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DISCRIMINATION

AND

HOMOSEXUALITY:

S U M M A R Y

NEW SOUTH WALES ANTI-DISCRIMINATION BOARD 1982

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The Anti-Discrimination Board's report Discrimination and Homosexuality was released in July, 1982.

The contents of the 650 page report are as follows:

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1. Introduction

There is a popular misconception that homosexuals constitute only a small proportion of the population and therefore the problem of discrimination against them is insignificant. But, from existing studies, it seems likely that at least 10% of the population are predominantly or exclusively homosexual. On this basis there are approximately 370,000 adult homosexuals in NSW and at least one million in Australia.

The Board's research uncovered numerous instances where the rights and freedoms that people normally expect to enjoy in a democratic state were denied to lesbians or homosexual men. Arguments used by some to justify the curtailment of their civil liberties, for example, that homosexuals constitute a threat to society, were seriously examined by the Board and found to be

unjustifiable. Consequently, the Board recommended that the Anti-Discrimination Act be amended to make it unlawful to discriminate on the ground of homosexuality in the areas of education, employment, accommodation, goods and services and registered clubs. There are a number of precedents in other parts of the world for the inclusion of homosexuality in anti-discrimination legislation. Norway has national legislation making discrimination against homosexuals unlawful, discrimination on the ground of sexual orientation is forbidden in the Quebec Charter of Human Rights and Freedoms and a number of municipal authorities in Ontario have prohibited discrimination on the ground of "sexual orientation" in public employment. A large number of municipalities, counties and states in the United States prohibit discrimination in areas such as employment, accommodation and credit.

Subtle forms of discrimination include the expression of social disapproval through ostracism, sneering remarks, ridicule and harassment. While these expressions of negative attitudes could not be entirely prevented through the Anti-Discrimination Act, an amendment to include homosexuality in the Act would be an essential step towards the elimination of discrimination. Without it, many homosexuals live in fear of the negative repercussions of their homosexuality becoming known.

2. Defining Homosexuality

Beyond the dictionary definition of "having a sexual propensity for someone of one's own sex", definitions of homosexuality vary according to the context within which the concept is used. Within a fundamentalist Christian framework, for example, homosexuality is a sin, within the "medical model"

homosexuality is considered a biological anomaly, a mental illness or a personality disorder, and within the context of the gay liberation movement, it is a normal variant of human sexuality. Lesbianism is invariably overlooked in explanations of the origins and nature of homosexuality.

The roots of contemporary popular prejudices about homosexuality can be traced partly to the dominant theories on the causes of homosexuality from the disciplines of medical science, psychology and psychiatry from the nineteenth through to the twentieth centuries. Some of these major theories are examined, including psychoanalytic accounts which explain homosexuality as a personality disorder caused by a failure in the socialization process, and biological accounts which define homosexuality as an innate condition stemming from an hereditary defect. There is little agreement from one discipline to another on the question or even consensus within the one discipline.

"The helping professions" have developed various treatments or "cures" for homosexuality based on the assumption that it is an illness and therefore amenable to change. The Board's research found that hormonal therapy, psychosurgery and aversion therapy have been used in attempts to reverse sexual orientation. Several of our Phone-In survey respondents complained that many doctors and psychiatrists see homosexuality as something to be cured rather than as a form of sexuality equally as valid as heterosexuality.

However, the notion that homosexuality is a psychopathology is losing credence amongst contemporary professionals. Significantly, the Australian & New Zealand College of Psychiatrists issued a position statement in 1972 strongly condemning community attitudes and laws which discriminate against homosexual behaviour between consenting adults in private and, in 1973, issued a memorandum stating that many psychiatrists consider that homosexual behaviour is not necessarily or commonly associated with neurotic symptoms and

is "compatible with good adjustment and a useful and creative contribution by the individual to society". The American Psychiatric Association ruled in 1973 that homosexuality would no longer be listed as a mental disorder in its official nomenclature of mental disorders and the American Psychological Association voted to support this move in 1975.

