the material you sent us about the recent Tribunal on Homosexuals and Discrimination held at the University of New South Wales. Our congratulations for thinking up this fascinating idea and carrying it off so well.

We are particularly interested in what response the Tribunal received in the non-gay press. Was it reported nationally? Did it stimulate discussion after it was over?

We'd much appreciate copies of any clippings from the national or overseas press. We're stimulated by the notion of staging a similar Tribunal here. The major purpose, of course, would be to stimulate public attention, and we'd like to have some idea how much publicity you were able to generate.

Once again congratulations for an excellent idea.

Tribunal Collective letter to National Gay Task Force, 31 December 1976

Thank you for your letter dated 13 December 1976, regarding the Tribunal on Homosexuals and Discrimination.

A numbers of problems were encountered in regard to the above Tribunal:

1) The major Sydney daily newspapers did very extensive interviews with the Tribunalists after they had presented their findings and recommendations. They also did interviews with me personally and later per telephone. We feel one of the reasons for the Tribunal not appearing in Monday the 29 press was that the Fraser Government decided to devalue the Australian dollar by 17 and a half % on the Tribunal weekend. Furthermore we also believe that, for once, the media were not able to ridicule the homosexual community because we had done something 'respectable' and therefore they were not able to sensationalise us.

2) The Australian Broadcasting Commission, (ABC) which is the only national system and financed by the taxpayer, had a 24 hour strike because of cutbacks and legislative changes proposed by the destructive Fraser Government. The ABC usually gives the homosexual community in Australia a good hearing and is very conscious of presenting the views of all minority groups. However, the ABC 10pm Sunday night news did have a news item about the Tribunal but it was very short. ABC television did come to the Sunday session of the Tribunal and did some filming for its Sunday 7pm national news, but as mentioned before, all of the news that Sunday was devoted to the devaluation and consequently there was no room for anything else.

The pre-Tribunal publicity was in the form of 10-15 minutes on two metropolitan commercial radio stations talk-back programs and some coverage in the local and two national newspapers. Further publicity was done by pasting up 400 of the enclosed posters throughout the metropolitan area. A week after the Tribunal I was guest at a 60 minute radio talk-back program and was able to elaborate on many of the matters raised at the Tribunal.

I am writing you all this, not because we were disappointed with the response and overall outcome of the Tribunal but because we feel it only fair that the circumstances we encountered should be explained. They will not necessarily be encountered by you.

Hopefully you will go ahead with organising the Tribunal because it gave the homosexual community in Sydney a forum for airing its grievances and all the evidence gathered can and will be used to show the many government departments and community groups that homosexuals do need some form of legal protection and social recognition.

In order to establish a closer international awareness, perhaps you would be able to use the same name for the Tribunal.

Hoping that the information is of use to you; do not hesitate to write for further finer details if needed.

We are in the process of publishing the complete proceedings of the Tribunal and will let you know when it is available and the cost involved.

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[129] Board Officers: Betty J Powell, Gary J Van Ooteghem, Meryl C Friedman, Joseph Norton, PhD.; Co-Executive Directors: Jean O'Leary, Bruce Voeller, PhD.

Letter from Nigel Hart, Information Officer, Campaign for Homosexual Equality, 18 December 1976 [130]

I read with great interest the reports of the Tribunal on Homosexuals and Discrimination. It would seem to be something which CHE could well emulate to mark the tenth anniversary of the partial relaxation of the laws on male homosexuals in England and Wales (July 1967 – Sexual Offences Act) and thereby show how much still remains to be done.

I would be very grateful if you could send me an account of how the Tribunal worked (advance papers ? how did you get a counsel to take an opposite stance ? Was she a devil's advocate ? how and when did the Tribunal members prepare and publish their conclusions ?), how much publicity/effect did it achieve and how much did it cost ? + anything else you feel could be of value to us in setting up a Tribunal here.

Tribunal Collective letter to Campaign for Homosexual Equality, 31 December 1976

Thank you for your letter dated 18 December 1976 regarding the Tribunal on Homosexuals and Discrimination.

The preparation for the Tribunal started about 3-4 months before the actual day. All the cases presented at the hearing were documented beforehand, photocopied and forwarded to the Tribunalists and counsel, with a memo explaining what was going on and keeping them generally informed and interested. This memo writing and forwarding of documents was done four times in the time preceding the hearing day. The feeding of documents to the Tribunalists and counsel was necessary because all day Saturday they had to be able to question and cross examine the various witnesses and only had Sunday from 9am – 3pm to prepare their findings and recommendations.

The two counsel had always been on the side of the homosexual community but they felt that the whole input and outcome of the Tribunal would be more credible if they took opposite stances. At first Jane Mathews was going to act for the discriminators but they later decided to rotate at the end of each session so that neither of them would be branded as our opponents. So in fact the two lawyers were devil's advocate for two sessions each. All the alleged discriminatiors received a personal letter from us before the Tribunal explaining that particular Act or dismissal etc was going to be presented as evidence of discrimination and inviting them to come and appear or make a written statement. A fair number replied.

Our direct expenditure towards the Tribunal was about $A750.00 with the largest share of that as national and state advertising. Further actual expenditure is difficult to calculate because the printing of the invitations and posters was a donation. After holding a widely publicised dance on the Saturday night, receiving various donations from homosexual groups in Australia and having a bid donation box at the Tribunal we were able to put in a special account about $A100.00 after expenses for the publication of the proceedings.

A number of problems were encountered with the media in regard to the Tribunal:

(See identical paragraphs 2 to 7 in letter to 'National Gay Task Force' (see page 330).

Hoping that the information is of use to you; do not hesitate to write for further finer details if needed.

We are in the process of publishing the complete proceedings of the Tribunal and will forward a copy to you as soon as they are available.

Tribunal Collective letters to NSW Premier, Minister for Justice and Attorney General, 5 January 1977

At the above Tribunal, the Tribunalists,

Hon Dr Jim Cairns, MP
Mr Barry Egan, Secretary, Australian Workers Union
Senator Arthur Gietzelt, ALP Shadow Minister

[130] Various executive members of the Campaign for Homosexual Equality were at the time: Hon President, Allan Horsfall; Hon Chairman, Barrie Kenyon; Hon Vice-Chairwoman, Alison Hennegan; Hon Treasurer, Barry Jackson; Administration Officer, Mike Gibberd; Information Officer, Nigel Hart.

Ms Bridget Gilling, Vice-President, NSW Council of Social Service.

Presented the following recommendation in regard to prisoner Sandra Willson:

The Tribunal is disturbed at the way in which the Mental Health Act is administered in NSW in respect of persons found guilty on the grounds of mental ill health, and later found to be sane and no longer needing to be detained.

On the evidence presented to the Tribunal it appears that Sandra Willson, still detained in a NSW jail, long after having been found sane, should be released.

We urge you as Premier/Minister of Justice/Attorney-General to act upon the above recommendation by the Tribunal.

Letter from the Premier of NSW, 26 January 1977

Ref:76/4084

I am writing in reference to your recent letter on behalf of the Tribunal on Homosexuals and Discrimination requesting the release of Sandra Willson from prison.

The terms of the Tribunal's representation have been carefully noted and, as the specific issue of whether or not Ms. Willson should be released from prison is a matter primarily associated with the administration of my colleague, the Minister for Services, I feel that the most appropriate action to take would be to bring your letter specially to Mr Mulock's attention.

Although, as explained above, Ministerial responsibility for prisoners such as Ms. Willson rests essentially with Mr Mulock, the Mental Health Act falls within the ambit of responsibility of the Minister for Health. Accordingly, I have also had the Tribunal's letter placed before Mr Stewart for his consideration.

Letter from the NSW Attorney General, l4 February 1977

77/374

I have received your letter conveying a recommendation of the Tribunal on Homosexuals and Discrimination, concerning the case of the prisoner Sandra Willson.

Whilst I have noted the contents of your representations, the matters raised pursuant to the recommendation fall within the administration of my colleague, the Minister of Justice and Minister for Services. Accordingly, I have referred your representations to the Honourable R J Mulock, LLB., MLA, for his consideration and reply to you direct.

As the Mental Health Act is primarily administered by my colleague the Minister for Health, the Honourable K J Stewart, MLA, I have also referred a copy of your representations to him for his information.

Letter from Ian Dunn, Executive Committee, Scottish Minorities Group to Neville Wran, 8 December 1976 [131]

It is with deep concern that I am writing, on behalf of the Scottish Minorities Group, to draw your attention to the extraordinary situation which surrounds the case of Sandra Willson.

As I am certain you will know, Sandra Willson has served a very long period of confinement at

[131] Scottish Minorities Group: 'For The Rights And Welfare Of Homosexual Men And Women', National Office, 60 Broughton Street, Edinburgh EH1 3SA; Glasgow Office, 534 Sauchiehall Street, Glasgow. At the time the various executive members were: The Hon Chairwoman, Sheila MacAskill; Deputy Chairman, Jim Innes; Secretary, Malcolm Crowe; Treasurer, Jim Halcrow.

Parramatta Psychiatric Hospital, and for the last five years as a sane prisoner. It has been represented to ourselves, and to many other organisations in the United Kingdom, that barbaric prejudice is being levelled against Sandra Willson on the grounds that she nobly upholds her lesbian orientation in spite of State attempts to coerce her into an orientation which is unnatural to her.

I very much hope that this is not the case: this woman has already suffered enough at the hands of a seemingly unfeeling, uncaring administration. I can only comment that her case forms a dreadful blot on NSW justice, just at a period in history when Australia was beginning to make so many civilised advances.

Your hand can – and should intercede **now**. Please sign an order, through your senior legal Counsel, freeing Sandra Willson from jail. With this act you will also free NSW from the shame of being associated with State brutality on the scale currently being witnessed in Chile, Brazil and Union of Soviet Socialist Republics, to name but three.

I Look forward to hearing from you at the earliest possible moment.

Minister for Services letter to Scottish Minorities Group, 25 March 1977

I further refer to your correspondence of 8 December 1976 address to the Honourable Neville Wran, QC, MLA, Premier, concerning Sandra Willson.

Miss Willson's case has been considered by the Parole Board of New South Wales and as a result of the Board's recommendation arrangements have been made for Miss Willson to be given an opportunity in a special program.

Miss Willson's progress will be carefully monitored and her case will be referred to the Parole Board for further consideration in six months time.

I have arranged for your representation to be placed with Miss Willson's papers for the information of the Parole Board of New South Wales when her case is next reviewed.

Letter from Scottish Minorities Group to Tribunal Collective, 1 April 1977

I am enclosing a letter received yesterday from Mr Haigh, Minister for Services. I expect that you will be familiar with the news it contains.

At our Annual General Meeting on 11 December 1976, we endorsed the Statement in support of Sandra Willson. The Tribunal documents were very valuable in this.

The Executive's decision represents minimal progress in Sandra's case. We hope to have better news in the mid-year.

I have acknowledged Mr Haigh's letter today.

Letter from Steve Mark, President, NSW Anti-Discrimination Board to Tribunal Working Group, 13 May 1992

Thank you for your letter of 25 April seeking the Board's assistance in commenting on homosexuality discrimination cases presented to the 1976 Tribunal on Homosexuals and Discrimination.

As you know, the NSW Anti-Discrimination Act was amended in 1982 to include homosexuality as a ground for complaint in the major areas of public life covered by the Act: employment, goods and services, education, accommodation, and registered clubs. However, this does not cover every type of unfair treatment which homosexuals receive. For instance, a number of cases cited by the Tribunal would constitute homosexual vilification, which is not as yet a ground for complaint under the Act, but a matter which the Board has been discussing with various interested groups.

On 2 May, Sue Wills [TWG] talked with Anthea Lowe and Juliet Sheen of this office in order to save time by getting information to you quickly. They went through the cases with her and pointed out what cases would be covered by the Anti-Discrimination Act 1977 if they were to recur today. They also gave her information about other legislative and policy changes which would affect cases outside the current Act.

Sue Wills will be able to advise you about the matters which were discussed with her in detail.

13. Memos to Tribunalists

MEMO TO: Tribunalists: Counsel — 4 October 1976

1. This is the first of a series of progress reports we'll send regularly to keep you in touch with the planning of the Tribunal.

2. When a CAMP deputation met him, Neville Wran assured us that homosexuals would be protected by the forthcoming NSW Discrimination Bill. This means that the purpose of the Tribunal will now be wider and more general than we had at first envisaged: how wide and general is entirely up to the tribunalists. We have proposed to Neville Wran that debate on the Discrimination Bill in Parliament coincide with the Tribunal. We don't know yet if this is possible.

3. Jim Cairns, Arthur Gietzelt and Bridget Gilling are still the only confirmed tribunalists. We are awaiting replies from Barry Egan, Australian Workers Union; Lady Shehadie (Dr Marie Bashir), psychiatrist; Michael Tate, Catholic Commission for Justice and Peace; Dr Barbara Thiering, Anglican theologian.

4. Jane Mathews, counsel assisting the Royal Commission of Human Relationships (inter alia) and Helen Coonan, feminist solicitor and activist (inter alia) have agreed to act as counsel at the Tribunal. At their suggestion they will take opposite sides in each case: one for the alleged discriminator, the other for the person allegedly discriminated against. (At last reports they were brawling over who would take which side!) We will be approaching each person or body against whom a complaint is made either to personally appear or to make a statement answering the charges.

5. Each case to be presented to the Tribunal will be documented beforehand and circulated to each of you, to lessen the workload on the weekend.

6. Attached is a copy of the budget (or expenditure anyway) we estimate for the Tribunal. We are approaching the following for donations: Inner City Regional Council for Social Development; University Students Representatives Councils. We would be pleased to hear of any other potential sources of funds.

7. Our friendly telephone is always ready to receive queries. Mike can be rung at work on 635 3099 or at home on 827 3063

MEMO TO: Tribunalists: 11 October 1976
Counsel

1. Enclosed is the first set of discrimination cases, for your information. We have written to each of the people or organisations involved seeking a statement.

2. Would you please keep these to bring with you on 27-28 November.

3. Subject to his not having to appear in court on either 26 or 29 November, Barry Egan will be very happy to be one of the tribunalists.

4. Dr Barbara Thiering has turned down our invitation with much regret. She fears discrimination from her Anglican Church employer were she to be involved. As a substitute, we have approached Alderwoman Joan Pilone of the Sydney City Council.

5. We have written to Neville Wran asking that he make a transcribing typist available to us for the two days so that we can get a record of proceedings, for your use as well as ours.

6. Our friendly telephone is always ready to receive your queries. Mike can be rung at work 633 3099 or at home on 827 3063

MEMO TO: Tribunalists:
Jim Cairns
Margaret Davis
Barry Egan
Arthur Gietzelt
Bridget Gilling

Counsel:
Helen Coonan
Jane Mathews

1 November 1976

1. Enclosed is the second set of discrimination cases, for your information. We have written to each of the people or organisations involved seeking a statement.

2. Would you please keep these to bring with you on 27-28 November.

3. Joan Pilone of the Sydney City Council has turned down our invitation with regret. She too fears discrimination were she to be involved.

4. After contacting numerous other women including Caroline Jones, Ita Buttrose, Betty Archdale, Lady Macarthur-Onslow and Joan Cummings who were all unable to accept our invitation to be a tribunalists, we have pleasure in announcing our final tribunalist Margaret Davis MLC.

5. The tribunalists are as follows: Jim Cairns, MP; Margaret Davis, MLC (NSW); Barry Egan, Union Official; Senator Arthur Gietzelt; Bridget Gilling, Social Worker. Counsel are: Helen Coonan, solicitor and Jane Mathews, barrister.

6. We have been getting free publicity in newsletters and magazines of various organisations and have started media publicity. The extent of the latter will depend on funds and/or media good will. The Australian Union of Students are printing posters and handbills for us this week, free of charge.

7. Please do not hesitate to telephone us we will be only to glad to answer your queries. Mike can be rung at work 633 3099 or at home on 827 3063.

MEMO TO: Tribunalists: Jim Cairns, Barry Egan, Arthur Gietzelt, Bridget Gilling
Counsel: Helen Coonan, Jane Mathews

16 November 1976

1. **Margaret Davis**

   Margaret Davis has decided that she cannot sit on the same platform as Jim Cairns and Arthur Gietzelt and so has withdrawn from the Tribunal. A copy of a personal explanation made by her in the Legislative Council will be forwarded when we have it.

2. **Dinner**

   CAMP would very much like to invite you, and whomever you would like to bring, to dinner at CAMP Centre, 33a Glebe Point Road, Glebe on Saturday evening 27th at about 6.30 pm. However this must be purely your decision as we would hate to impose. If you would be interested in dinner, do you think you could ring and let us know before the middle of next week so that we can make the appropriate arrangements?

3. **Weekend Timetable**

   We wondered if you could arrive at the Sir John Clancy Auditorium by **9am** on Saturday 27th so that you can meet each other and we can have a briefing session. The Tribunal will commence at 10am and go through to 5pm, with appropriate breaks. We have booked the luxurious 'robing room' adjoining the Clancy Auditorium for your deliberations on Sunday. We thought you might like to begin meeting about **9.30am**. We have set down 3pm as the time at which you will deliver your report in the Auditorium.

4. **Cases**

   Please don't forget to bring your copies of the cases already documented, the latest instalment of which are enclosed !

5. **Telephone**

   Still ! 02 633 3099 or 02 827 3063

Love !

Memo to: Jim Cairns
Barry Egan
Bridget Gilling
Arthur Gietzelt

9 January 1977

New Year's greetings to all!

1. Enclosed (or coming soon) are a number of letters we have drafted as follow-up to the Tribunal. They are for your signature (copies to be initialled) – if you are happy to sign them. We have enclosed spare letterhead in case you wish to change any of them. If you have suggestions for alternative ways of approaching these people, we would be happy to have them.

    1.1 If you do sign the letters, could you please pass the bundle on to the next tribunalists (or CAMP Arthur), after signing them. This simply involves placing the next enclosed stickers over that bearing your name and posting it! Thank you.

    1.2 You may care to take copies of the letters before forwarding them.

2. The executive has discussed Tribunal Two and has recommended that it be held on 23-24 July, on the topic Homosexuals and Children.

    2.1 Could you let us know:

        2.1.1 if you're willing to again be involved;

        2.1.2 if yes, are the proposed dates suitable?

        2.1.3 do you agree with the proposed (meant to cover seduction, adoption, custody, children's rights, etc.)?