3. The case against Homosexuality

This section outlines the attitudes of some churches which define homosexuality as a "sin". This attitude is often translated into secular terms by branding homosexuality as a "threat to society" and demanding that it be regarded as a crime.

Groups opposed to homosexuality and homosexual law reform make much of the argument that homosexuals are likely to be child molesters with the threat, "Your child is their target". This is a highly emotive brand of polemics which plays upon widespread ignorance and misunderstanding of homosexuality. However, we demonstrate that the available evidence from court statistics does not support the myth that homosexuals are more likely to molest children than are heterosexuals. In fact molestation of girls appears to be a far greater social problem.

Some moral campaigners such as members of the Festival of Light are affiliated with Christian churches. This does not mean, however, that there is an agreed view on homosexuality among all churches; nor, indeed, within particular denominations. Support groups for homosexuals have been formed by practising Catholics, Anglicans and members of the Uniting Church. In addition, policy groups within some major churches have advocated the decriminalization of adult homosexuality and a revision of theological approaches to the issue.

Another common argument used to justify discrimination against homosexuals, particularly in employment, is that homosexuals will "advocate" "flaunt" or "proselytize" their homosexuality. It is further assumed that this may convert people, especially young people, to homosexuality. This argument rests on the dubious assumption that people will change their sexual orientation simply by coming into contact with lesbians or homosexual men who are open about their sexual orientation.

Public Attitudes

Negative public attitudes are the source of most forms of discrimination against lesbians and homosexual men. The dominant tone of public comment on homosexuality is condemnatory, largely due to the vigorous activities of the small but vocal anti-homosexual lobby in the community which is committed to opposing law reform or other moves for greater acceptance of homosexuality.

Violence against homosexuals is the most dramatic and disturbing manifestation of popular prejudice. The phenomenon of "poofster-bashing" is sought to be justified by the belief that homosexuals are in some way criminal and deserve all the abuse they get. The Board's Phone-In documented numerous examples of this behaviour.

Family, friends and associates at work often react negatively when homosexuals "come out" and consequently the majority are cautious about revealing themselves, and many continue to hide their sexual orientation.

The media plays a significant role both as a moulder and reflector of public opinion. It has much to answer for in selective reporting of events concerning homosexuals, and in promoting popular misconceptions and stereotypes of lesbians and homosexual men, e.g. the limp-wristed male and the "butch" female. In one instance a newspaper misrepresented a press release by a clergyman as a letter

to the editor expressing opposition to "homosexual practices". In another case a major newspaper published the names and addresses of a large number of people arrested at a gay demonstration with the result that some of those arrested received abusive and obscene letters in the mail and others experienced trouble at work and with friends and relatives. The Code of Ethics of the Australian Journalists' Association contains statements of principle which, if abided by, could largely overcome the discriminatory treatment of homosexuals and homosexuality in the media.

Public attitudes towards homosexuality have been changing in a more positive direction in the last ten years or so. For instance, it appears from public opinion polls that a majority is in favour of homosexual law reform. However, it does not necessarily follow that all those who support law reform will be fair and reasonable in their dealings with individual lesbians and homosexual men.

The issue of child custody is treated as a case study of the extent to which society's key institutions, in this instance the courts, are influenced by or reinforce dominant social attitudes on homosexuality. The majority of cases studied concerned lesbian mothers. It was found that homosexuality per se did not appear to be a determining factor in the majority of custody decisions. However, in some cases the decision not to grant custody to a homosexual parent was apparently influenced by personal moral standards or views on the effect on a child of living with a homosexual parent, or the child's ability to cope with negative community attitudes. The award of custody to a homosexual parent is sometimes conditional upon their acceptance of strict limitations placed by the court on their behaviour, e.g. hiding the fact of their sexual orientation from the child.

5. The Law

There are 4 NSW statutes under which a male can be charged with an offence for engaging in, or having the intention to engage in, sexual activity with another male: the NSW Crimes Act 1900, the Offences in Public Places Act 1979, the Government Railways Act 1912 and the Child Welfare Act 1939. The Crimes Act is the only statute which specifically refers to sexual activity between males and it and the Offences in Public Places Act, which prohibits behaviour that offends against public order and decency, are used more commonly against homosexuals than the other statutes.

Under sections 79 to 81B of the Crimes Act charges can be laid for "buggery" (homosexual or heterosexual), "indecent assault on a male person" and "any act of indecency with another male person", as well as "attempting to commit", "procuring", "attempting to procure", "soliciting or inciting" and "attempting to solicit or incite" such activities. In other words males can be, and are, charged and convicted for those "unnatural offences" even though no activity at all took place. The maximum penalty for those convicted of buggery is 14 years imprisonment. Sexual activity between females is not specifically proscribed by law in NSW. Therefore the law itself is discriminatory as it singles out sexual activity between males for harsher treatment than heterosexual activity or lesbianism.

Studies have shown that caution needs to be exercised in labelling all sexual offences between men as "homosexual" as some who have been charged are married and their primary orientation is heterosexual. Nor should it be assumed that homosexual men arrested for sexual offences are typical of homosexual men in general.

A study by the Board of Crimes Act offences heard in the higher courts in 1980 revealed that sections 79 to 81B of the Crimes Act are redundant because the vast majority of offences were the kind that would remain offences were the law to be changed to allow statutory equality between homosexual and heterosexual behaviour (e.g. offences involving coercion.) Such offences are already adequately dealt with under the Crimes (Sexual Assault) Amendment Act passed in 1981. The Board also studied Crimes Act offences heard in the Courts of Petty Session in 1980 and found that the largest category involved "procuring" which covered either straightforward requests for sex or prostitution-type offences, neither of which are unlawful for heterosexuals.

The 1981 amendments to the Crimes Act created a glaring anomaly within that Act relating to homosexual offences because the sexual assault amendments did not include repeal of sections 79 to 81B. Under section 79, a male is liable to a maximum of 14 years imprisonment for "buggery" with consent, while under section 61D the maximum penalty for "sexual intercourse without consent", including buggery without consent, is 7 years.

The criminal status of male homosexual behaviour leads to a reluctance on the part of homosexual men to report to the police criminal offences committed against them, for fear that they themselves may be subject to prosecution or suffer other detriment. It is also used to legitimize discrimination in other areas, such as employment. Some other consequences of the criminal sanctions against homosexuality are blackmail and physical assault.

For these reasons the Board recommended that, as a matter of urgency, statutory equality with heterosexual offences be established for consensual sexual activity between adult males

(i.e. 16 and over). Such a move would simply bring NSW into line with the general trend in Australia and overseas to modify or abolish statutes which penalize consensual sexual activity between adult males. South Australia, Victoria, the A.C.T. and the Northern Territory have already taken such action. Public opinion polls show that a majority of the population in NSW has, for some time, been in favour of the de-criminalization of homosexuality. Contrary to the opinion of the opponents of law reform, none of the countries or states that has reformed laws against homosexuality has witnessed an increase in homosexual activity or a decline in moral standards as a consequence.

The reform of discriminatory legislation cannot in itself guarantee equal rights for homosexual men and so this chapter goes on to examine and make recommendations on the enforcement and administration of the law by the justice system. Allegations have been made by homosexuals of police harassment, unwarranted surveillance and investigation, unnecessary finger-printing, arrests for public expressions of affection, the misuse of the Intoxicated Persons Act to remove homosexuals from public areas, improper conduct at gay rights demonstrations and the use of decoys and entrapment techniques to elicit "indecent" behaviour, resulting in arrest. Recommendations are made to improve the existing mechanism for the investigation of complaints against the police by the NSW Ombudsman and for improving homosexual-police relations.