3. We have completed the transcription of the weekend and are searching for interested publishers.

4. **Any** other comments, of course welcome.

5. Again, thank you for your involvement and support.

Love from all

Places to contact the tribunalists and counsel:

Name	Address	Alternative address
Jim Cairns . . . . . . Parliament House Canberra 2600 062 72 1211	21 Wattle Road Hawthorn, Victoria 3122 03 81 5183	27 Devonshire Road (electoral office) Sunshine, Victoria 3020 03 311 6240 311 7919
Bridget Gilling . . . . . . 28 The Bulwark Castlecrag 2068 95 4884	Regional Office, Inner Metropolitan Health Region, Box 160 Rozelle 2039 82 0691 ext 36	
Arthur Gietzelt . . . . . . Parliament House Canberra 2600 062 72 1211	28 Kitchener Street Caringbah 2229 524 9159	Crusade House (electoral office) Banksia Road (cnr Willarong Road) Caringbah 2229 525 7898
Jane Mathews . . . . . . c/- Royal Commission on Human Relationships Box 273 Kings Cross 2011 357 3322	18 Pearson Street East Balmain 2041 82 2184	(Chambers) 231 4366
Helen Coonan . . . . . . Box 2653 GPO Sydney 2001 (4th Floor, 60 Park Street, Sydney 2000)	7 Minnamurra Road Northbridge 2063 95 1175	
Barry Egan . . . . . . Secretary Australian Workers Union 321 Pitt Street Sydney 61 9301	National Secretary Shop Distributive and Allied Employees Association 321 Pitt Street Sydney 20 621	
Margaret Davis . . . . . . Parliament House Sydney 2000 230 2111	4 Weeroona Avenue Woollahra 2026 36 2853	

14. Invitations to and Attendances at the Tribunal Hearing

Tribunal invitation October 1976

You are invited to

Tribunal on Homosexuals and Discrimination

Sir John Clancy Auditorium
University of New South Wales

27-28 November 1976

R.S.V.P. 20 November

On Saturday 27 November, from 10am to 5pm, a panel of tribunalists will hear evidence of discrimination (specific and general from homosexual people. There will be counsel for each side in all cases presented.

On Sunday 28 November, at 3pm, the tribunalists will hand down a report, with recommendations, based on the evidence they have heard.

You are invited to be present during this educational forum.

Tribunalists

Hon Jim Cairns, MP, Former Deputy Prime Minister and Treasurer of Australia.

Hon Margaret A E Davis, Liberal Member of Legislative Council of New South Wales.

Mr Barry Egan, National Secretary, Shop Distributive and Allied Employees Association; Secretary, Australian Workers Union.

Senator Arthur Gietzelt, Labor Member of the Senate, Parliament of the Commonwealth of Australia; ALP Shadow Minister.

Ms Bridget Gilling, Vice-President Council of Social Service of New South Wales.

Counsel

Ms Helen Coonan, BA LLB, solicitor

Ms Jane Mathews, BA LLB, barrister; counsel assisting the Royal Commission on Human Relationships.

List of invitations

Eight-hundred of the above invitations were posted by the Women's Department of the Australian Union of Students on 5 November 1976.

Bold denotes: people/organisation(s) responded to the invitation but did not necessarily attend the tribunal hearing.

All Campus groups in the Australian Union of Students network.

SYDNEY

Women's Liberation.
Feminist Bookshop.
Leichhardt Health Centre.
NSW University Gay Liberation (Maurice Stipendiary).
South Sydney Womens Centre.
Newcastle Women's Liberation.
WEL NSW groups.
Sydney University Gay Liberation.
Lesbian Feminist Collective.
Socialist Homosexuals (Sydney).
Liverpool Women's Health Centre.
Macquarie University Gay Liberation.
Gay Teachers' Group (NSW).
Hunter Region Working Women.

MELBOURNE

Society Five.
Gay Teachers Group (Gay Liberation Melbourne).
Melbourne University Gay Society.
Melbourne Womens Liberation.
Ian Hawkins.
Salon.
Working Womens Centre.
Versuvia.
WEL Victoria.
Geelong Gay Liberation.
Socialist Homosexuals (Melbourne).
Monash University Gay Liberation.

ADELAIDE

Dr Duncan Bookshop.
CAMP South Australia.
Adelaide Women's Liberation.
Socialist Homosexuals (Adelaide).
Naomi Women's Shelter

BRISBANE

Brisbane Women's House.
Brisbane Women's Liberation.
CAMPUS CAMP.
Patchwork.
Minerva CAMP Women.
CAMP Queensland.
Kelvin Grove College of Advanced Education.

ACT

Gay Students and Teachers Union, ANU.
Canberra Women's Liberation.
Cell One.

TASMANIA

Hobart Women's Liberation.

TOWNSVILLE

Gay Women's Group.

GENERAL

Murray Farquahar, NSW Chief Stipendiary Magistrate.
Justice Wootton.
Commissioners, NSW Health Commission.
Governor of NSW.
NSW Director General of Education.
Eula Guthrie, Staff Inspector, Department of Education.
Commissioner of Corrective Services.
Director, Department of Youth and Community Services.
Board of Teacher Education.
Sir Herald Dickinson, NSW Public Service Board.
Mr F.J. Hanson, NSW Police of Commissioner.
Ombudsman.
Mr Langshaw, Department of Youth and Community Services.
Justice Lionel Murphy, High Court of Australia.
Australian Press Council.
Peter H. Bailey, Task Force on Co-ordination in Health and Welfare.
Professor Bridges-Webb.
Justice Staples, Australian Conciliation and Arbitration Commission.
Gail Wilenski.
Peter Wilenski.
Doctors Reform Society.
Family Medicine Program.
Pharmaceutical Society of NSW.
A.S.H.O.G.
Pharmacy Guild of Australia.
Association of Youth Organisations.
Women's Trade Union Commission.
United Nations Association of Australia.
Royal Australasian College of Physicians.
Parents and Citizens Federation.
National Council of Women of NSW.
Justice of Peace Information Centre.
Pam Rutledge, NSW Health Commission.

POLITICAL PARTIES NEW SOUTH WALES

Workers Party.
Australia Party.
Country Party.
Liberal Party.
Communist Party of Australia, National Committee.
Australian Labor Party.

MILITARY

Flag Officer Commanding, Eastern Australia Area.
G.O.C., 2 Military District.
A.O.C., RAAF HQ.

GENERAL

Women's Hall, Sydney University.
University Hall, Sydney University.
St Paul's College Sydney University.
Robert Menzies, Macquarie University

New College.
G.F.S. Hostel, Forest Lodge.
CENEF Hostel, Randwick.
St Andrews College.
Church of England Homes.
Church of England Chaplains Service.
Shalom College, University of NSW.
Council for Civil Liberties.
Sutherland COSS.
Humanist Society.
K.A. Handley, Q.C.
Life Line.
Youth Line.
Liverpool Women's Community Health Centre.
Rev W. George Coughlan.
Roger Bush.
Australian Family Planning Association.
NSW Family Planning Association.
Crisis Call.
Helping Hand.

UNIONS

Water and Sewerage Employees Union, Salaried Division and Wages Division.
Transport Workers Union of Australia.
Theatrical and Amusement Employees Association.
Seamen's Union of Australia (Branch and General Secretary).
NSW Public Service Association.
Postal Telecommunications Technicians Association (Aus).
General and State Secretaries, Miscellaneous Workers Union.
Merchant Service Guild of Australia.
Firemen and Deckhands Association of NSW.
Federated Marine Stewards.
General Secretary, Commonwealth Public Service Association.
Colin G. Benjamin, Federal Secretary, Australian Social Welfare Union (Federal Council).
Federated Clerks Union of Australia.
Carpenters and Joiners.
Amalgamated Society of Australia.
Australian Teachers Federation.
Australian Insurance Staffs Federation.
State Secretary, A and C of A (NSW Branch).
General Secretary, A and C of A (Australian Public Service).
Retail Traders Association of NSW.
Professional Officers Association.
Municipal Officers Association of Australia (NSW).
The Institute of Directors in Australia.
Federation of Australian University Staff.
Federation of Australian Commercial TV Associations.
Executive Director, Employers Federation of NSW.
Executive Director, Australian Retailers Association.
Australian Association of Social Workers, NSW Branch.
Actors Equity Association of Australia.
General Secretary, AMWO.
ABC Staff Association.
Postal Overseers Union of ustralia.
NSW Nurses Association.
Hospital Employees Association.
Health and Research Employees of Australia.
Fire Brigades Employees Union.
Professional Officers Association.
Federation of Australian Commercial Broadcasters.
Amalgamated Metal Workers Union.
Amalgamated Metal Workers Union (Central).
Amalgamated Postal Workers Union.
Australian Railways Union (Federal and NSW).
Australian Textile Workers Union.
Australian Workers Union (Federal and NSW).
Builders Labourers Federation.
Building Workers Industrial Union.
Electrical Trades Union.
Federated Ironworkers.
Federated Storemen and Packers Union.
Federated Union of Locomotive Enginemen
F.E.D.F.A.
Labor Council of NSW.
Meat Industry Employees Union (Federal and NSW).
Merchant Service Guild.
Ship Painters and Dockers Union.
Ship Assistants Union.
Trades Hall Association.
Vehicle Builders Union.
Union of Postal Clerks and Telegraphists.
Waterside Workers Federation.
Australian Journalist Association.
Union of Australian Women.

ASSOCIATIONS

NSW Mental Health Association.
Leichhardt Womens Community Health Centre.
Family Life Movement.
NSW Marriage Guidance Council.
NSW Institute Marriage Counsellors.
Australian Medical Association (Federal and NSW).
Australian and NSW Council of Social Service.
Local Government Association.

GENERAL

B.L. Hennessy, Hospital and Health Services Commission.
School of Public Health and Tropical Medicine.
Australian Metal Workers Union.
Roger Court, Director, Criminal Law Review Division, NSW Attorney General's Department.
Federal Department of Health.
National Commission on Discrimination in Employment and Occupation.
Public Service Arbitrator.
Australian Institute of Criminology.
Justice R.M. Hope.
Professor C.M.H. Clark.

Donald Horne.
Research Section, Human Rights Commission.
Archbishop Felix Arnold.
Justice Elizabeth Evatt.
Dr Paul Wilson.
Professor Robert Connell.
Margaret Sargent.
Professor Ted Wheelwright.
W.J. Orme, Executive Member, NSW Privacy Committee.
NSW Department of Employment and Industrial Relations.
Federal Schools Commission.
ACT Legal Assistance.
Justice Michael Kirby.
Justice Woodward, ASIO.
Judges, Family Court.
Director Aboriginal Affairs.
Deputy Crown Solicitor.
Department of Education.
Australian Catholic Social Welfare Commission.
Ella Community Centre, Haberfield.
GROW NSW.
Newtown Community Care Centre.
P-W-P- NSW.
South Sydney Community Aid.
Inner City Education Centre.
RACGP's.
Workers Education Association.
Broadway Community Centre.
Brian F. Luby, A/g Secretary National Consultative Council on Social Welfare.
Other members of the Consultative Council:
David R. Neely, The Smith Family.
J.R. Newton, TADPAC Industries Tasmania.
Development.
Peter Shaw, Department of Social Security.
Director, Department of Social Security.
Office of Child Care.
ABC Commissioners.
Al Grassby.

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Ashfield.
Auburn.
Bankstown.
Baulkham Hills.
Blacktown.
Botany.
Burwood.
Campbelltown.
Canterbury.
Concord.
Drummoyne.
Fairfield.
Holroyd.
Hornsby.
Hunters Hill.
Hurstville.
Kogarah.
Ku-ring-gai.
Lane Cove.
Leichhardt.
Liverpool.
Manly.
Marrickville.
Mosman.
North Sydney.
Parramatta.
Randwick.
Rockdale.
Ryde.
South Sydney.
Strathfield.
Sutherland.
Sydney.
Warringah.
Waverley.
Willoughby.
Woollahra.

RELIGIOUS

Donald Robinson, Bishop of Parramatta.
Catholic Education Office.
State Conference Assemblies of God in Australia.
Church of Christ.
Church of Christ of the Latter Day Saints.
Festival of Light.
Society of Friends.
Social Services Secretary, Salvation Army.
Greek Orthodox Archdiocese of Australia.
Council of Jewish Women.
Board of Jewish Education.
Jewish Board of Deputies.
Jehovah's Witness.
Assistant Commissioner, Eastern Australian Headquarters – Salvation Army.
United Theological College.
Salvation Army Training College.
Seventh Day Adventist Church.
Conference of Seventh Day Adventist.
President, PWA.
Presbyterian Fellowship of Australia.
Social Service Department, of the Presbyterian Church of Australia.
Presbyterian Church in NSW.
Superintendent, Central Methodist Mission.
Christian Citizenship Methodist Centre.
David Lloyd, Central Methodist Mission.
Methodist Church of Australia, NSW Conference.
NSW District Lutheran Church of Australia.
Chief Rabbi, The Great Synagogue.
Congregational Union of NSW.
Christian Science.
Christadelphian Sydney Central.
Family Welfare Bureau.
St Mary's Cathedral.
Catholic Archbishop of Sydney.
Baptist Union of NSW.
Anglican Youth Department.
Anglican Board of Education.
Anglican Archbishop of Sydney.
Donald Cameron, Diocese of Sydney.
Dean Shilton.
Willoughby Community Information Centre.
Women's Electoral Lobby.
Sylaviani Community Aid.
South Western Sydney Social Development Council.
Parramatta Community Centre.
North Sydney Community Service.
Mosman Community Advice Bureau.
Law Society of NSW.

Law Council of Australia.
Glebe Community Care Centre.
Georges River Community Service.
Fairfield Community Council.
Employers Federation.
Eastside Community Help Organisation.
Crossroads Community Care Centre.
Australian Psychological Society.
Pam Waugh.
Danny Torsh.
Brian Klon Cohen.
Women's House.
W.E.L. Newsletter.
Wayside Chapel.
South Sydney Women's Centre.
Prisoners Action Group.
Nic Nac.
New Journalists.
Media Briefs.
Matraville Health Clinic.
Vernon Marshall.
Marrickville Community Information Service.
Inner City Regional Council for Social Development.
Eric Fisher.
Elsie Refuge
Alternative News Service.
John A. Newfong, Aboriginal Medical Service.

TERTIARY INSTITUTIONS

University of Newcastle: Departments of Psychology and Education.
University of New England: Departments of Psychology, Education, Politics and Sociology.
Macquarie University: Departments of Behavioural Science, Education, History, Philosophy and Politics.
University of NSW: Departments of Politics, Psychology and Social Work. Robin Winkler. Faculties of Medicine and Law, **Professor N.R. Wills.**
University of Sydney: Departments of Psychology and Education, Faculties of Medicine and Law.
Australian National University: Faculties of Arts, Economics, Law and Oriental Studies.
University of Melbourne: Criminology Department, Lynne Foreman.

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L.F. McGinty, *Willoughby*.
B.McGowan, *Gosford.*
Gordon C. Mackie, *Albury*.
J.C. Maddison, *Ku-ring-gai*.
M.J. Maher, *Drummoyne*.
H.C. Mallam, *Campbelltown*.
J.M. Mason, *Dubbo*.
M. Meillon, *Murray*.
T.J. Moore, *Gordon*.
The Hon M.A. Morris, *Maitland.*
The Hon R.J. Mulock, *Penrith*.
W.T.J. Murray, *Barwon*.
L.W. Mutton, *Yaralla*.
G.H. Neilly, *Cessnock*.
K. O'Connell, *Peats.*
C.G. Osborne, *Bathurst*.
G. Paciullo, *Liverpool*.
E.N. Park, *Tamwworth*.
W. George Petersen, *Illawarra*.
N.E.W. Pickard, *Hornsby*.
L.A. Punch, *Gloucester*.
E.N. Quinn, *Wentworthville*.
E.D. Ramsay, *Wollongong*.
The Hon J.B. Renshaw, *Castlereagh*.
R.E.A. Rofe, *Nepean*.
P.A. Rogan, *East Hills*.
K.R. Rozzoli, *Hawkesbury*.
K.J. Ryan, *Hurstville*.
J.J. Schipp, *Wagga Wagga*.
T.W. Sheahan, *Burrinjuck*.
M. Singleton, *Clarence*.
The Hon Kevin J. Stewart, *Canterbury*.
J.H. Taylor, *Temora.*
Allan E.A. Viney, *Wakehurst*.
W.A. Wade, *Newcastle.*
The Hon F.J. Walker, *Georges River*.
N.D. Walker, *Miranda*.
B.L. Webster, *Pittwater.*
G.B. West, *Orange*.
P.F.P. Whelan, *Ashfield*.
B.C. Wilde, *Parramatta*.
Sir E.A. Willis, *Earlwood*.
R.C.A. Wotton, *Burrendong.*
The Hon Neville K. Wran, *Bass Hill*.