Allegations of unfair treatment before the courts are also examined, including the effect of judicial attitudes on sentencing, conviction under summary offences legislation for behaviour for which heterosexuals are not charged and the conviction of homosexuals on the basis of uncorroborated police evidence.

6. Employment

Discrimination in employment is widespread and most apparent in "sensitive" positions such as those involving physical contact, for example nursing, contact with young people such as teaching, or contact with the public, such as sales work. It can take the form of denial of employment, denial of promotion, dismissal, harassment by other workers, social ostracism, or having to remain closeted and living a life of deception in constant fear of being found out. Many employers are prepared to "tolerate" homosexuals in their workforce as long as it is not public knowledge. Once homosexuals exercise normal civil rights enjoyed by others in the community, such as appearing in a demonstration or writing to the press about homosexual issues, they are likely to face disciplinary action or even dismissal.

The Board found that some employers justify discrimination against lesbians and homosexual men by appealing to prevalent misconceptions about the behaviour and personality characteristics asserted to be "typical" of homosexuals. Amongst these are that homosexuals will molest children, promote their "lifestyle", sexually harass other workers, or cause trouble if more than one is employed in the same work area. Homosexual men are expected to be weak and effeminate and consequently unfit for manual jobs such as labouring. Other justifications used to support discrimination are that other employees or clients would object to a homosexual worker or that homosexuals are vulnerable to blackmail and hence a security risk. Each of these assumptions is examined and refuted.

The Board surveyed employers in both the public and private sectors on their attitudes and practices relating to the employment of homosexuals. In the private sector, the most important findings were that the majority of employment agencies and employers surveyed

had no objections to employing homosexuals and expected no problems if the Act is amended to include homosexuality as a ground of complaint. However, these findings contrast with the accounts of Phone-In respondents, over half of whom identified employment as a main area where they had personally experienced discrimination.

To gain an indication of policies and practices in the public sector, the Board conducted a survey of all government departments and statutory authorities. Most departments replied that a person's homosexuality would not be a relevant consideration in employment and promotion but there were some important exceptions and qualifications, in particular where the work included contact with young people. Evidence from sources such as the Phone-In and other submissions from public servants casts doubt on the official response from some departments claiming that homosexuality would be no bar to employment and promotion.

Positive action is required to ensure that homosexuals enjoy equal opportunity in public employment, and the Board recommended that the NSW Public Service Board develop a policy for all government agencies stating that homosexual job applicants and employees are to be treated according to the same standards as heterosexuals in all aspects of employment and that the Board promote this policy throughout the service and develop guidelines for its implementation.

The problems of lesbians and homosexual men employed as teachers (in both state and private schools), in the police force and by religious organizations are given special consideration. The Board recommended that when the Act is amended to render discrimination in employment on the ground of homosexuality unlawful, non-government schools should not be given exemption, and it was also recommended that the Police Department develop a recruitment policy to encourage minority groups, including lesbians and male homosexuals, to join the force.

Some trade unions have developed policies to support the rights of homosexuals in the workplace. Significant advances occurred late in 1981 when the Labor Council of NSW carried a motion supporting homosexual law reform and the ACTU circulated a draft anti-discrimination clause (including sexual orientation as a ground) for inclusion in federal awards.

7. Education

Information from primary school teachers indicated that anti-homosexual attitudes can develop in children at a very early age. "Poofter" and "lezzo" are sometimes used as terms of abuse although the children may have little or no idea of the meaning of the words. Boys are generally persuaded early in life to refrain from touching or demonstrating affection and are labelled as "sissies" if they do not conform to the standard behaviour patterns expected of males.

By secondary school, children have generally learned that if they have a homosexual orientation they had better remain closeted or risk serious harassment. Phone-In respondents reported many incidents of persecution by peers with the more serious cases involving physical attacks and beatings.