Attendance register

Attendance Register Tribunal on Homosexuals and Discrimination			
Name	**Address**	**Affiliation**	**Source**
Lynette Hicks	Cammeray 2062	?	By mail
Peter Trebilco	North Sydney 2060	Mental Health Association	By mail
Peter de Waal	Balmain 2041	CAMP NSW	?
Phil Noyce	Annandale 2038	?	Personal contact
Bob Cotter	Darlinghurst 2010	CAMP NSW	Personal contact
Jon Campion	North Sydney 2060	?	Personal contact
Ian MacNeill	Cremorne 2090	?	Newspaper ad.
C.C. Halbitt (?)	University of NSW, Kensington 2033	Against (?)	?
Robert French	Darlinghurst 2010	?	?
?	Canberra City 2601	?	?
Lance Gowland	Enmore 2042	Socialist homosexuals	?
Brigitte Seega	Balmain 2041	CAMP	Personal contact
Terry Goulden	Bexley 2207	CAMP	Personal contact
George Petersen	Unaderra 2526	MLA	By mail
J. Ilbery	Wollstonecraft 2065	WEL	Press
Sally Hudson	Waverley 2024	Karinya - Health Commission	Health Commission Circular
Maura Outterside	Meadowbank 2114	Karinya - Community Centre	Health Commission Circular
?	Summer Hill 2130	Lesbian Feminist Collective	Personal contact
M. Constance	Summer Hill 2130	Lesbian Feminist Collective	Personal contact
Sue Wills	Leichhardt 2040	?	Grapevine
Bruce Munday	Randwick 2031	?	Posters
Rev Lee Carlton	Paddington 2021	MCC	Mail
Bradley Lawson	Surry Hills 2016	Daily Telegraph	Word of mouth
Robyn Plaister	Annandale 2038	Lesbian Feminist Collective	Executive meeting
Elaine Whiteman	Annandale 2038	Lesbian Feminist Collective	Friends
Robin Thibbs ?	Chippendale 2008	MCC	Church
Randolph E. Carlton	Newtown 2042	MCC	Church
Michael Minehan	Centennial Park 2021	?	Nation Review
Joe Tokoara	Birchgrove 2041	?	CAMP NSW
?	Surry Hills 2010	?	?
Bruce Pink	PO Box 69 Lane Cove 2066	?	Friend
Catherina Kay-Phillips	Glebe 2037	?	Posters
Mike Bray	Petersham 2049	?	CAMP NSW
Pam Waugh	Lane Cove 2066	Women in Education	CAMP
John Kitchen	Kirribilli 2061	?	CAMP
Brian McGahen	Newtown 2042	Socialist Homosexuals	Socialist Homosexuals
Peter Jordan	PO Box 772 Darlinghurst 2010	?	News Advert.
Harry Pepper-Clayton	Woronora 2232	CAMP Syd	CAMP

Name	Address	Affiliation	Source
Jean Rhodes	Newtown 2042	Lesbian Feminist Collective	Friends
Nazife Bashar	Newtown 2042	?	Posters
Jeanette Lang	Waverley 2024	?	Friend
M. McNamara	PO Box 583, Armidale 2350	?	Old friend
N. Brennan	University of New England, Armidale 2351	?	Women's Collective
Peter Brennan	Crows Nest 2065	?	?
Sunni Rees	Northbridge 2063	MCC	?
Kaiti Duell	Northbridge 2063	MCC	MCC
George Oakley	Balmain 2041	MCC	MCC
Penny Kerr	ABC News, 164 William St East Sydney 2011	Media	Media
Julia Freebury	Bellevue Hill 2023	ALRA	?
Phillipa Nichol	Bellevue Hill 2024	?	?
?	GPO Box 1204, Adelaide 5001	Adelaide Gay Counselling Service	Post
?	Crows Nest 2065	MCC	MCC
?	Bondi Beach 2026	MCC	MCC
Greg Stevens	Cammeray 2062	MCC	MCC
Bruce Watson	Crows Nest 2065	MCC	MCC
Patrick McCoy	Woollahra 2025	MCC	MCC
Chris + Michael	Manly 2095	MCC	MCC
Thelma Marsland	Waverley 2024	Nurse	Health Commission Circular
Anna DiSalvo	Chippendale 2008	CAMP	CAMP
Ray Zeller	Paddington 2021	?	Friend
Richard Wilson	Wollongong 2500	Wollongong Area Gay Society	CAMP News Sheet
Kym Skinner	Enmore 2042	CAMP NSW	CAMP NSW
Karen Moore	Chippendale 2008	Myself	Invitation
Lisanne Baghitozz?	Annandale 2038	Myself	Friend
Ros (?) Gravenor	Annandale 2038	CAMP NSW	CAMP NSW
Michael McAlary	Paddington 2021	Friend	CAMP NSW
Colin Smith	Ashfield 2131	MCC	Gay Liberation
Ian Smith	Paddington 2021	CAMP NSW & MCC	CAMP NSW & MCC
Kevin Keogh	Edgecliff 2027	?	City Garbage Tin Poster
George Carr	Medlow Bath 2780	?	Nation Review
Brian Day	Toowong 4066	Qld Gay	Newsletter
David Morrow	Punchbowl 2096	Myself	News sheet
John Y. Bright	Neutral Bay 2089	CAMP	CAMP
A. Baynham	Bondi Junction 2022	?	Paper
C. Wallace	Bass Hill 2197	CAMP	?
B. Shallis	Lakemba 2195	CAMP	Friend
Peter Murphy	Glebe 2037	Socialist Homosexuals	At a meeting
J. Checuti	Glebe 2037	?	?
C.M. Poole	PO Box 583, Armidale 2350	Frustrated person	Notice Board

Name	Address	Affiliation	Source
W. Aitkenhead	Glebe 2037	?	?
B. ?	Glebe 2037	?	?
D. Alexander	Altona 3018	?	CAMP
Michael Denne	Forest Lodge 2037	?	Nation Review
Julie Lambert	Annandale 2038	?	?
Marie Curnick	Waverton 2060	NSW Bureau of Crime Statistics and Research	?
Dorothy Selwood	Willoughby 2068	Seahorse Club	?
Brian Shumack	Birchgrove 2041	CAMP	CAMP
Ron Austin	Waverton 2060	CAMP	CAMP
Barry Leadbeater	Glebe 2037	ARAFMI	MHA Newsletter
Ian Jack	Glebe 2037	ASHOG	MHA Newsletter
Craig Bell	Randwick 2031	CAMP	CAMP
Dorothy Simon	Greenwich 2065	WEL	Word of mouth
Ian Randolph	Redfern 2016	CAMP	CAMP
Leo Ortado	Sans Souci 2219	CAMP	CAMP
Pam Joy	Balmain 2041	?	CAMP
Wendy Hill	Manly 2095	?	Friend
Danny Olbrich	Glebe 2037	Health Commission	CAMP
Jim Walker	Enmore 2042	CAMP	CAMP
Bruce Dyer	Newtown 2042	Ananda Marga	?
Jan Aitkin	Huntley's Point 2111	WEL	Ads
Trina Higgins	Huntley's Point 2111	Love	Ads
Graham Greenleaf	Lilyfield 2040	NSW Privacy Committee	Invitation
Chris Jones	Bondi Junction 2022	?	?
Yolanda ?	Greenwich 2065	?	Newspaper
Alinda Papas	Clovelly 2031	?	Newspaper
Norm Lawrence	Croydon 2132	CAMP NSW	Newsletter
Greg Weir	Paddington 4064	Kelvin Grove Homosexual and Lesbian Group	Kelvin Grove CAE
P. ?	Box 244, GPO Adelaide 5001	Gay Men's Centre	Post
Richard Hollomby	Glebe 2037	CAMP NSW	CAMP Clubrooms and SMH
Truda Korber	School of Sociology, UNSW, PO Box 1 Kensington 2033	Australian/Vietnam Society	Radio
John Bridges	Paddington 2021	Gay Lib Sydney Uni	Friend, Nanna's Coffee Shop
Val Edwards	Geebung 4034	AUS/QTTU	CAMP - Brisbane
Michael Thompson	PO Box 69, Lane Cove 2066	?	Friend
Les Masterman	Balmain 2041	?	Campaign Newspaper
Tony Newell	Haberfield 2045	CAMP NSW	CAMP
Allan Beggs	Elizabeth Bay 2011	?	?
Ken Davis	Darlinghurst 2010	Socialist Workers' Party	CAMP
Vicki Foster	Bondi 2026	?	CAMP
David Ritchie	PO Box 163 Paddington 2021	CAMP/Gay Lib Syd	CAMP/Gay Lib Syd /MCC

Name	Address	Affiliation	Source
Mary Kennedy	Glebe 2037	Lesbian Feminists/CAMP	Lesbian Feminists/CAMP
Margaret Prentice	Glebe 2037	Lesbian Feminists/CAMP	Lesbian Feminists/CAMP
Susan Pearce	Glebe 203	Lesbian Feminists/CAMP	Lesbian Feminists/CAMP
Lynette Simon	Glebe 2037	Lesbian Feminists/CAMP	Lesbian Feminists/CAMP
?	Islington 2296	CAMP NSW	CAMP Newsletter
Dennis Altman	Glebe 2037	?	?
David Weiner	Birchgrove 2041	CAMP	CAMP
Maria Golik	Bondi 2026	?	?
T.C.E. van Gils	Paddington 2021	?	Posters, Campaign newspaper
Terry Batterham	Coogee 2034	?	Word of mouth
Libby Lloyd	Randwick 2031	?	Brochure at Uni
Janice Dunne	Chippendale 2008	?	Friend
Bruce Pearson	PO Box 161, Parramatta 2150	?	CAMP
Brendan Hartnett	Cronulla 2230	?	CAMP
Digby Clarke	Paddington 2021	?	Poster
David Pentes	Balmain 2041	?	CAMP
Charlie Farrington	Balmain 2041	?	Friend
Tania Daniels	Rozelle 2039	?	Friend
Victor Boulos	PO Box 1, Kensington 2033	Tharunka, UNSW Students' Union	Friend, downtown press
R. Harvey	Centennial Park 2021	?	Poster, Nation Review
Eric Aarons	Sydney 2000	Communist Party of Australia	Correspondence
Ross Forman	Elizabeth Bay 2011		Newspaper
Kevin Golding	Darlinghurst 2010	?	Poster, which I nearly missed
Joyce Record	Vaucluse 2030	?	Discussion group
Julie Lulham	Balmain 2041	?	Newspaper
Brett Treney	Glebe 2037	?	Friend
Jennifer Tilby	Annandale 2038	?	Through CAMP
Fred Barton	Epping 2121	CAMP member	Have heard nothing
		CAMP member	else but this for last month
Jim McAlary	Paddington 2021	CAMP member	From CAMP
Graham Carberry	North Fitzroy 3065	Gay Lib - Melbourne	Through CAMP
Bob Hay	Newtown 2042	CAMP member	Through CAMP
Susan McFarlane	Medlow Bath 2780	?	National Times
Dougald McLean	Drummoyne 2047	Society of Friends	Through CAMP
Angelo Rosas	Chippendale 2008	Socialist Lesbian and Male Homosexuals	CAMP
M.V. Barlow	PO Box W106, Neutral Bay 2089	Interested	From Friend

Name	Address	Affiliation	Source
Craig Johnston	Chippendale 2008	Socialist Lesbian and Male Homosexuals	CAMP
Barry Kenny	Paddington 2021	?	CAMP
John Dowd	Parliament House, Sydney 2000	Liberal Party	Invitation
Warren Harrison	Paddington 2021	MCC	From CAMP
Rev P. Alexander-Smith	Paddington 2021	MCC	From CAMP
David Routledge	?	?	Press (National Times)
Tricia Taylor	PO Box 342, Royal Exchange, Sydney 2000	Seahorse Club	CAMP invitation
Penny Goode	North Sydney 2060	NSW Privacy Committee	CAMP invitation
Judith O'Callaghan	Bardon 4065	Kelvin Grove Homosexual and Lesbian Group	Kelvin Grove CAE
Gillian Green	Annandale 2038	?	Nation Review
Joan Webster	Annandale 2038	?	Nation Review
Jamie Gardiner	Bendigo 3550	Central Victoria Gay Group/Melbourne University Gay Soc.	Don't remember, sorry
Geri Rothman	Mosman 2088	MGC Milson's Point	CAMP Personnel
Herman Rothman	Mosman 2088	MGC Milson's Point	CAMP Personnel

Distribution of attendees by postcode attending 1976 tribunal hearing [132]

Postcode	M	F	?	Postcode	M	F	?
2000	3x, 2			2089			1
2008	1x	3	1	2090	1		
2010	4	1		2095	1	1	
2011	1x	1x		2096	2		
2016	1	2		2111	1	2	
2021	4x			2114			
2022	7			2121	1		
2023	1	1		2130	1	3	
2024	1	2		2131			
2025	2	1	2	2132	1		
2026	1	3		2150	1		
2027	1			2195	1x		1
2030	1x			2197			1
2031	1			2207			
2033	8	1	1	2219	1		
2034	1	2		2230	1		
2037	1	1x		2232	1	2	1
2038	1			2296	1		1
2039	7	7	1x	2350			1
2040	7	7		2358		1x	
2041	1		1	2500			
2042	1	1		2526	1		
2045	1	3		2601	1		1x
2047	1x	2		2780		1	
2049	4			3018	1		
2060	1		1	3065	1		
2061	1	1		3550	1		
2062		1		4034	1	1	
2063	2	1	1	4064			
2065	2x	2	2	4065	1		
2066			1	4066	1		
2068	1	1		5001	1	2x	
2088			1				
				Total 165	**90**	**53**	**22**

[132] Note: '?' indicates that gender of person attending is unknown.
Note: 'x' following a number indicates that the Postcode is for a non-residential address.

Affiliations of attendees at the 1976 tribunal hearing [133]

	M	F	?
Adelaide Gay Counselling Service		1	
Abortion Law Reform Association		1	
Ananda Marga	1		
ARAFMI	1		
ASHOG	1		
Australian Union of Students		1	
Australian Vietnamese Society		1	
CAMP (NSW)	23	4	3
Central Victoria Gay Group	1		
Communist Party of Australia	1		
NSW Bureau of Crime Statistics		1	
Gay Liberation	1		
Gay Liberation (Melbourne)	1		
Health Commission of NSW		4	
Kelvin Grove Homosexual and Lesbian Group	1	1	
Lesbian Feminist Collective		9	
Mail	3	5	2
Metropolitan Community Church	2	1	4
Marriage Guidance Counsel	1	1	
Mental Health Association	1		
Newspaper Advertisement or report	9	6	3
NSW Privacy Committee	1	1	
No indication of affiliation or source	8	4	5
Personal contact	17	9	3
Poster	3	4	
Queensland Gay Reform Association	1		
Seahorse Club	2		
Socialist Homosexuals	5		
Society of Friends	1		
Socialist Workers Party	1		
Wollongong Area Gay Society	1		
Women's Electoral Lobby		3	
Women in Education	1		
	86	55	24

[133] "?" denotes that gender of attendee is unknown.

15. Tribunalists' Responses in the Nineties

Tribunalists/Counsel today

The TWG wrote to the Tribunalists and Counsel assisting the Tribunal on 7 February 1991 as follows:

> I trust you will remember that in November 1976 you acted as a Tribunalist/Counsel assisting at the **Tribunal on Homosexuals and Discrimination**. Currently a working party, including one of the Tribunal organisers, Peter de Waal, is preparing the records of the Tribunal for libraries and archives. Simultaneously we are re-examining the cases of alleged discrimination brought before the Tribunal in the light of subsequent anti-discrimination legislation and changes in employment practices and social attitudes since then.
>
> I am writing to invite you, if you wish, to offer any retrospective comments you may have on your experience of the Tribunal, and on the issue of discrimination against homosexuals and lesbians, then or since, for inclusion with the Tribunal papers.
>
> We are please to report that, in some respects at least, todays' responses from employers, government departments, lawyers etc have revealed a significant diminution of prejudice against (or at least of discriminatory action against) homosexual or lesbian people. However, some types of discrimination noted in 1976 remain – for example government refusal to acknowledge even **de facto** marriage for homosexual or lesbian couples, and the Armed Services' refusal to employ acknowledged gay men or lesbian women. Also, of course, new forms of social discrimination have emerged, particularly with the advent of AIDS. Physical violence against gay and lesbian people is probably commoner now than then.
>
> In retrospect we would like to thank you warmly again for participating in the Tribunal, and for thus contributing to the significant advances which were undoubtedly made in the late 1970s and 1980s. We look forward to receiving any comments you care to make, and we will of course send you a copy of our work when it is complete.

On 12 March 1991 The Hon Dr Jim Cairns responded as follows:

> I do remember the November 1976 Tribunal on Homosexuals and Discrimination.
>
> There has been significant reduction in discrimination. It is more than in 1976 anyone could have expected. It is more than a bit due to open acceptance of homosexual character by homosexuals themselves leading to the recognition that they are not so different after all. One of the changes is that overt homosexual over-acting which induced objections. There may be now more physical violence against gays and lesbian people but if so its, I think, no greater an increase than violence generally.
>
> We may now have reached the stage where discrimination against homosexuals is similar to discrimination in general. But discrimination is the main social problem – negative and put down begins with these kids out of fear and continues everywhere.
>
> I would be glad to have a copy of your work when it is complete. I've enclosed a copy of *The Untried Road* – it puts things as I see them.

The TWG wrote the following reminder on 14 August 1991:

> Earlier this year I wrote to you about the work being done on the records of the 1976 Tribunal on Homosexuals and Discrimination (I enclose a copy of my letter).
>
> I haven't heard from you so the Working Party has asked me to contact you again, hoping you might be happy to respond to some or all of the following questions:
>
> 1. Why did you agree to assist the 1975 Tribunal?
>
> 2. Was the Tribunal an informative experience for you?
>
> 3. Do you have any particular memories of aspects of the Tribunal proceedings?

4. Did you think the Tribunal and its outcomes worthwhile at the time?

5. Do you have any comments on the degree of discrimination against homosexuals and lesbians today?

On behalf of the Working Party, many thanks for any comments you would like to offer.

The TWG wrote, on 4 October 1991, to the Tribunalists/Counsel who had not responded to previous correspondence the following letter:

I have incorporated the text of Ian Black's letter to you of 14 August, 1991. I also enclose a copy of his letter of 7 February.

We would appreciate your responding to the five questions, both as a reflection of your ideas, and as a way of comparing them with those of the other Tribunalists, Counsel assisting and some of those who gave evidence, 15 years ago.

Since Ian wrote to you, we have amassed a considerable volume of current evidence, and there have been some powerful changes in legal restraints and community attitudes. There are some areas, though, where change is happening but with painfull slowness; the Defence Department is one such example. Sadly, some state governments have still done little or nothing towards equal employment opportunity, anti discrimination or law reform.

May I thank you for your time and interest, and for your reply?

On 7 October 1991 Bridget Gilling responded as follows:

Mea culpa—they say that busy people can always … twice—I am the exception that tests the rule. But I will answer Ian Black, with luck, tomorrow, probably in long hand as I am non-technical.

Sorry not to be within telephone … at a civilised hour, but we will talk soon. I hope all goes well. You sounded fine, as usual.

Arthur Gietzelt responded on 10 October 1991 as follows:

I acknowledge your interesting letter received earlier this year and a gentle reminder from Peter for a response. I apologise for being so remiss in not making comments—somehow I misread the original intent and being in retirement put it aside. However I hope my late comments will excuse the lapse.

In respect of question 1—Why? I need to give you some background of my involvement in politics. My grandfather came to North Queensland from Austria in 1887 after serving in the Austrian Army. He was a Socialist and supporter of Karl Marx who was after all for the emancipation of all humanity. In 1871 Austria was defeated by Germany—then a rising militaristic power. Yet in 1914/17 grandfather was nicknamed 'Fritz the Hun'. My father was a socialist and indeed I have been all my conscious life. I am against all forms of discrimination and philosophically on the side of most minorities. Accordingly I am on side with all people oppressed, whether it be racial, political, economical or sexual.

Question 2—The Tribunal was a great experience for all the Panel. For my part I saw personally what decent persons faced simply because they were different. I came to see more clearly that prejudice caused sorrow and pain to many, both as a group and as individuals. This made me more determined to help individuals as they sought assistance to emigrate and escape from penal discrimination. It made me a better person.

Question 3—I met a number of homosexuals and my wife and I made friends with some of them. The Tribunal gave all of us an insight into issues that were publicly unknown. For example the right of homosexuals and lesbians to have and/or adopt children. I had not previously thought about such a need. I supported the concept then and still do, even though I am aware that public opinion is not yet helpful.

Question 4—The Tribunal played a part in public education. It is hard to quantify its role, when

compared with the courage of many people in the gay movement who have challenged community prejudice, discrimination and forced many persons to acknowledge the rights of sexual preference. I think the Tribunal helped those of us in the 'opinion-making' area to fight for our ideas wherever we could.

To the extent that we were involved in some pioneering work, extending the work of the CAMP movement of the early 70s, I do believe we gave support to the Whitlam Government's Inquiry into Sexuality [134] which helped many in public office to understand the less obvious forms of discrimination. The Tribunal was a very worthwhile project.

Question 5—I suppose it is reasonable to say there will be some form of sexual discrimination forever. However it must be recognised how much progress has been made by the community in the past twenty or so years. Laws have been made outlawing discrimination in most jurisdictions. That does not mean of course that community attitudes are as yet satisfactory. There remains deep-seated prejudice towards homosexuals and lesbians which while deprecated by most, has to be recognised exists in most sections of society.

Just as we must fight to retain the right of women to make the decision re abortion, so must we fight to allow each person the right to determine their sexual life style, free from any form of legal, personal or community judgement.

I believe the community as a whole has come a long way even though it has a long way to go before it meets the criteria of enlightenment and principles I believe should apply to all legitimate minority groups. I am grateful to have been asked to participate in the Tribunal which played some part in the movement for tolerance and acceptability.

The TWG wrote the following to Helen Coonan on 14 November 1991:

Thank you for your message you left on my answering machine the day before yesterday and the searching you have done through your garage.

I have attached copies of letters from Ian Black dated 7 February and 14 August 1991 to you.

We would appreciate your responding to the five questions, as outlined in the attached, both as reflection of your ideas, and as a way of comparing them with those of the other Tribunalists, Counsel Assisting and some of those who gave evidence, 15 years ago.

Since Ian wrote to you, we have amassed a considerable volume of current evidence, and there have been some powerful changes in legal and community attitudes. There are some areas, though, where change is happening but with painful slowness; the Defence Department is one such example. Sadly, some state governments have still done little or nothing towards equal employment opportunity, anti-discrimination or law reform.

May I thank you for your time and interest, and for your reply?

Helen Coonan responded to the above letter during November 1991 as follows:

Question 1—I agreed to assist because I believe it to have been dealing with a subject which had hitherto been ignored and I had some professional skills to contribute in an area where there appeared to be little knowledge or understanding. Since that time other mutually qualified persons have taken an interest and as I am not gay, I thought it more appropriate to let others play a part.

Questions 2, 3, and 4—It must have been but I have no independent recollections.

Question 5—Only anecdotal. I am sure that there must be competent research in this field.

The TWG wrote to Barry Egan, on 15 January 1991, the following letter:

[134] Royal Commission on Human Relationships, Canberra 1977, Australian Government Publishing Service.

You will recall the two letters you received from Dr Ian Black, and our telephone call of 5 November?

We have not received a response to our request for your observations of what being a Tribunalists meant to you then; what effects the experience had on you; and your impressions of discrimination and female and male homosexuality, currently?

Would it be easier for you for us to put some comment to the effect that you did not feel that any response was necessary or appropriate? This will leave room for the thoughtful and challenging comments that we have received from Dr Cairns and Arthur Gietzelt.

If we do not hear from you, by the Working Group's next meeting in February, we will assume that a comment along those outlined above will be acceptable?

The TWG wrote again to Bridget Gilling on 16 January 1992 as follows:

You will recall the two letters you received from Dr Ian Black, and our telephone conversation of 18 December?

We have not received a response to our request for your observations of what being a Tribunalists meant to you then; what effects the experience had on you; and your impressions of discrimination and female and male homosexuality, currently?

Would it be easier for you for the Working Group to put in some comment to the effect that you did not feel that any response was necessary or appropriate? This will leave room for the thoughtful and challenging comments that we have received from Jim Cairns and Arthur Gietzelt.

We have a meeting of the Working Group on 22 January; if we have not received any response from you, we will assume that you are agreeable to our making the suggested editorial comment.

On 18 January 1991 the TWG wrote the following letter to Justice Jane Mathews:

You will recall the two letters you received from Dr Ian Black last year, and our telephone conversation of 11 November 1991.

We have not received a response to our request for your observations of what being Counsel assisting the Tribunal meant to you; what effects the experience had on you; and your impressions of discrimination against female and male homosexuals, currently?

Would it be easier for you for us to put some comment to the effect that you did not feel that any response was necessary or appropriate? This will leave room only for the thoughtful and challenging comments that we have received from Dr Jim Cairns, Arthur Gietzelt and Helen Coonan.

If we do not hear from you, by the Working Group's next meeting in February, we will assume that a comment along those outlined above will be acceptable?

On a number of other occasions the TWG contacted Tribunalists Barry Egan and Bridget Gilling and Counsel assisting the Tribunal Jane Mathews [now Justice Mathews] by telephone for their comments. Apparently, they do not feel that a response is necessary.

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16. What Has Changed?

The Tribunal recommended: … ***the elimination of all forms of discrimination on the grounds of sexual orientation*****.**

Most Australian state governments have made legislative changes to criminal and discrimination laws. New South Wales was not the first state government in Australia to pass anti discrimination legislation, but, in 1982, it was the first to finally incorporate discrimination on the real or perceived grounds of homosexuality. This change in the attitudes of Members of the State Parliament took five years and a major report from the Anti-Discrimination Board which extensively quoted the recommendations of the 1976 Tribunal on Homosexuals and Discrimination.

Writing this chapter has proved very perplexing. The dynamics of discrimination, especially in New South Wales, but across Australia too, are inconsistent. The shifts in attitudes, behaviours and values in governments and in the communities are, at once, negative and affirmative. For every positive change there are adverse reactions.

Some who have read with astonishment this account of the repression, discrimination, hypocrisy and cruelty which existed in the 1970s may think that Australian society has come a long way since then in its attitudes to gays and lesbians. The reality is that gay men are still being assaulted and murdered; lesbians are still being abused in their homes, at work and on the streets, as a recent report by lesbians *Get Off Our Backs*, has shown.

Whether this chapter is read in the year of publication, or a decade down the road, reactionary attitudes and actions will still be counterbalancing affirmative behaviours. The struggle to gain equal civil, social, criminal and emotional rights will go on. And this will only be through the continuing efforts of female and male homosexuals, their families and friends and others of goodwill and perception.

The Tribunal recommended: … ***that sexuality in all forms is eliminated from the law and only violence and undue influence remains an offence*****.**

In 1984, the New South Wales Crimes Act was significantly amended. There were a number of further amendments in 1985, 1987, 1988 and 1989. No longer could men be charged with the 'abominable crime of buggery'; it was no longer a felony 'to solicit (or attempt to solicit) a male for an immoral purpose'. Providing what was being done was in private and between consulting adult males, no form of gay sex was illegal.

However, while the age of consent for heterosexual intercourse remains at 16 years, homosexual men have to restrain themselves until 18. There is no public explanation for this discrepancy in favour of heterosexual teenage sex. The 1987 amendment also placed constraints on any health, education or welfare professional, or community worker, from counselling young men concerning their perceptions about their gay sexuality:

> 78Q (2) Any person who solicits, procures, incites or advises any male person under the age of 18 years to commit or to be party to the commission of an act of homosexual intercourse, or an act of gross indecency, with a male person, shall be liable to imprisonment for 2 years.

Since lesbian sexual behaviour had never been included in the criminal law there was a call to include it. However, the call was rejected because it was thought the Summary Offences Act was adequate to cover public display of lesbian sexual intimacies.

The Tribunal recommended … ***a significant increase in community knowledge and, therefore understanding, of sexuality and especially homosexuality …***

But if the laws in New South Wales change, attitudes do not. Some dioceses of the Anglican Church still maintain an unyielding and theologically dubious stand; the Roman Catholic dioceses, bowing to the dictates of the Vatican, have not changed their public stance. The extremely conservative 'Letter to Bishops of the Catholic Church on the Pastoral Care of Homosexual Persons', as reported in the *L'Osservatore Romano* of 10

November 1986 was reiterated by the Congregation for the Doctrine of the Faith in 1992. In it 'Some Considerations Concerning the Response to Legislative Proposals on the Non-Discrimination of Homosexual Persons', the Congregation is reported as stating:

> Recently, legislation has been proposed in various places which would make discrimination on the basis of sexual orientation illegal. In some cities, municipal authorities have made public housing, otherwise reserved for families, available to homosexual (and unmarried) couples. Such initiatives, even where they seem more directed toward support of basic civil rights than condonement of homosexual activity or a homosexual lifestyle, may in fact have a negative impact on the family and society. Such things as the adoption of children, the employment of teachers, the housing needs of genuine families, landlords' legitimate concerns in screening potential tenants, for example, are often implicated.

The report in *L'Osservatore Romano* 29 July 1992, of the 'Considerations' also includes comments such as:

- Homosexual orientation is an objective disorder and invokes moral concern (The Letter to Bishops of 1986, drawing on *Declaration on Certain Questions of Sexual Ethics* of 29 December 1975, explains *objective disorder*: Although the particular inclination of the homosexual person is not a sin, it is a more or less strong tendency ordered towards an intrinsic moral evil; and thus the inclination itself must be seen as an objective disorder.)

- Providing a basic plan for understanding this entire discussion of homosexuality is the theology of creation we find in Genesis.

- Homosexual persons, as human persons, have the same rights as all persons, including the right of not being treated in a manner which offends their personal dignity. Among other rights, all persons have the right to work, to housing, etc. Nevertheless, these rights are not absolute. They can be legitimately limited for objectively disordered external conduct.

- Thus it is accepted that the state may restrict the exercise of rights, for example, in the case of contagious or mentally ill persons, in order to protect the common good.

The Protestant churches vary in their attitudes. The fundamentalist churches are constant in their denial of human dignity. Others are more 'tolerant', but few can accept that there can be love between two homosexual men or two lesbians, or that the expression of this love is other than sinful. Most church councils still demonstrate a bunker mentality with the view that marriage is for heterosexuals only. The South Australian Uniting Church recently rejected the application of an openly gay man to join the ministry, not because of his openness about his sexuality, but because he was living with another man in an admitted loving and sexual relationship. Nevertheless, the Tasmanian Uniting Church's Synod Standing Committee has recommended to that State's government that discrimination and vilification against gay men and lesbians be made illegal.

Islam, the largest non-Christian religion in Australia, is also very conservative in its teachings about male homosexuality; its perceptions of the female role in the family and society also encompass arbitrary rules concerning punishments for lesbian behaviours. The Jewish congregations, like their Christian counterparts, are split between conservative and liberal views. Some groups condemn male gay activities; others condone. The Buddhist teachings are very simple: the standard for sexual matters is that for all other actions, *not harming oneself, and not harming others*. True enlightenment comes only through the rising above carnal desires.

Most Anti-Discrimination Acts exempt churches and religious bodies from their provisions as to employment and supplying services; no church has considered it necessary to seek to have these exemptions lifted. Using this exemption, the Australian Catholic University has refused students permission to form a lesbian and gay campus support group. Such gay and lesbian student associations exist on all other campuses. Only the Society of Friends (Quakers) have seen fit to refuse to hide behind this protection. Theirs was the first declaration on the rights of homosexual women and men; it is still one of the few.

Elsewhere in Australia, discrimination is covered by both state and federal legislation. The Human Rights and Equal Opportunity legislation of the Federal government can and does fill in gaps in state legislation. In Tasmania, where homosexual acts have not been decriminalised, it is the only guard against discriminatory actions.

Governments find a need to respond to a range of perceived public pressures. These pressures usually stem from small, well-organised groups of zealots who can be reactionary as well as visionary. So, an amendment was passed to the New South Wales Public Health Act, 1902, to make it a criminal offence to withhold one's HIV positive status from one's sexual partner(s). At the same time the existing powers of restraint over persons with infectious diseases were reinforced. This amendment was incorporated in the 1991 Public Health Act. It is clearly discriminatory and represents the reactive and conservative nature of government.

If an excuse to keep prejudices and bigotries alive were needed, it was provided by the onset of HIV/AIDS infection. By the time that the New South Wales Anti-Discrimination and Crimes Acts were amended, there were dozens of men suffering from a wide range of opportunistic diseases. There are now hundreds who are sick, and thousands have died.

But some very wonderful things have also emerged from the HIV/AIDS pestilence. The federal government of the day, and some state governments, had recognised that HIV/AIDS could not be fought effectively if, simultaneously, repression of male and female homosexuals continued. The battle against the virus required openness, frankness, and trust - which were impossible while society continued to banish homosexuality to an untalked-of netherworld. Ironically, therefore, the terrible virus became, indirectly, an agent of further liberation for gay male and lesbian communities.

Simultaneously, many politicians, bureaucrats, doctors, scientists and health workers found themselves liberated from archaic assumptions and stereotypes about homosexuality. One federal minister appointed a gay and lesbian community liaison officer in his electoral office; there is an organisation for gay medical practitioners and another for gay lawyers; the challenges of research, diagnosis, treatment and palliative care demonstrated the irrelevance of sexual orientation. Most psychiatrists have now accepted the 1974 vote of the members of the Royal Australian and New Zealand College of Psychiatry that homosexuality is not a mental illness and, therefore, cannot be treated.

From the gay communities came true community organisations to care for, support and be advocates for people with HIV/AIDS infection and its associated opportunistic diseases. In New South Wales charities such as the Bobby Goldsmith Foundation were formed to help take up the economic needs for those who were no longer able to work. The Community Support Network trains volunteer carers and provides a 24 hour home caring service. Close relations have been forged between the Health Department's community Health Service and these voluntary community organisations.

Of all these initially informal groups, one emerged as a major educational, service provider and lobby organisation - The AIDS Council of New South Wales (ACON). It has become the State government's principal agent in active education among gay men, lesbians and all men and women whose sexual or drug use behaviours could expose them to HIV infection. ACON has set up groups in New South Wales provincial towns which help coordinate treatment, support and educational services; there are programs for people from non-English speaking backgrounds, young women and men, members of the deaf community, men who have sex with men, mature aged men and women and AIDS.

ACON is a member of the Australian Federation of AIDS Organisations, a federally funded body which provides technical and planning advice to the Department of Community Services, Health and Housing and is the hub of the information and advocacy networks.

Socially, all these very open operations have made potent differences. For the individual lesbian and gay man, they have had a more valuable role. They allow any homosexual man or woman to take a public stance on any issue of discrimination. These men and women are, more and more, experiencing feelings of self-worth and legitimacy. Whilst there are still many opponents of any public expression of gay or lesbian affection or rights, their limited vision and uncharitable attitudes are more often seen by the general public for what they represent. No longer are the pronouncements of these conservative and stale individuals accepted as expressions of general community attitudes.

A striking example comes from the history of the development of the Sydney Lesbian and Gay Mardi Gras where 1000s of lesbians and gay men parade, to the delight of several hundred thousand spectators. From modest (and illegal) beginnings in 1978, it is now one of the major expressions of lesbian and gay rights in Australia. Its level of public approval increases each year; the New South Wales government publicises the event, internationally; its present form does not deny its origins in oppression, criminal sanctions and social alienation.

It is likely that the demonstrated enthusiasm of the vast crowds who watch each year's parade have enabled

state parliamentarians to stand as avowed gay candidates, and be elected. There are also a number of openly lesbian and gay members of local government bodies.

Many inner suburbs of Sydney have long been the preferred living areas for male and female homosexuals; in the last ten years or so, some have achieved the doubtful distinction of being called 'gay ghettos'. The label may have many painful connotations for many heterosexual and homosexual people, but it does acknowledge that it is now possible for many lifestyles to be permitted in our society. Similar favoured areas exist in most Australian capital cities.

An even more marvellous series of events has also come from the AIDS calamity; long established lesbian groups found that there were many common issues with which they could work with male homosexual organisations. The Gay and Lesbian Rights Lobby took up the challenge and has spawned several specific interest groups - Gay and Lesbian Teachers and Students, Street Violence Project, Safe Place Scheme, and the Lesbian Violence Project. It now seeks to set up a legal centre for lesbians and gay men.

The Lobby has been able to focus considerable attention on discrimination of all kinds against lesbians. Because of this involvement in both social and recreational activities, lesbian and gay male information networks have been restored across Australia; the tyranny of distance still influences the effectiveness of lobby groups separated by history and purpose. One example of how this communication has influenced government response to needs is the funding of several gay and lesbian support organisations in various States.

In private enterprise, there is reason to believe that employers have been circumventing the Anti-Discrimination legislation by using economic reasons for terminating employment of 'known' gay men and lesbians. It is impossible to prove, despite the New South Wales Anti Discrimination Board's best endeavours. There are also reports of similar cases, in every State and Territory, and, if the particular Act is silent on homosexual discrimination, the individual is forced to seek redress from the Human Rights and Equal Opportunity Commission.

One organisation that had staunchly maintained its discriminatory policy on the recruitment or employment of male or female homosexuals is the Australian Defence Department. The saga, reported first before the Tribunal, has since staggered from one anticlimax to the next. Forced by the Human Rights and Equal Opportunity Commission to review all its discriminatory policies, the Department first claimed exemption from the Act. Having failed with this sortie, it then sought exemptions on the grounds of special conditions. This counter attack held off outright defeat for a time. However, while the then Minister for Defence supported his commanders and bureaucrats, the government party had misgivings. A Caucus Committee, in a majority report, recommended that the bastion of homophobia be put to rigorous siege.

Parleys took place; these were somewhat marred by the level of intellectual arguments presented:

- We would be disgusted, quite frankly; … the homosexuals who are allowed in will agitate the heterosexuals in the services;

- Homosexuals are sexual deviants who have a medical problem and should not be treated any differently from drug addicts;

- … the ban was necessary to maintain cohesion, morale and discipline …; a serious backlash [is predicted] to the lifting of the ban, [with] physical and verbal abuse against homosexuals and disciplinary problems resulting.