School counsellors were generally perceived to be inadequately equipped to help young lesbians and homosexual youths, even when they were sympathetic and understanding. Most of the Phone-In respondents who reported on their school experiences were not willing to approach the counsellors because they expected a negative reaction. There is also the problem that counsellors may not be able to promise confidentiality and the Board recommended that, in public schools, steps be taken to reassure students and parents that information about sexual orientation and behaviour is excluded from departmental requirements that counsellors make information available to school principals.

The main official source of information on homosexuality for school students is the Personal Development Course, which is conducted in some form in most state secondary schools in NSW. The details of course content and the way that issues are treated are left to the discretion of teachers giving the course. The Department of Education provides literature for the course and the material on homosexuality was examined by the Board and found inadequate on the basis that it tends to waver back and forth between homosexuality as a neurotic disorder and homosexuality as a "normal variant like left-handedness" and leaves the overall impression that there is something strange or wrong about it. In view of the obvious need for non-judgmental and informative material for school students, the Board recommended that the Department of Education review that part of the Personal Development program relating to homosexuality with the intention of providing more suitable, accurate and up-to-date material.

The Board also recommended that the Act be amended to include homosexuality as a ground of unlawful discrimination in the area of public education, and that private educational authorities should not be exempt from amendments to the Act which include homosexuality as a ground of unlawful discrimination.

At the tertiary level the Board surveyed a number of departments and schools which provide courses for those professions, such as social work and medicine, whose practitioners are most likely to encounter homosexual clients. The aim was to find out how homosexuality was presented to students and most replies indicated that it was defined as "a normal sexual variation" and "a valid alternative lifestyle" rather than a psychological problem or an anti-social activity. This may indicate that professional workers in the future will have less rigid and stereotyped perceptions of lesbians and homosexual men.

8. Other areas

There are many instances where homosexuals have been denied benefits or goods and services that would have been provided, if they had not been homosexual. Some discriminatory treatment in this area stems from the lack of legal standing of homosexual relationships in comparison with heterosexual relationships. Other forms of discrimination, including denial of goods and services and accommodation, result from ignorance and prejudice on the part of service providers.

The lack of legal standing of homosexual relationships deprives homosexual partners of a range of benefits that accrue to heterosexual spouses. These include the partner's share of the estate if the deceased has no will, certain benefits provided to family members by some NSW statutes, and employer-provided benefits such as moving expenses and accommodation.

Other problems arising for homosexual partners include difficulties in obtaining joint loans, being deprived of the hospital visiting rights available to heterosexual partners and family members, failure to be accepted for immigration and residency status and denial of the right to benefits from the partner's superannuation.

It was recommended that the definition of 'relations', 'next of kin', 'spouse' etc. should be extended to include lesbian and male homosexual partners living in a bona fide domestic relationship.

Many cases of denial of goods and services to individual homosexuals and to homosexual groups were brought to the attention of the Board. These included the failure of some newspapers and magazines to accept advertisements from homosexual individuals and groups, restricted access to information services in public libraries and unwillingness of counselling agencies to make adequate provision for the needs of homosexual clients.

Some counselling is offered at present by voluntary workers in homosexual organizations on a part-time basis and there is a pressing need for a more extensive service. The Board recommended that the Department of Youth and Community Services assign priority to funding a suitable agency to provide special counselling and related services for lesbians and male homosexuals. It also recommended that the Health Commission formulate and implement policies in the area of health education and promotion to provide for homosexuals and their parents in all relevant community health programs.

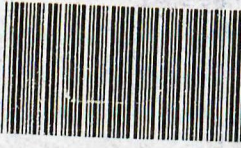
It is apparent that prejudice against lesbians and homosexual men leads on occasions to the denial of rented accommodation and could result in denial of membership of some registered clubs. The major recommendation in this chapter was that the Act be amended to render discrimination on the ground of homosexuality unlawful in the provision of goods and services, accommodation and access to membership of registered clubs.

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