The then Leader of the Opposition, Dr Hewson, wanted to wash his hands of the matter:

- I haven't seen the proposal, but our view is fairly straightforward, and that is, we have left those sort of determinations to the advice really of the defence chiefs of staff.

But Cabinet ordered the Department to capitulate. Since 23 November 1993 there are no hostages in the Department or any of the Forces. Discrimination on the grounds of homosexuality is now illegal. The war continues, but this battle, at least, is won.

The Tribunal stated: ***Evidence was given that the same standards and law should apply to homosexuals as to heterosexuals.***

In the areas of superannuation, life insurance and other 'partner' benefits, the influence of the Commonwealth Marriage Act only gives these rights to heterosexual partners, whether the marriage is *de jure* or *de facto*. The federal Attorney General's Department claims to be unaware of a significant public will to have any amendments made to the Marriage Act, or any legislation which depends on that Act's definitions or operation.

On the other hand, in 1991 the Federal Parliament approved a new regulation introduced by the Minister for Immigration which for the first time in Australian legal history recognised lesbian and gay male relationships. The partial parity with our heterosexual counterparts' familial and spouse categories was achieved by the Gay and Lesbian Immigration Task Force after lobbying the Department long and hard. In other words for lesbians and gays the immigration door is only just ajar.

There is evidence that medical services are still influenced by the apparent or assumed sexuality of a patient. Homophobia and discrimination are still very common in the manner and the quality of service and treatment. Such attitudes are evidenced by the insensitive label of 'innocent victim' of HIV/AIDS.

Some psychiatrists still use behaviour modification techniques to 'cure' gay male and lesbian patients. There is, thankfully, no evidence that aversion therapy is extensively used any longer. Misguided parents do still send their daughter or son to have the adolescent's sexual orientation treated; fortunately, heterosexuality is not seen as a similar problem.

In 1992 a significant case was decided in the Australian Capital Territory Supreme Court. [135] The decision was the precursor of the Domestic Relationships Act, 1994, which was gazetted on 31 May 1994. This Act, unique in Australia, provides among other things, for equal status in property rights for lesbian and gay couples.

Homosexual couples are to be officially counted as "families" for the first time in the 1996 Australian census following a Federal Government decision to change a long-standing administrative procedure which refused to recognise relationships between people of the same sex.

The change, which was endorsed by Federal Cabinet on 16 August 1994, has been made in response to strong lobbying from lesbian and gay rights groups for official recognition of their family structure.

The Tribunal recommended that: ***There be a significant … change in community opinion and action.***

The media show an unsureness to lesbian and gay issues. Reporting varies from 'SHOCK, HORROR' to intelligent and perceptive critiques. In the print media, there is no evidence to detect and prove a publisher's policies, or a subeditor's tendentiousness; in the electronic sources, the personal prejudices of commentators and reporters do not seem to be contained by management. It is a mark of Australian society, it seems, that any salacious matter is fair game for publicity and comment (and condemnation, if this is considered likely to pleasure the reader, listener or viewer). The spate of murders of gay men, in and around Sydney, Melbourne and Adelaide since 1990 does seem to have raised public awareness and conscience about this ultimate discrimination.

There is another very positive change, however. It may also be a signpost for other changes. The NSW Police Service has set up a number of Community Liaison Units, and there are Police Officers in many stations with express responsibility for liaison with a range of minority groups. One such is the Gay and Lesbian communities liaison. This networking between individuals, community groups and the Police and Anti Discrimination Board has succeeded in reducing much of the friction traditional between police and homosexuals. It has had a part in helping these communities set up many organisations that aim to reduce violence and make the streets safer for lesbians and gay men. The public acknowledgment of an officer's

[135] *Hartigan v Widdup*, Supreme Court of the Australian Capital Territory, Master Hogan, unreported, 23 March 1992; cf *Bryson v Bryant* (1992) 29 NSWLR 188 (CA), 202; *Green v Green* (1989) 17 NSWLR 343.

sexual preferences is still not readily accepted by many serving and retired police officers, despite the strongest admonitions by the Commissioner as to the rights to privacy of members of his Service. The history of gay harassment and of discrimination against lesbians is so long that it will take much benevolence and forgiveness on the part of homosexual communities to restore a level of trust. The Police Service has a culture of hating poofters and deriding dykes.

In the other States, legislation removing male homosexual offences has been introduced over the last generation. Only in Tasmania has the privacy of men and women not been protected; their sexual behaviour remains proscribed, and hypocrisy allows the punishment of the innocent. Victimless 'crimes' are still considered a social aberration and the business of government.

The Tribunal recommended that: ***All references with a sex/sexuality bias should be removed.***

The New South Wales Department of (School) Education has been both leader in, and resister to, change in policy and curriculum. In 1976 the Tribunal heard evidence of the changes being brought about through the Personal Development program. The subjects of Health Education, Physical Education, Recreation and Dance were studied very closely for a number of years by committees which had to balance perceived community attitudes, student needs, societal change and educational parameters. The completely revised syllabi reflect the care and imagination of the committees, as well as the inertia of the Department. The matter of HIV/AIDS is being used to have students consider alternative lifestyles; it is hoped to reduce tangible homophobia present in many schools.

The Roman Catholic, independent and other religious schools have also tried to solve the clash between changes in society's attitudes, the behaviours of substantial minorities and the various theological directives.

These changes to teaching materials and methods have not been introduced too soon. At least two high school teachers have been murdered by school students apparently engaged in poofter bashing. Much work must be done in this field, particularly as a number of self-appointed community leaders are still advocating physical and verbal abuse of lesbians and gay men.

There is still, therefore, an ambivalence on the part of many state governments and their agencies towards homosexuals. Discrimination, possibly more subtle than in the times of the Tribunal's hearings, is still widespread. Violence towards lesbians and gay men is still all too common. Many formal community groups have made little or no change in their attitudes or expressions. And these are violent.

The Tribunal recommended that: ***Action should be taken to prevent the censorship of publicity about legitimate activities of homosexuals.***

Vilification was not a word in common currency in the 1970s. Verbal abuse was experienced by most lesbians and gay men, at work and in public. The vocabulary of words aimed to harm and besmear was extensive, colourful, and very offensive and hurtful. In 1993 the New South Wales Parliament amended its Anti Discrimination Act to make vilification of lesbians and gay men an offence. In 1994 vilification of, and discrimination against, people with HIV/AIDS also became offences. In this way, the attitudes of too many unfeeling and unthinking men and women in our wider communities may be challenged. If violence, in any form, is no longer socially approved or accepted, members of these minorities will be able to live peaceful, productive and fulfilled lives.

17. Appendixes

Appendix A: Written Responses to the Australian Broadcasting Commission's Chequerboard Television Program

The ABC
Dear Sir

I would like to congratulate you on the Chequer Board programme last Wed, it perhaps clears up the question of just what, and why, is a homosexual for many people.

In my young days there was seemingly no such thing! There must have been much misery and fear.

If a homosexual can have no normal marriage and companionship, surely I feel, there can be no wrong in such a relationship as depicted in Chequer Board programme.

Perhaps the worst feature is the cruelty and brutality shown by 'normal' heterosexuals if one can believe various reports in magazines and newspapers.

ABC continue to let us have light on more subjects.

R A Debus
Faulconbridge
6 November 1972

Dear Sir

I wish to congratulate you on tonight's episode of 'Chequerboard': – This Just Happens to be Part of Me. It is pleasing to me, being a homosexual to see your Channel help enlighten the public in the problems and lives of the homosexual. With more enlightening programs like this maybe society will be better equipped to understand and accept the homosexual for what he, or she, really is. Thus when the public have a better insight of homosexuality, the present absurd laws in this country can finally undergo reform.

For what I have done in private with another male I am to be tried in court for homosexual acts. When a police force can bring charges like this, when no harm is being inflicted on others, it is certainly time for reform.

Keep up the good work and time programs.

(Anonymous)
Carlise Street
St Kilda
7 November 1972

Dear Sir

Last night at 8.30, 'Chequerboard' I could not believe, you were trying to entertain people with the show you had about 'Homosexuals'. Was it shown to let the young see how grand it was? or do you feel, life is not **cheap** enough to day in every way. If more of 'Homosexuals' would cheer the world up believe me, you people make me darn **sick**. Is it your way of spending an evening??

Jack Walker
(no location given)

Manager
ABC Channel 2
Alderson Building
Pacific Hwy
St Leonards

Dear

I wish to protest forcible on the screening last Tuesday evening on Chequerboard,the subject of 'Homosexual Relationships'. If that is the sort of programme you imagine the majority of viewers would appreciate, it would spell a poor future for our country and for the young people now growing up in our midst. I am sure most people would disapprove although too indolent to take the trouble to make protest. This film could do incalculable harm to many, especially to weak-minded people in our community.

Also, why encourage the weak and criminally-minded, to use a gun to settle their differences. No wonder we hear of the daily occurrence of murder in our community. They don't need any encouragement. In many of this type of film, we invariable see drinking parties in the homes or elsewhere. Is that the pattern of the majority of homes in this country ? I would not like to think so. You have access into millions of homes. It is up to you to show the best, nothing that would degrade, something uplifting on all occasions. You have a great responsibility.

All have not the same taste, but we did enjoy the Lord Mountbatten series last year, Monday Conference, The Inventors, A Big Country, and historical films, to name only a few.

Deaconess
2 November 1972

Dear Sir

I wish to congratulate you on your program **Chequerboard** entitled: this just happens to be a part of me!

At last someone had the knowledge, insight, courage and good taste to show homosexuals as ordinary (not to say 'normal') people, without depicting them as female impersonators, child seducers and perverts. Male homosexuals are as masculine as other men, as lesbians are feminine. It is about time that they are not depicted as a Tivoli joke, with limp wrists, and mincing walks. (Although, advisedly, they do exist) but unfortunately the man and woman in the street thinks that everyone is like that. It was an intelligent discussion and courageous on your part to show it. I feel sure, many suburban couples have sat up in disbelief of witnessing a bearded masculine man being a self declared homosexual, and not conforming to their ill-informed, pre-conceived idea. Maybe you have achieved a great feat within the family circle that when next time a family finds out about their son or daughter, they won't disown them, and compare them with freaks. Maybe they will remember your program and realise that two people of the same sex are entirely capable of forming decent and lasting relationships, based on trust and love. Christians believe it is important to **love**, not necessarily judging as immoral the object at whom that love is directed.

(Anonymous)
Hawthorn

Dear Sir

I would like to congratulate the ABC and all those concerned with the production of the Chequerboard programme 'This just happens to be part of me'. This is, in my opinion, one of the best Chequerboard programmes that has been shown. A subject such as homosexuality, guaranteed controversial, can only receive a better understanding from such a programme. As a homosexual, I would like to commend the entire team for their honesty, integrity and lack of sensationalistic journalism (which often mars other attempts to look at topics akin to homosexuality). A superbly produced and directed programme.

Is there any possibility that this particular Chequerboard could be repeated at some time in the future?

Brian Woodward
[Fivedock] NSW 2046
1 November 1972

Television Station
ABN Channel 2
Pacific Highway
Gore Hill NSW 2065

Dear Sir

I have just viewed your wonderful informative program in the Chequerboard series titled *This just happens to be part of me*.

I wish to commend you for producing and showing this program, as I feel that there should be a greater understanding of the homosexual, and it is programs such as this that we, as the viewing public can learn and try to understand these people.

I do hope that you can find time at some future date, to re-show this great program.

B Heller

Dear Sir

Congratulations for your production of 'It's part of me' on Chequerboard last Tuesday night. It's a fine effort on your part, and I hope to view more programmes of such controversial nature.

A Dright
(mother of five)
Glebe

Dear Sir

I was surprised that your last 'Chequerboard' series featured homosexuality as a topic, but not unpleasantly so. Being a liberal Christian, I do feel one must bear life as it is given to us, and that homosexuals must cope with their problem, the best way they can. It is not for us to judge whether it is right or wrong. I myself learnt a few facts about homosexuality through your programme and indeed feel less apprehensive towards them than before. I think it must be the general ignorance and fear of homosexuals that makes us hostile to them. One need to overcome this, by presenting, frank unbiased image of these people – and to teach the community not to be afraid of them – but to let them live their lives in peace as best they can.

Hoping to see more programmes of this nature.

C A Armstrong
Rose Bay
6 October [sic] 1972

Dear Sir

On Tuesday 31st October I watched the Chequerboard Program *This Just Happens to be Part of Me*. I consider this to have been a very fine programme on a subject that could cause difficulties.

I write to congratulate Robin Hughes on the skill of her interviewing. Her questioning I felt showed a thorough preparation and great sensitivity. I heard her today interview the Reverend Peter Hollingworth on the Insight Programme and this only serves to confirm my opinion of her skill.

She is an asset to your organisation and much appreciated by a member of your audience.

Christine Deer
5 November

Dear Sir

As an avid viewer of your 'Chequerboard' series, I was pleasantly surprised to see such a topic as 'Homosexuality' reported on, as it is a topic which is always clouded with myth and fiction, and it is rare to be able to get honest, untainted facts on the subject, I would appreciate more programmes to delve into this relatively unexplored part of the community.

I have known a few homosexuals but have been unable to really communicate with them, because mainly of my ignorance about the lives of these people, which is general of the community, as a whole, I am sure.

So it is a credit to you to have devoted one of the programmes to 'Homosexuality' and I hope there shall be many more.

Thus a good cheer for the ABC.

Penny O'Connell
3 November 1972

The Manager ABC
Channel 2

Dear Sir

Several people who have missed 'Chequerboard' 'The Homosexuals' have asked me to write in to you to ask if we could have a Replay of that session.

Hoping this will be possible, as it was most enlightening, Thanking you.

(Mrs) M S Peulland
[Mosman] NSW 2088
3 November 1972

Appendix B: Report of the Standing Committee on a 1983 Sydney Synod Motion on Homosexuality and Ministry

Anglican Church of Australia
Diocese of Sydney

Report of the Standing Committee on a 1983 Synod Motion on
Homosexuality and Ministry

1. The following motion was placed on the business paper of the 1983 Synod of the Diocese of Sydney:

> Synod is of the opinion that homosexuality is not a bar to any ministry of this Church.

2. The motion had not been dealt with by the conclusion of Synod, and was referred inter alia to the Standing Committee. The Standing Committee appointed a Committee to consider the proposed motion consisting of Canon D.B. Knox, Mr K.R. Handley, Q.C., Mr T.R. Smith and Canon A.A. Langdon (Convenor). Subsequently the Rev Dr P.F. Jensen replaced Canon D.B. Knox.

3. In due course the Committee reported to the Standing Committee, which approved of that Report being printed for Synod in the following terms:

During 1984 Standing Committee was involved in the issue of homosexuality as it affected the use of Sydney Square and, after an initial meeting, the Sub-Committee was disbanded as it was thought that its work would be subsumed under the general investigation in which Standing Committee was engaged. However, this did not prove to be the case and on 29 October it was reappointed with its original terms of reference. When Canon Knox retired from the principalship of Moore College, the Rev Dr P.F. Jensen replaced him as a member of the Committee. That Committee now presents the following report:

4. The Committee would distinguish at the outset between a person who is engaging on current and continuing basis in homosexual acts on the one hand, and a person with a homosexual orientation who does not engage or no longer engages in homosexual acts. Scripture does not condemn a person merely because of his or her homosexual orientation or inclination. For this reason, Christians in this category who resist and reject the practice of homosexual acts deserve the continuing acceptance, encouragement and support of the congregation in terms of both fellowship and ministry. The terms homosexual and homosexuality are only properly applicable to persons who engage in homosexual acts or follow a homosexual life style. We use the words homosexual and homosexuality in this report in the sense referred to above.

5. The Committee proposes the following theological criteria as the basis for understanding the term homosexuality in the motion:

> Willing continuing homosexual activity is sinful. God's wrath rests on it. (Romans 1:24-28, I Corinthians 6:9-11, Leviticus 18:22; 20:13)
>
> If a Christian brother or sister will not abandon this action after admonitions, his or her fellow Christians must withdraw their Christian fellowship. The New Testament requires this. (I Corinthians 5 and 6)
>
> The active practice of homosexuality is a bar to every ministry in the name of Christ or within the Church of Christ, for such ministries are the gift of the Spirit (I Corinthians 12:7) and are conducted in the power of the Spirit of holiness (I Thessalonians 4:1-8).
>
> It is clear from God's word that such people, while they remain unrepentant, cannot be entrusted with responsibility for ministry. Scripture, however, does not differentiate in this respect between persons who are sexually immoral because of heterosexual acts and those who are sexually immoral because of homosexual acts.

6. Pursuant to the Anglican Practices Ordinance, 1983, the Anglican Church in the Diocese of Sydney has

declared that:

> (a) It is a practice of the Anglican Church of Australia in the Dioceses of Sydney to follow the teaching of the canonical scriptures of the Old and New Testament and to apply the Will of God as revealed there, which practice conforms to the doctrines of this Church.
>
> (b) … the Scriptures teaches that 'the sexually immoral … adulterers, male prostitutes, homosexual offenders' (I Corinthians 6:9-10) have seriously departed from God's purposes. Therefore it is the practice of the Anglican Church of Australia in the Diocese of Sydney to censure those persons (irrespective of the sexual propensities of those persons) who practise or promote the practice of such acts and to support those persons whose sexual propensities may be towards such acts but who resist such propensities.

7. The Committee supports the Diocese's traditional policy that homosexuality as defined above is a bar to the ordained ministry.

8. However, the motion originally appearing in the Synod business paper referred to 'any ministry in this Church'. The Committee has therefore analysed possible lay ministries as follows:

(a) Ministry of Leadership – e.g. churchwardens and parish councillors.
(b) Ministry of Preaching and Teaching – e.g. Layreaders, Sunday School or S.R.E. teachers, CEBS or GFS leaders, Fellowship and other youth leaders, Bible study leaders.
(c) Ministry of Musical Leadership – e.g. organist and choir master.
(d) Ministry of Representation – e.g. parish nominators, Synod representatives.
(e) Ministry of Participation – e.g. in Holy Communion, Confirmation, Baptism, choir member or lesson reader.
(f) Ministry of Assistance – e.g. sidesmen and sideswomen, parish secretary, verger.

9. In applying the theological criteria to these categories of lay ministry, the Committee has concluded that a practising homosexual as defined cannot properly occupy any office or perform any duty which involves ministry within the Christian fellowship. Consequently such a person could not fulfil any of the roles of lay ministry referred to above. The same applies to a person who advocates or promotes homosexual practices or a homosexual lifestyle, even if there is no evidence that he or she personally engages in homosexual acts.

10. On the other hand, ministers and Churchwardens are not called upon to approach possible cases of homosexual immorality within the life of the congregation on a different basis to possible cases of heterosexual immorality. A person offering for duty as a sidesmen or sideswomen, parish councillor, choir member etc. is not normally asked questions about his or her heterosexual activities outside marriage, unless there is something in the situation to give the Minister ground for concern. Similarly there is no need, and indeed no justification, for asking any such person about their possible homosexual activities, unless comparable grounds for concern are present.

11. The Rubric to the Service of Holy Communion in the Book of Common Prayer which entitles and requires the Minister to take steps to exclude 'an open and notorious evil liver' from the Lord's table lest 'the congregation be thereby offended' is, in our opinion the appropriate test to apply in practice. There is no doubt that the words of the Rubric apply to cases of 'open and notorious' homosexual activity just as they apply to 'open and notorious' heterosexual immorality (and, of course, to 'open and notorious' immoral behaviour in any other area of life). Inherent in the Rubric is the obligation to undertake appropriate pastoral counselling and reconciliation within the congregation. We draw attention to the fact that the Rubric also places upon the Minister the following requirements:

> Provided that every Minister so repelling any, as is specified in this, or the next precedent Paragraph of this Rubric, shall be obliged to give an account of the same to the Ordinary within fourteen days after at the farthest. And the Ordinary shall proceed against the offending person according to the Canon.

12. If a person who is undertaking some ministry within the parish, confides in a Minister the he or she is

engaging in sexually immoral conduct, heterosexual or homosexual, the Minister would normally seek to help that person to give up such conduct and follow once again God's standards in his or her life. The position would not be different if the Minister, for example, were to discover such a person in a compromising situation. In dealing with situations which have arisen because of his private knowledge, either obtained through his ministry to that person or otherwise, he should treat the homosexually immoral person no differently from the heterosexually immoral person.

13. On the other hand, if the minister becomes aware of the problem through information through a third party, rumour or gossip, he must act with care and discretion because the information could be false, and its communication malicious. Once again, however, he is neither required nor entitled to treat such information differently, or to act in a different manner, when it relates to homosexual rather than heterosexual conduct. In so doing he should, in either case, be conscious of the risk of being sued, for example, for defamation.

14. For this reason the Committee draws attention to the fact that the law of defamation is concerned with disparaging statements about a person communicated to another. Accordingly a Minister who, with no one else present or in earshot, counsels a parishioner in private about his or her lifestyle or behaviour, has not defamed the person to whom he spoke. Equally, a handwritten letter given to the person in question cannot be a libel if the author showed it to no one else. However, a letter dictated to a secretary and typed by her is published to the secretary, and this would enable the recipient to sue the author for defamation.

15. The law does, however, protect defamatory communications, spoken or written, where the speaker or writer has a duty to speak, and the hearer or reader has an interest to know. This protection is known as qualified privilege, and communications in this situation are legally protected, even if defamatory and even if false, provided the speaker or writer acted in good faith and without malice or ill will to the person defamed. Thus communications in good faith by a churchwarden to a Minister, or by a Minister to his Bishop, are legally protected and the speaker or writer would not be liable in damages.

16. Part IVC of the Anti-Discrimination Act 1977-1983 (NSW) prohibits certain acts which discriminate 'against a person on the ground of his (or her) homosexuality'. Not all types of alleged discrimination are within the Act, as the recent decision of the Anti-Discrimination Tribunal, dismissing the complaint brought by the Gay Solidarity Group against the Glebe Administration Board relating to the use of Sydney Square, demonstrates. Moreover it is not clear whether 'homosexual persons' and 'homosexuality', when used in the Act, refer to a person's sexual orientation or to his or her activities and lifestyle.

17. Section 56 of the Anti-Discrimination Act provides:

> Nothing in this Act affects–
> (a) The ordination or appointment of Priests, Ministers of Religion or members of any religious order;
> (b) The training or education of persons seeking ordination or appointment as Priests, Ministers of Religion or members of a religious order;
> (c) The appointment of any other person in any capacity by a body established to propagate religion; or
> (d) Any other practice of a body established to propagate religion that conforms to the doctrines of that religion or is necessary to avoid injury to the religious susceptibilities of the adherents of that religion.

18. In the opinion of the Committee, the direction in the opening Rubric to the Service of Holy Communion in the Book of Common Prayer to exclude from communion 'open and notorious evil livers' to avoid offending the congregation, is a practice of the Anglican Church of Australia within the meaning of Section 56(d) of the Act and also reflects a wider practice of excluding all such persons while unrepentant from any ministry within the Church. Accordingly, action taken to exclude such persons from ministry within the congregation should be protected by Section 56(d) from any proceedings under the Anti-Discrimination Act.

For and on behalf of the Standing Committee.

Rev Canon A A Langdon

Convenor
3 October 1985

Appendix C: Dishonourable Discharge from USA Defence Forces [136]

ARMED FORCES

Homosexual Sergeant

With a chestful of ribbons (Bronze Star, Purple Heart, Commendation Medal from three tours in Viet Nam) and Airman's Performance Reports studded with ratings of 'absolute superior,' Leonard Matlovich, 31, is the very model of a modern technical sergeant. He is also a professed practising homosexual. As such, he has become a celebrity in the armed forces, which every year drums out hundreds of homosexuals on grounds that they 'seriously impair discipline, good order, morale and security.' Tall and red-haired, Matlovich has become, in the words of American Civil Liberties Union Lawyer David Addlestone, 'a beautiful case' for legally challenging the military's prohibition against homosexuals.

Long Odyssey. He is doing just that. In March, Matlovitch, a race-relations instructor at Virginia's Langley Air Force Base, wrote his commanding officer: *I have arrived at the conclusion that my sexual preferences are homosexual, as opposed to heterosexual*. The Air Force began moving to give Matlovich a general-less than honorable-discharge. But Matlovich has fought the customary procedures by demanding that a three-officer board review his case, and says that he will take his fight to the Supreme Court if necessary.

Matlovich's act was the culmination of a long personal odyssey. The son of a career Air Force sergeant, Matlovich grew up on military bases in such places as Charleston, S.C., Alaska and Guam. In 1963, after graduating from high school in England, he joined the Air Force. *I knew I was homosexual then*, he says. *I had been since I was in the seventh grade*.

Ultraconservative in politics and social values, he looked with great loathing upon his sexual desires. To bolster his self-esteem, he says, he clung to racist views. *I kept thinking that if there was someone lower than me on the totem pole, it was not so bad. It was a defence mechanism*.

Gay Bar. In 1971, however, Matlovich began training as a drug-abuse and race-relations instructor at Hurlburt Field in Florida, and his prejudices began to evaporate. As he came to realize that his contempt for blacks was ill-founded, his stereotyped disdain for homosexuality crumbled too. All along he had denied himself sexual contact; now, with considerable trepidation, he visited a gay bar in Pensacola and had his first homosexual encounter.

The Pentagon plans to hold to its rulebook. The presence of homosexuals in the service, it argues, could impair recruitment; other young men might feel anxious about living in close quarters with them. In addition, Defence Department officials contend, homosexuals cannot command respect as officers or noncoms and are prey to blackmailers. Replies Matlovich, who had top-secret clearance in the 1960s while working as an electrician on Minutemen ICBM silos: *Who's going to blackmail **me**?*

Fellow airmen at Langley continue to accept Matlovich as a fine noncom. He finds sexual partners by frequenting a gay bar in Norfolk twice a week, but now that he can be open about his way of life he is thinking of a more sedate arrangement: *I want a lover. I want to settle down*. For now, his chief concern is working to dispel the military's timeworn fears. *We don't want any license to rape*, says Matlovich. *We just want the right to work*.

Leonard Matlovich, [137] the Air Force technical sergeant who has begun a legal challenge to the military's prohibition of homosexual servicemen (Time, June 9), now has some company. Last week the Army started proceedings to give less than honorable discharges to two lesbian WACs. Pfc Barbara Randolph, 22, of Indiana,and Private Debbie Watson, 20, of Texas, voluntarily admitted their sexual preferences to an interrogator as the result of a whispering campaign about their activities at Fort Devens, Mass. Both women intend to fight the dismissals, said Private Watson, *as far up as we can go*.

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[136] *Time Magazine*, 9 June 1975, pp. 34-5.
[137] *Time Magazine*, 16 June 1975, p. 48.

Appendix D: Questions Concerning Swedish Military Service, Etc.

(In 1984 a major official Swedish Government report on 'Homosexuals and Society' [ISBN 91-38-68269-1] was published. Below are the translated sections relevant to the armed forces).

13.1 Introduction

Most Swedish men go through basic military training. Some men continue their military service and become permanently employed as commissioned officers.

Many of those who complete their basic military training, and several who become officers in command, have a homosexual temperament.

Earlier, it was thought that difficulties for homosexuals were associated with their capacity to manage basic military training. As an example of past attitudes, a statement made in 1971 by the West Establishment Office can be mentioned. In this statement it was reported that homosexuality, not infrequently, could bring problems for the servicemen who would spend time in an 'extremely masculine' environment, which life in barracks involves, and that most often it was an advantage for the individual homosexual to be excused from military service, since such service could bring unnecessary suffering with it.

13.2 Basic Military Training

13.2.1 Introduction

Basic training involves an enforced sense of community, which some individuals cannot cope with. Many men who do the training come directly from their homes and schools, and are introduced to the enforced sense of community. This may create many problems for the individual who is at an impressionable stage of his life. It is not only homosexuals who experience these problems.

As well, however, the homosexual has to deal with the special complexity of problems, which can be integral to homosexuality. He risks being either persecuted or excluded from the sense of community. Even the fear of exposure can lead to anxiety.

13.2.2 The general procedures of the enlistment process.

The main rule, either when selecting conscripts or any other post within the armed forces, is according to the National Service Law (1941:967) paragraph 6, Part 5: a serviceman should, as far as possible, be selected for the training he is considered best suited for. In order that a selection for a certain position should be as suitable as possible, an assessment of the soldier's qualifications, in all aspects, must be done.

At such selections, it is proper that personal characteristics and inclinations are taken into consideration. There are no existing Regulations which direct that a homosexual temperament, of itself, is to disqualify, in part or in whole, applicants for any position or type of service within the armed forces.

In order that the enlistment authorities will be able to assess the service potential of the recruit a medical examination is given, as a part of the procedures of the enlistment office. This is to find out if there are any so called obstacles to particular forms of military service, or reasons against the draftee doing military service at all. The service oriented medical assessments are made with the help of instructions from the section of the Medical Service Administration Manual, 'Medical Examination and Evaluation Instructions' (MED.U, Annex B, Handbook for Medical Service Personnel within the Armed Forces, H Med F). Each complaint or condition must be evaluated; the diagnoses in the Medical Handbook are from the 1968 edition which was compiled by the Swedish Board of Health and Welfare.

The system of classifications of complaints and conditions is given military medical meaning by the addition of a number, according to the following scale:

8 An insignificant complaint;
7 Slight;

6 Moderate;
5 Moderately significant;
4 Significant;
3 Very significant;
2 Very significant (is not ordered military training, but is suitable within other parts of the defence program) - exempt;
0 Very significant (is not ordered training within any part of the defence forces) - exempt;
1 Not established.

Example: A condition has been classified as number 507.0215. The first five digits (507.02) indicate that the person who has been examined is suffering from hay-fever, and the sixth digit, 1 puts the specific complaint as 'general'. The seventh, and last digit, shows the significance of the complaint, from the point of view of military service, and in this case has been diagnosed as 5, meaning 'moderately significant'.

In the Medical Evaluation Table of the Swedish National Board of Health and Welfare, homosexuality was given, up until 27 September, 1979, the classification number 302.00; it was to be found under the heading 'Sexual Anomalies', which in turn is indexed under 7, 'Mental Disorders'. The Swedish National Board of Health and Welfare decided, however, on that date, that the code-number 302.00, among others, should be cancelled.

The classifications under 'sexual anomalies' were:

302.31 Transexuality
302.99 Sexual anomalies not otherwise described

13.2.3 Nineteen-seventy - up until the summer of 1976

'Medical Examination and Evaluation Instructions' were published in 1976, and have been revised subsequently. In the previous edition, the instructions were that homosexuality should be classified 302.00 and that the evaluation should be 0 or 2, that is to say, an unconditional exemption from basic military training.

The Regulations were upheld accordingly, but not rigidly. Most of the recruiting centres assessed each request for exemption on the grounds of homosexuality on its merits. The assessment was the based upon several factors, including social and medical factors.

13.2.4 Instructions from the 1976 edition

According to the 1976 edition of 'Medical Examination and Evaluation Instructions', homosexuality was not to lead to an unconditional exemption from military service. At the service-based assessment, even the evaluation 8 (no reduction) could be used. In the instructions, it was also stated that, before the service assessment was made, informed decisions were to be made based on a weighing of risks and essential qualities.

13.2.5 Current Instructions

As a result of the decision made by the Swedish National Board of Health and Welfare, (section 13.2.2), the 'Medical Examination and Evaluation Instructions' have been changed, so that homosexuality no longer is mentioned as a specific classification, and is not part of the service assessment. Instead, the following classification has been introduced.

302.99 Sexual anomalies 0, 5 or 8 not otherwise described.

In assessments 0 and 5, a diagnosis is mentioned, whereas in assessment 8, there is no diagnosis.

Homosexuality is classified with the number 302.99.

The changes in the 'Medical Examination and Evaluation Instructions' mean that homosexuality is no longer a classification at the time of the enlistment proceedings. For the person who states that he is homosexual, the classification 302.99 should be used. This classification means that, at assessment, a person's homosexuality, even with other circumstances taken into consideration, is not currently of major or minor significance, and does not lead to automatic exemption. The instructions do not mean that homosexuals are automatically exempt from military service.

Two questions are of immediate interest. The first one is, can a homosexual always can count on being exempt from military service, if he so wishes?. The other question is whether homosexuals, who want to complete their military service, run the risk of being exempted from enrolment?

Dealing with the first question, a careful interview is conducted to analyse the reasons for the request to be exempted from military service. If an analysis of the interview shows that the application is justified and genuine, and if the analysis has been made after careful consideration, the person concerned is excused from military service.

When it come to the second question, an aptitude test is given, which includes an interview. It assesses whether the person concerned will be able to complete his military service without any difficulties of a social or medical nature occurring. If the assessment turns out to be unfavourable, the person concerned will be rejected for military service, despite his wishes.

13.2.6 Other

Members of the Medical Committee of the Defence Department have stated that the Instructions are working out smoothly, and homosexuals who have chosen to do their military service are doing so effectively. Only in very rare cases have complications arisen. Only in exceptional cases has a discharge been granted on the basis of homosexuality or assessment at enlistment has been unfavourable.

13.3 The Views of the Commander-in-Chief, Swedish Armed Forces

The Commander-in-Chief has provided a written statement, outlining the views of the armed forces on homosexual service personnel. The following summarises his attitude:

The attitudes of members of the armed forces, when it comes to any deviation from the usual societal behaviours are based on the general values in our community; consideration is also given to the special conditions found in the armed forces. Homosexuality is assessed by the Commander-in-Chief as apparently more and more accepted in society. This is in line with the statement by the Swedish Parliament on this issue. Homosexuals, therefore, do not, in any circumstances, require special treatment of any kind within the armed forces.

At the time of enlistment, the armed forces try to obtain volunteers, as well as recruiting permanent military and civilian personnel. In other words, selection and placement aim at placing the 'right man and the right woman in the proper place'. Personal characteristics are a part of the basis of the decisions made. Sexuality is always a part of personality. The essential thing is the individual's ability to manage or handle his own sexuality.

For the mature person whose homosexuality or some other so called deviant behaviour is an accepted and controlled part of his personality, the condition is not a basis for special treatment within the armed forces.

Where homosexuality does present problems for the individual, such as not accepting his or her homosexuality, this could give rise to difficulties for the individual when on service in the armed forces.

A list, covering specific situations which could cause problems for the individual homosexual would be long. Three examples will be sufficient:

The organisation of the defence forces requires that service personnel live in close-knit squads, often isolated from other units for long periods of time.

To serve under such conditions can be very difficult for people whose sexuality has not been worked out, psychologically. This is about, for example, a lone man among a large group of women, as well as a lone woman in a group of men; it also concerns a homosexual man or woman, who is alone in a single sex squad or group.

The special security requirements of the armed forces mean that all personnel with any type of problem,

such as economic, alcohol, drug, marital or sexual behaviour which is prohibited, can run the risk of putting themselves in an addiction-dependence state.

What is important to servicemen is that they serve under an obligation to obey commands.

Because of this, their ability to influence the situational problem is decreased. This, in turn, compounds the risk of disrupting relationships within the formal group for the period that those in question serve in the armed forces. All forms of deviance can, for this reason, become causes of harassment.

13.4 Discussion

It is proper that the principles used for selecting personnel for different posts within the defence forces have the aim of 'the right man and the right woman in the proper place'. Homosexuality, as such, cannot be a reason for special treatment within the armed forces, just as no other reason such as alcohol dependence or marital situations can be a reason for special treatment, either. It is, however, stressed that, irrespective of its causes, many homosexuals, as with groups of people, can have problems.

It is natural within the defence forces, as well as within other groups in society, that if you show proper consideration for homosexuals for example, there will be no special classification needed, when enlistment processes takes place. Homosexuality as such, cannot, and ought not, disqualify a person from any post within the defence forces.

It is not, and this is the view of the 'Medical Examination and Evaluation Instructions', a sexual anomaly at all.

So, there is not any special classification needed for homosexuals, and we presume that any such classification has been removed from the 'Medical Examination and Evaluation Instructions' for this reason.

Appendix E: The Michigan Bill: a Proposal for Discussion

CAMP NSW Notes to Explain the Michigan Bill

(Draft 6 September 1976)

The Bill specifies two forms of criminal conduct:

1. Sexual penetration
2. Sexual contact

see Definition section – S1

There are two categories for each of these – if accomplished:

1. Sexual penetration

see felony (more serious) – S2
see misdemeanour (less serious) – S4

2. Sexual contact

see felony (more serious) – S3
see misdemeanour (less serious) – S5

There are two further provisions:

Sexual penetration – coercion or force with INTENT to commit – S6
Sexual contact – coercion or force with INTENT to commit – S6

Section 1. Definitions

Section 2. Sexual penetration (felony)

(1) Circumstances in which sexual penetration can be criminal sexual conduct.
(2) Penalties for this criminal sexual conduct – according to age of victim.

Section 3. Sexual contact (felony)

Structure as for – S2

Section 4. Sexual penetration (misdemeanour)

Structure as for – S2

Section 5. Sexual contact (misdemeanour)

Structure as for – S2

Section 6. Intent to commit criminal sexual conduct

(1) Sexual penetration

(2) Sexual contact

Section 7. Evidence admissible in court

Section 8. Suppression of names and details of case

Section 9. Removal of authority over victim

The Michigan Bill:
a proposal for discussion

Preamble: To implement this Bill it would be necessary to repeal those sections of each statute which deal with criminal conduct as this Bill would provide a complete code to regulate all aspects of such conduct. The sections to be repealed would probably be: sections 62-81B of the Crimes Act and sections 27-34, Summary Offences Act (rape, incest, 'unnatural offences', soliciting, prostitution). Discussion needs to be held with the government on their proposals for the Summary Offences Act.

The Bill:

S1. Definition section.

(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 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 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) 'Spouse' means a person (whether male or female) living in voluntary sexual cohabitation with another person or persons (whether male or female), regardless of the legal status of that relationship.

(j) 'Victim' means the person alleged to have been subjected to criminal sexual conduct.

S2. (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) 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 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 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 unethical or unacceptable.

(v) When the actor, through concealment or by the element or surprise, is able to surprise the victim.

(vi) When the actor is in a position of authority over the victim and uses this authority to coerce the victim to submit.

(b) 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.

(c) 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.

(d) 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)

(2) Criminal sexual conduct in the aforesaid section is a felony.

(a) Where the victim is thirteen years of age or under, and the actor knows or has reason to know the age of the victim, the felony is punishable by imprisonment for fourteen years.

(b) Where the victim is between thirteen and sixteen years of age, and the actor knows or has reason to know the age of the victim, the felony is punishable by imprisonment for twelve years.

(c) Where the victim is over sixteen years of age, and the actor knows or has reason to know the age of the victim, the felony is punishable by imprisonment for ten years.

To be considered: Should age differentials be included in the above?
Should alternative punishment be recommended?

S3. (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) The actor causes personal injury to the victim and force and coercion is used to accomplish sexual contact. 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 the 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 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 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 the purposes which are medically recognised as unethical or unacceptable.

(v) When the actor, through concealment or by the element of surprise, is able to surprise the victim.

(vi) When the actor is in a position of authority over the victim and uses the authority to coerce the victim to submit.

(b) 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.

(c) The actor is armed with a weapon or any article used or fashioned in a manner to lead the victim to reasonably believe that it is a weapon.

(d) 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 contact. Force or coercion includes but is not limited to any of the circumstances listed in subdivision (a) (i) to (vi).

(2) Criminal sexual conduct in the aforesaid section is a felony.

(a) Where the victim is thirteen years of age or under, and the actor knows or has reason to know the age of the victim, the felony is punishable by imprisonment for seven years.

(b) Where the victim is between thirteen years of age, and the actor knows or has reason to know the age of the victim, the felony is punishable by imprisonment for six years.

(c) Where the victim is over the age of sixteen years, and the actor knows or has reason to know the age

of the victim, the felony is punishable by imprisonment for five years.

S4. (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) Force or coercion is used to accomplish the sexual penetration. Force or coercion includes but is not limited to any of the circumstances listed in S2 (1) (a) (i) to (vi).

(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.

(a) Where the victim is thirteen years of age or under, and the actor knows or has reason to know the age of the victim, the misdemeanour is punishable by imprisonment for seven years.

(b) Where the victim is between thirteen and sixteen years of age, and the actor knows or has reason to know the age of the victim, the misdemeanour is punishable by imprisonment for six years.

(c) Where the victim is over the age of sixteen, and the actor knows or has reason to know the age of the victim, the misdemeanour is punishable by imprisonment for five years.

S5. (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 S2 (1) (a) (i) to (vi).

(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 then $500 or both.

S6. (1) Force or coercion used with intent to commit criminal sexual conduct involving sexual penetration is a felony. Force or coercion includes but is not limited to any of the circumstances listed in S2 (a) (i) to (vi).

(a) Where the victim is thirteen years of age or under, and the actor knows or has reason to know the age of the victim, the felony is punishable by imprisonment for ten years.

(b) Where the victim is between thirteen and sixteen years of age, and the actor knows or has reason to know the age of the victim, the felony is punishable by imprisonment for eight years.

(c) Where the victim is over sixteen years of age, and the actor knows or has reason to know the age of the victim, the felony is punishable by imprisonment for six years.

(2) Force or coercion used with intent to commit criminal sexual conduct involving sexual contact is a felony.

(a) Where the victim is thirteen years of age or under, and the actor knows or has reason to know the age of the victim, the felony is punishable by imprisonment for five years.

(b) Where the victim is between thirteen years of age, and the actor knows or has reason to know the age of the victim, the felony is punishable by imprisonment for four years.

(c) Where the victim is between sixteen years of age, and the actor knows or has reason to know the age of the victim, the felony is punishable by imprisonment for three years.

S7. (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 Sections 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 subsection (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 subsection (1). If new information is discovered during the course of the trial that may make the evidence described in subsection (1) (a) or (b) admissible, the judge may order an in camera hearing to determine whether the proposed evidence is admissible under subsection (1).

S8. Upon the request of the victim, the actor or either of their respective counsel in a prosecution under S2-7, the magistrate before whom any person is brought on a charge of having committed an offence under S2-7 shall order that the names of the victim and details of the alleged offence be suppressed until such time as the actor is arraigned on the information or the charge proven.

S9. On the conviction of a person under the terms of section 2 (1) (a) (vi), the court may divest the offender of all authority over the victim.

Appendix F: Discrimination and the NSW State Superannuation Board – An Actuarial Report

Roger Sawkins FIA FIAA
PO Box 57
CANNON HILL
QLD 4170

4 December 1991

Peter de Waal
Tribunal Working Group
Tribunal on Homosexuals and Discrimination
PO Box 6
Balmain NSW 2041

Dear Peter

Discrimination and the [New South Wales] State Superannuation Board

1. Introduction

You have asked me to prepare a report on the extent of discrimination against homosexual relationships in the [New South Wales] State Superannuation Fund (SSF) and the possible costs of removal of that discrimination.

This report is in the following sections:

1. Introduction . . . . . page 391
2. The information supplied . . . . . page 391
3. The present position of the Fund . . . . . page 392
4. Discrimination against homosexual relationships . . . . . page 392
5. The costings of the Fund . . . . . page 393
6. The costs of removal of the discrimination . . . . . page 394
7. Summary and conclusions . . . . . page 396

There are also three appendices, as follows:

1. Summary of spouse's benefit provisions . . . . . page 396
2. Summary of actuarial valuation basis for spouse's benefits . . . . . page 397
3. Some references in relation to homosexual relationships . . . . . page 397

2. The Information Supplied

For the purpose of my investigation, you have supplied me with the following information:

(a) Three publications of the State Authorities Superannuation Board; namely *Spouse's and Children's Benefits*, published in June 1987, *Benefits – State Superannuation Fund*, published in October 1989 and *the Lump Sum Option – Information and Election Form*, published in February 1990.

(b) Copies of the *Annual Reports* of the State Superannuation Board and its predecessor for each of the five years to 31 March 1990 (years prior to 31 March 1988 ended on 30 June).

(c) A copy of the *Sixteenth Valuation Report of the State Superannuation Fund as at 30 June 1987*, dated 29 July 1988 by the three actuaries appointed by the Board. It is suggested in the papers that a further Valuation was to take place at 1 July 1988, but I have no information about this.

(d) A copy of a letter dated 8 October 1991 from John Fahey, (see page 129) [New South Wales] Minister for Industrial Relations and Minister for Further Education, Training and Employment.

3. The Present Position of the Fund

The State Superannuation Fund commenced on 1 July 1919 and has undergone a number of changes over the years. It provides benefits principally in pension form to former contributors and their spouses and children. However, a prospective pensioner has the option to commute their pension benefits to lump sum form, and a change in April 1988 added an additional 'basic benefit' in the form of a comparatively small lump sum for all contributors.

The fund was closed to new contributors on 1 July 1985 (when a new scheme was implemented for subsequent employees), and hence the membership is slowly decreasing. As at 31 March 1990 there were just over 85,000 contributors (down about 7,000 on the previous year), around 29,500 pensioners (unchanged) and nearly 1,900 former contributors entitled to preserved benefits from the Fund (up 400).

About 65% of the contributors to the Fund were male, and about 45% of the contributors were in the [NSW] Department of School Education or the [NSW] State Education Authority. The remainder were spread through other areas of the public service.

The assets of the Fund at 31 March 1990 totalled just over $7 million, having grown by nearly $2 million over the previous 12 months. It is to be expected that the assets will grow over a number of years into the future as the contribution income exceeds the benefit outgo. As the Fund is closed to new entrants, there will come a time when the assets will decline as an increasing number of contributors retire, die or leave the service.

The Actuarial Valuation Report as at 30 June 1987 showed that the Fund was in a surplus; that is to say the future contributions from contributors and their employers, together with the then assets of just over $4.5 million, were expected to be sufficient to pay all the future benefits and administration expenses as they fell due.

4. Discrimination Against Homosexual Relationships

The main area of the Fund where there is discrimination in relation to homosexual relationships is the area of spouse's benefits.

Set out in Appendix I is a description of who is entitled to such benefits from which it can be seen that they are restricted to the legal spouse of a member or a de facto spouse of the opposite sex.

In effect, no benefit is available to a member's spouse of the same sex, since legal marriage is not available in those circumstances and de facto spouses are specifically defined as being of the opposite sex.

This clear discrimination against same-sex spouses is contrary to the statement in the Minister's letter of 8 October 1991:

> … my superannuation administration has advised that the SSF scheme does not discriminate on the basis of homosexuality. To the extent, however, that certain reversionary spouse benefits of the scheme are related to marital status at the time when benefits first become payable, homosexuals are in exactly the same position as any other person of single marital status.

This statement is thus blatantly untrue. Members of single marital status are provided with spouse benefits for a de facto spouse *only if that spouse is of the opposite sex*. If the de facto spouse is of the same sex, such benefits are denied.

To remedy this discrimination it is sufficient for the legislation to be changed so that a de facto spouse can be of either sex. This would mean that a same-sex spouse, male or female, would be entitled to a pension on the death of a member if they had lived together on a bona fide domestic basis continuously for a period of at least three years, or a period of at least one year and the spouse fulfilled the prescribed requirements relating to financial dependency. I see no reason why the criteria for assessing the eligibility for benefits for same-sex couples need be any different to those for opposite-sex couples.

There may be some transitional considerations in making such a change. Clearly, there will be existing pensioners who have a same-sex de facto relationship and the benefit extension should apply to them. There will also be some members who have died prior to the change when it is adopted, but I believe that making the change retrospective to this extent would be too difficult. The change should thus be restricted to deaths of contributors or pensioners after the date of effect.

5. The Costings of the Fund

In order to look at the possible costs of such a change it is necessary to examine the way in which the actuaries carried out the valuation of the Fund as at 30 June 1987.

As mentioned earlier, the actuaries' findings were that the future contributions to the Fund from contributors and their employers were expected, together with the then existing assets of the Fund, to be sufficient to finance all the future benefits and administration expenses as they fall due.

In order to carry out an exercise it is necessary for the actuaries to calculate the expected future benefits payable by the Fund. This is done by making various assumptions about interest rates, inflation rates, amounts of benefits to which each member may become entitled, probabilities of payment of such benefits, etc. These are done in their Valuation Report.

The actuaries have used a variety of alternative assumptions, but have used a principal set as the basis of their results. These results are set out in the form of a Valuation Balance Sheet which is set out on page 45 of their report.

The figures effectively represent the amount which, if set aside at the valuation date, would have been sufficient, together with future interest earnings, to pay all the benefits of the Fund as they fall due in the future. The benefit amounts are shown in the following table.

Extracts from Valuation Balance Sheet – Value of benefits	
Present value of:	Millions $
Benefits to existing pensioners	
Pensions and Commutation Benefits	3,285.8
Prospective Benefits –	
Pensions and Commutation Benefits –	
Age	11,237.0
Breakdown	2,295.1
Spouse	3,013.6
Children	19.3
Lump sums on Withdrawal and Death	309.3
Future Expenses of Management	251.3
Reserve for Minimum Benefit	36.3
Surplus	222.7
Total Liabilities	**20,670.4**

The 'Surplus' is the amount by which the Fund's assets (present investments plus future contributions) exceed the liabilities for benefits and expenses set out above.

It will be noted that the above table includes an amount of $3,013.6 million for 'Pensions and Commutation Benefits – Spouse'. It is this figure which will be increased if the eligibility for spouses' benefits is widened to same-sex couples.

There are a number of aspects which go into the calculation of this amount. The main ones are the probabilities of death of various members and pensioners at different ages; the proportions who leave an eligible spouse, the amount of the benefit payable to that spouse and the period for which any such pension will be payable.

The mortality of members and the calculation of the amount of spouse's pension will neither of them be affected by extension of eligibility to same-sex spouses. However, the proportion of members leaving an eligible spouse on death and the period for which such a pension may be payable will be affected.

Set out in Appendix II are the assumptions made by the actuaries in relation to these factors. My comments on them are set out in the following paragraphs.

(a) **Proportion of members leaving an eligible spouse** These are said to be derived from the experience of Fund members in the past. It can be see that the proportion tends to be highest at ages 40 to 60; prior to this age relationships are less settled and long-term, after this age there is often separation by divorce or death of one or other spouse.

It is not my function here to comment on the applicability of these assumptions; suffice it to say that there is an assumption that up to 83% of members are presently expected to leave an eligible (opposite-sex) spouse on death.

(b) **Assumed age difference between male and female partners** It will be seen that it is assumed that males will leave an eligible spouse on average 5 years younger than themselves, but females will leave a spouse of the same age. This apparent discrepancy may be partly explained by some difference between the relationships of male and female members of the Fund, but is more likely to be explained as an element of caution on the part of the actuaries. The assumptions used have a 'safety margin' to ensure that the liabilities are not understated.

(c) **Assumed mortality of spouse** The assumed mortality is related to a standard table referred to as the PA (90) ultimate mortality table. This table is derived from the mortality of a large number of pensioners from a great number of schemes. The mortality is then adjusted; again probably as a cautionary measure to ensure that the liabilities are not understated.

6. The Costs of Removal of the Discrimination

It is now necessary to decide what changes may be required to these assumptions to include the cost of extending the eligibility provisions to same-sex spouses. In doing so, two things need to be borne in mind:

(1) the benefit extension which we are examining is very small in relation to the total liabilities of the Fund. It is not necessary therefore for the assumptions to be highly accurate, and

(2) the actuaries may already have adopted conservative assumptions which in themselves could include a margin which would go some way towards the cost of the benefit extension.

Bearing these in mind, I have looked at the possible changes in assumptions required in the following paragraphs.

(a) **Proportions of members dying who leave an eligible spouse** This is the most difficult to determine.

I know of no studies which indicate the proportion of same-sex de facto spouses in the Australian community, nor amongst members of superannuation schemes. Set out in Appendix III are details of some references in relation to homosexual relationships which are useful to a limited extent. However, I have not undertaken a complete literature search which may come up with other useful research.

What I have done, therefore is to approach the necessary assumptions in two different ways.

Firstly, Alfred Kinsey in his massive study of sexual behaviour [138] in the United Sates in the 1940s found that about 37% of males had same-sex sexual activity during their adult lives, some 15% had exclusively same-sex activity for a period of at least three years and 4 to 6% had only same-sex activity throughout adulthood. The percentages for females were similar but significantly smaller.

There has been no other survey of this size performed before or since, and so it is not known whether these figures apply to Australia in the 90s. However, such research as has been carried out seems to indicate that the

[138] Kinsey, Alfred C., Pomeroy, Wardell B. and Martin, Clyde E., *Sexual Behavior in the Human Male*, Philadelphia and London, 1948, WB Saunders Company. Kinsey, Alfred C., Pomeroy, Wardell B., Martin, Clyde E. and Gebhard, Paul H., *Sexual Behavior in the Human Female*, Philadelphia and London, 1953, WB Saunders Company.

figures are reasonably reliable, perhaps a little understated for present experience.

Kinsey did not look at the question of duration of relationships or whether they were on a bona fide domestic basis, but it would be clear from these figures that the proportion of people having an eligible de facto spouse will be very small.

There is also the question of whether the particular members of the [NSW] State Superannuation Fund are more or less likely to be in same-sex de facto relationships than the general population. On the one hand, anti-discrimination has been practised earlier and more effectively in public service employment rather than private sector employment. On the other hand, a significant proportion of members are in the teaching profession, where overt homosexual relationships could lead to severe repercussions. Overall, I see no reason to suppose that the Fund has any significantly different experience than the general population in this regard.

The alternative approach to the problem is from the experience of the Fund itself. The actuaries assume that up to 83% of members will leave an eligible spouse. The proportion leaving an eligible same-sex spouse must therefore come from the remaining 17% (I am assuming that the number of people leaving **two** eligible spouses – a legal one and a defacto one – is too small to concern us). The majority of this 17% balance is likely to be made up mainly of those with short-term heterosexual relationships which do not qualify, or with no such relationship at the time of death. Clearly, only a very small proportion would have same-sex de facto relationships.

Overall, I believe it would be reasonable to assume for the purpose of these costings that about 3% of members will leave a same-sex eligible spouse. This assumption is fairly arbitrary and I would suggest it may be on the high side, but only the experience of the Fund will be able to tell.

(b) **Assumed age difference between partners** There is some evidence to indicate that long term male homosexual relationships have a higher age difference than those of heterosexual relationships. However, this is only relevant for the Fund if one is to assume that the Fund member is always the older/younger partner. I see no reason to suggest this, so an assumption of no age difference on average seems reasonable.

(c) **Assumed mortality of spouse** There may be some reason to assume that the mortality of an eligible same-sex spouse of a Fund member may have worse mortality than the member themselves (after all, the Fund member has been employed, and employed people on average have lower mortality than the general population). Be that as it may, the mortality of same-sex spouses of male members is going to be higher (because they are men) than that of opposite-sex spouses of male members. The opposite is true of female members.

Overall, the result will be to increase the average mortality of spouses, hence slightly reducing the liabilities of the Fund.

It also has to be borne in mind that benefits are already paid to members who die *without* an eligible spouse, and an extension of eligibility will reduce these. Hence there will be a small *reduction* of liability from this source.

Bearing in mind the factors set out above, it is my view that it would be appropriate to say that the cost of extending spouse benefits to same-sex couples is about 2% of the present liability for spouses' benefits.

2% of the liability for spouses benefits in the Valuation Balance Sheet (see page 393) amounts to $60 million. This can be compared with the assets at that time of $4,579 million and the Fund surplus of $223 million.

It is interesting to see what the actuaries have to say about this surplus. On page 46 of their report they say the surplus is *a very small amount relative to the amount of the Fund and the total Scheme liabilities.* They also say on page 67 that *substantial improvements to the Scheme are not able to be financed from the Fund surplus itself*, but suggest minor benefit improvements.

Since the cost of this proposal benefit change is less than one-third of the amount of the surplus mentioned above, I think it fair to regard it as insignificant. Such a change could be adopted without any need for adjustment of the contribution rates to the Fund.

I would again refer to the Minister's letter of 8 October, [see page 129] where he says:

> Extending benefits in the scheme to a new category of persons would clearly add significantly to the cost of the scheme – a cost which must be borne by the Government and/or the other contributors. Given the State's present financial problems, such a change would impose an unacceptable cost burden on the Government.

The Minister's comment is inconsistent with the costing set out above and I believe misleading.

7. Summary and Conclusions

In this report I have looked at the areas of discrimination against same-sex relationships in the [NSW] State Superannuation Fund. The discrimination is that spouses benefits in relation to de facto relationships are restricted to opposite-sex relationships. Removing this restriction and treating same-sex de facto relationships in the same way as opposite-sex ones would remove the discrimination.

I have looked at the last actuarial investigation of the Fund and have examined the possible cost of this change. After making what I believe to be reasonable assumptions I have concluded that the cost is likely to increase the present value of the Fund's liabilities as at 30 June 1987 by about $60 million, which is insignificant in relation to the overall size of the Fund and its liabilities. The change could be introduced without any need for a change in contribution rates.

I am disturbed that the Minister for Industrial Relations and for Further Education, Training and Employment, in his letter of 8 October 1991 has made statements which are both wrong and grossly misleading on this subject. It seems he has been provided with extremely poor advice.

I would be happy to discuss this report with you and provide you with additional information or advice if you wish,

(Signed) Roger Sawkins
Fellow of the Institute of Actuaries (UK)
Fellow of the Institute of Actuaries of Australia

Appendix F—1: Summary of Spouse's Benefit Provisions

The leaflet *Spouse's and Children's Benefits – Explanatory Notes* published by the Board in June 1987 includes the following (where de facto spouse is defined as being of the opposite sex):

Who is eligible for a benefit?
1. On the death of a Fund contributor – the legal spouse; or – the defacto spouse who satisfied the eligibility requirements described hereunder prior to the Fund member's death. 2. On the death of a Fund pensioner – the legal spouse where the marriage occurred prior to the retirement of the pensioner and continued to the date of the Fund pensioner's death; – the de facto spouse who satisfied the eligibility requirements described hereunder prior to the retirement and the relationship continued to the date of the Fund pensioner's death; or – where the deceased was receiving an invalidity pension from the Fund, the legal or de facto spouse is entitled to a benefit provided they married or the de facto relationship requirements were satisfied, both before the pensioner attained the maturity age and at the time 3 years before the pensioner's death and continued until the pensioner's death.
De facto spouse eligibility requirements
The requirements which a de facto spouse must satisfy **at all the relevant times** referred to above are that he/she was living with the Fund member as her/his spouse on a bona fide domestic basis and – 1. had so lived with the Fund member continuously for at least three years; 2. had so lived with the Fund member continuously for at least one year and fulfilled the prescribed requirements relating to financial dependency; or 3. is the parent (or pregnant with) a child of the Fund member.

The amount of the benefit is not relevant to this description. However, the leaflet *Superannuation – Benefits – State Superannuation Fund*, published by the Board in May 1989 points out that:

A spouse's pension is not affected if the partner had commuted pension to a lump sum.

The leaflet also makes clear that Children's benefits are only payable in relation to children of the Fund member or of the Fund member's legal spouse. Children of de facto spouses are therefore not eligible unless they are children of the Fund member.

The leaflet also states that the benefit payable on the death of a contributor who does not leave an eligible spouse or children is equal to the resignation benefit.

Appendix F—2: Summary of Actuarial Valuation Basis for Spouse's Benefits

			'Normal' Pensioners		'Breakdown' Pensioners	
	Contributors					
Age at **death**	**Male**	**Female**	**Male**	**Female**	**Male**	**Female**
Proportion of members dying who leave an eligible spouse						
20	0.00	0.00			0.00	0.17
25	0.28	0.42			0.39	0.42
30	0.57	0.67			0.59	0.67
35	0.76	0.77			0.64	0.77
40	0.83	0.82			0.69	0.82
45	0.83	0.82			0.72	0.82
50	0.83	0.82			0.74	0.82
55	0.83	0.77	0.78	0.77	0.75	0.77
60	0.77	0.68	0.78	0.68	0.75	0.68
65	0.57	0.55	0.78	0.55	0.73	0.55
70			0.74	0.40	0.66	0.40
75			0.68	0.25	0.57	0.25
80			0.61	0.15	0.49	0.15
85			0.52	0.08	0.40	0.08
90			0.41	0.05	0.32	0.05
95			0.26	0.02	0.22	0.02
Assumed age difference between male and female partners:						
	5 yrs	0 yrs	5 yrs	0 yrs	5 yrs	0 yrs
Assumed mortality of spouse; standard table adjusted by:						
	-20%	+.0212	-20%	+.0212	-20%	+.0212

The 'standard table' mortality is the PA (90) ultimate rates separately for males and females. This is a published table derived from the experience of superannuation pensioners.

Appendix F—3: Some References in Relation to Homosexual Relationships

The following books are not intended to be in any way complete nor the result of a literature search. For example, I have not searched the *Journal of Sex Research* or the *Journal of Homosexuality*, either of which may have articles about homosexual relationships. Also the list below (aside from Kinsey's volumes) does not contain information about female relationships; I am not aware of any studies on these, although again further research would no doubt discover some.

References which I have found useful in relation to this Report are as follows.

- Kinsey, A.C. *Sexual Behavior in the Human Male* (1948) and *Sexual Behavior in the Human Female*

(1953). Philadelphia; W B Saunders.

- Sonenschein, David *Male Homosexual Relationships* (1968) reprinted in *Sex Research Studies From the Kinsey Institute* (1976), edited by Martin Weinberg. New York; Oxford University Press.
- McWhirter, David and Mattison, Andrew *The Male Couple: How Relationships Develop* (1984). Eaglewood Cliffs, NJ; Prentice-Hall.
- Vadasz, Danny and Lipp, Jeffrey (eds.) *Feeling Our Way; Gay Men Talk About Relationships* (1990). Fitzroy, Victoria; Designer Publications.

Appendix G: Print Media Coverage of Police Harassment and Entrapment at the Black Rock – Sandringham Area [139]

Melbourne Truth, Sat, 18 Dec 1976, p. 9
'Police blitz catches homosexuals – A water side worker and a man studying for the priesthood were two of 15 people charged with homosexual offences after a blitz by undercover police …'

The Sun (Melbourne), Wed, 29 Dec 1976, p. 23 'No pay, no play on the beach? – most of our public parks and gardens were taken over long ago for much of the day by 'undesirables'. Perverts and molesters are a small minority, but big enough to deter women and children from freely enjoying those amenities that have moved Mr Hamer to christen Victoria the Garden State …'

The Age, Wed, 12 Jan 1977, p. 3
'Police go gay to lure homosexuals – Police have posed as homosexuals to apprehend 68 men for offences in the Black Rock – Sandringham area. The police described by senior officers as good actors and most unlikely looking policemen, studied homosexuals through binoculars so they could imitate their mannerisms …'

The Sun, Wed, 12 Jan 1977 'Police break up gay group – A police campaign has stamped out a meeting ground for homosexuals around Sandringham beach. Young police dressed in swimming trunks or casual clothes headed the drive …'

The Age, Thu, 13 Jan 1977, Letters page
'Provocative police – The outrageous police provocation and arrest of gays on bayside beaches deserves more searching examination than given in your report (*The Age*, 12/1). The ridiculous claim to be 'cleaning up beaches' are utterly appalling …'

The Age, Thu, 13 Jan 1977 'Police deny posing as homosexuals – Police and Government spokesmen yesterday denied policemen were posing as homosexuals to arrest men for sexual offences. The acting deputy chief commissioner, Mr Laurie Newell, said he was sure the commander of police at Sandringham had not instructed his men to 'imitate homosexuals' …'

The Sun, Thu, 13 Jan 1977, p. 5 'Gays traps get blast – Police had used outrageous methods to trap and arrest homosexuals, the State Opposition Leader, Mr Holding, said yesterday. He said the methods were the same as if policewomen were asked to act as prostitutes to entrap men seeking their services …'

The Age, Fri, 14 Jan 1977 'Reform call 'gay' arrests – A group of Melbourne lawyers said yesterday they were prepared to 'take on' the police over tactics used to apprehend homosexuals in the Sandringham-Black Rock area. A barrister said the group was dissatisfied with the way police had handled the cases already heard in court against the homosexuals …'

The Herald, Fri, 14 Jan 1977 'Police gay tactics 'ok' – People living along Beach Rd., Black Rock, said today they approved of police actions over homosexual activity along the beach opposite. But most of people interviewed said they did not think homosexuals should be treated as criminals …'

The Age, Sat, 15 Jan 1977 'Gay rally to protest over police – The Homosexual Law Reform Coalition will hold a picnic rally at Black Rock beach tomorrow afternoon to protest against police harassment of homosexuals …'

The Sun, Mon, 17 Jan 1977 'Rally for gay cause – About 50 people calling for the reform of laws affecting homosexuals attended a picnic-rally at Black Rock beach yesterday … An organiser, Mr John Holden, 29 of Fitzroy said the Homosexual Law Reform Coalition had challenged the Chief Secretary, Mr Dickie, to debate on discrepancies between his and police versions of the 68 police arrests at the beach in recent months …'

The Age, Tue, 18 Jan 1977, p. 4 'Gay laws 'barbaric' – Lawyer and civil rights campaigner Mr Gareth Evans yesterday condemned Victoria's homosexual laws and proposed a three-point reform programme.

The Age, Tue, 18 Jan 1977, Letters page 'Police decoys – On December 17, the Homosexual Law Reform Coalition wrote to Mr Dickie asking him to investigate entrapment and harassment of gays by police at Black Rock beach. We must assume now, from his ill-advised denial that any such activity has taken place, that Mr Dickie has not fully investigated our complaints. The coalition's allegations, based on information received in confidence from many apprehended persons (and verified by affidavit now in one instance) were substantiated by the police's own

[139] This print media coverage is not exhaustive, only parts have been reproduced.

words in '*The Age*' report, 'Police go gay to lure homosexuals' (12/1) …'

The Sun, Tue, 18 Jan 1977 'Gay times on the beach – If nudists are allotted their own stretch of sand and rock on which to bask, why not a section of the beach set aside to become a sheltered workshop, as it were, for homosexuals? By allowing nudists to colonise a restricted area we protect them from those members of the general public with a moral aversion, or a peeping-tom syndrome …'

The Sun, Tue, 18 Jan 1977 – Fifty-Fifty column 'Full marks to the police for clearing Sandringham and Black Rock beaches of homosexuals. No wonder police morale is low when they are criticised by the State Opposition leader for doing what any decent person would wish to be done.'

The Age, Wed, 19 Jan 1977 'The boys in blue go pink – Phillip Adams – I'd like to criticise the vice squad's technique of proffering constables as jail bait, but from a rather different point of view. Today I speak in my capacity as honorary treasurer of the Royal Society for the Prevention of Cruelty to Policemen …'

Nation Review, Thu, 20 Jan 1977 – Outsight 'Wallopers gay at Black Rock – … Since the story broke there's been a stalwart effort by government and police spokesmen to try and persuade the public that it didn't really happen that way at all. This is just plainly a lie. They are back at their old evil game – what they used to call 'doing the dunnies' – and it should not be allowed to rest here with a smother up …'

The Sun, Thu, 20 Jan 1977 p. 13 '5 nude on beach – say police – Three men accused of being nude on a Black Rock beach were fined in Cheltenham Court yesterday. Two others were placed on good behaviour bonds …'

The Age, Thu, 20 Jan 1977 'Provocative police go too far – It would be ironic if the latest police persecution of homosexuals were to precipitate reform of an oppressive and discriminatory set of laws and their enforcement.

Advertiser (Sandringham) 26 Jan 1977 'ALP man raps homosexual harassment – The use of entrapment and harassing of homosexuals by police at Black Rock beach has been criticised by Mr Neville Garner, the ALP candidate for Sandringham …'

The Age, 27 Jan 1977, p. 5 'Police hit over gay trap – The Victorian Council for Civil Liberties has protested to the Chief Secretary, Mr Dickie, about persecution of homosexuals. The secretary of the council, Mr John Bennett, said yesterday a protest letter had also been sent to the Chief Commissioner of Police, Mr Jackson …'

Battler, 2 Feb 1977 'Black Rock arrests: Gays Fight Back – The Black Rock campaign is now phasing into a broader campaign for the repeal of the anti-homosexual laws – and especially Section 19 of the Summary Offences Act, which gives the police wide poofter bashing powers. It can be used against lesbians too – but rarely is …'

The Sun, Thu, 3 Feb 1977, p. 20 '5 fined for loitering – Five men were fined $50 each at Cheltenham court yesterday on charges of having loitered for homosexual purposes at Sandringham beach … At the end of the hearing, Mr Smith [magistrate] said: 'Some of these gents are in need of some sort of treatment. I feel sorry for some of these people who are this way inclined because of some lack of hormones' …'

Melbourne Truth, Sat, 29 Jan 1977 'Cops May Face Homo Charges – Police working undercover to trap male homosexuals might soon find themselves in court – facing homosexual charges. This is the main point in a plan formulated by Melbourne's homosexual community …'

Standard News (Moorabbin), 23 Feb 1977 'Churchman to appeal – Mr Joseph Lokot, 60, of Beaumaris Pde., Highett, is to appeal against a conviction of loitering for homosexual purposes at Sandringham beach …'

Standard News, 23 Feb 1977 'Bad law lags behind social change … the enforcement of a discriminatory and outmoded law, a law seen to be unfair by a significant proportion of our community – at present places the Victorian Police in a vulnerable position …'

Melbourne Times, 1 Mar 1977, p. 6 'Homosexual Law Reform overdue – The law works to define and protect people's rights. But those same rights are being infringed when homosexuals, for example, are persecuted for no good reason other than their particular sexual predilection. Liberal philosophy hinges on the belief that there must be freedom for all – freedom to be oneself … and that includes the freedom to be different.'

18. List of Exhibits

Exhibit No	Content	Page No.
Exhibit 1	Department of Defence Policy regarding homosexuals in the armed services.	see p. 31
Exhibit 1A	Letter from Mr D J Killen, Minister for Defence, 1 November 1976.	see p. 31
Exhibit 2	CAMP NSW's news release regarding the withdrawn article entitled: 'A Serious Aspect of the Gay Life', by Stephen Ives in the journal *Health in New South Wales*.	see p. 58
Exhibit 3	Excerpt from the New South Wales Adoption Legislation Review Committee Report, chaired by Mary McLelland.	see p. 173
Exhibit 3A	Letter from the New South Wales Minister for Youth and Community Services, Rex F Jackson, dated 11 November 1976.	see p. 173
Exhibit 4	Withdrawn.	–
Exhibit 5	Contentious issues in schools statement by the South Australian Minister of Education, Dr Don Hopgood and the E D Circular 69 entitled: Contentious Issues in Schools.	see p. 156
Exhibit 6	Statutory declaration of discriminatory dismissal from Marist Brothers' High Schools at Eastwood, by Michael Anthony Clohesy.	see p. 136
Exhibit 7	Letter from Boat Hiring Firm outlining a discriminatory hiring policy.	see p. 232
Exhibit 8	*The National Times*, 'The Overflow Column' article by Professor and her husband Dr Kramer, dated 17-22 November 1975.	see p. 221
Exhibit 9	Discriminatory advertisement in *The Manly Daily*, dated 20 October 1976.	see p. 213
Exhibit 10	Australian Public Service Regulations: 62(1)(c); 80A; 87B(1); 89(1); 89 (2)&(4)&(7); 90A(1)(a); 93; 95C(1)(c); 97; 97A(1); 98(1)&(2)&(3)&(4)&(5); 98AAA(3)(b)&(c)&(d)&(e); 98AA(1)&(1A)&(3); 98A(1)(b); 98AC; 101; 103A; 119(1); 119A; 119B; 130.	see p. 97
Exhibit 10A	Letter from, R N McLeod, Acting Chairman Australian Public Service Board, dated 25 October 1976.	see p. 96
Exhibit 11	New South Wales Crimes Act 1900, as amended, Sections 79, 80, 81, 81A and 81B.	see p. 44
Exhibit 12	Letter to Council of the City of Sydney seeking permission to place VD (now STD) prevention posters in public conveniences.	see p. 229
Exhibit 13	Statement of alleged discrimination by the Public Transport Commission and the New South Wales Health Commission.	see p. 73
Exhibit 14	Qantas Airways Limited *Official Bulletin* regarding staff travel rebates on company's services, issued March 1974.	see p. 84
Exhibit 15	The New South Wales Adoption of Children Act, 1965, Section 19.	see p. 185
Exhibit 16	Statement of alleged discrimination by the Australian Festival of Light in their publication: *Sex Education, The School and Your Child*.	see p. 11
Exhibit 17	Statutory declaration outlining discrimination: A – Police public relations department; B – Wreath laying ceremony; C – A New South Wales (Goulburn) newspaper.	see p. 234
Exhibit 18	The (Federal) Superannuation Act 1976, sections: 3; 81-98; 111.	see p. 110
Exhibit 19	The (New South Wales) Superannuation Act 1916-1972 sections: 30; 31; 32A; 32B; 33; 38A; 39; 40; 41.	see p. 124

Exhibit No	Content	Page No.
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