

homosexuals

and

human

relationships

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CAM/H

CAMP NSW



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submission to

the Royal Commission on Human Relationships

CAMP NSW

CAMP NSW
Box 5074 GPO
SYDNEY 2001
September 1975

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CAMP NSW

for homosexual liberation



The Commissioners
Royal Commission on Human Relationships
100 William Street
Kings Cross 2011.

GPO Box 5074

SYDNEY 2001

20 September 1975.

Dear Commissioners,

We present the submission of CAMP NSW to the Royal Commission on Human Relationships.

The inspiration gained by one of our members at your last public hearings in Sydney led to the formation of a working group to prepare the submission. The group held a number of meetings between June and September, discussing at great length the many problems with which we are confronted as female and male homosexuals.

The results of our discussion, the ideals to which we subscribe, and the recommendations for action by you are set out in the following report. We homosexuals look to the Commission for the promotion of our ideas and the implementation of our recommendations which will lead towards liberation for this suppressed minority.

We seek to discuss the matters contained in our submission and any matters about which you would like more information: in informal session, and, in formal session, through public hearings.

Love and Peace

Ron Austin
Mike Clohesy
Jan Davis
Peter de Waal
Col Eglington
Terry Goulden

John Greenway
Robyn Kennedy
Robyn Plaister
David Ritchie
Peter Trebilco

for the Working Group, representing the membership of CAMP NSW.

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Of whatever kind, any proud, different and conspicuously active minority always comes to be suspected, resented and eventually oppressed by the majority; the more fiercely so when a minority within that particular minority is generally deemed to be over keenly on the make.

Leon Poliakov

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1. PREAMBLE

- 1.1 The first aim of this submission to the Royal Commission on Human Relationships is to analyse the oppression of female and male homosexuals.
- 1.2 This task is extremely complex, since the causes and manifestations of homosexual oppression are complex and diverse.
- 1.3 The method adopted for this submission has been to analyse our oppression as homosexuals according to the five basic terms of reference of the Commission: family, social, educational, legal and sexual aspects of human relationships.
- 1.4 Analysis of homosexual oppression is pointless unless allied to the search for homosexual liberation. The second, and more important, aim of the submission, therefore, is to recommend ways of liberating homosexuals from their oppression.
- 1.5 Liberation will come, fundamentally, only through a restructuring of society.
- 1.6 Some of the ways in which we see that this restructuring process could be promoted are outlined as recommendations at the end of each section of the submission.

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2. FAMILY ASPECT

Nuclear family

- 2.1 The only family unit given full recognition by society at the moment is the nuclear family.
- 2.2 The energies of all components of society are expended in maintaining this as its basic unit, to the exclusion of the individual unit and other family units.
- 2.3 This section of the submission will examine the conditioning processes which are a primary function of nuclear families; and will discuss the position of nuclear families.

Sex roles

- 2.4 The fundamental way in which nuclear families perform their function as socialising agents is by conditioning their members into adopting certain sex roles.
- 2.5 This means that certain roles are assigned to people according to their gender, regardless of their individual personality.
- 2.6 These roles serve to uphold the power structure of this patriarchal society by striving to ensure that men take on roles of power and women those of weakness.
- 2.7 Adoption of these roles is essential to the maintenance of the microcosm of the patriarchal society, the nuclear family.

Effects on homosexuals

- 2.8 The insistence of society that people should be conditioned into these roles is reflected in the duality of peoples' view of homosexuals and their life-style:
 - 2.8.1 That in homosexual relationships (of two people), one must adopt the male role, the other the female.
 - 2.8.2 That all male homosexuals are effeminate and all female homosexuals ruffians.
- 2.9 The basic oppression of homosexuals resulting from sex-role conditioning operates in two ways:
 - 2.9.1 since the purpose of the roles is to uphold the nuclear family life-style, they discriminate against alternative life-styles by ignoring them;
 - 2.9.2 in a more active way, by ridiculing and shunning them for rejecting sex roles.

Families of homosexuals

- 2.10 The expectation, produced and fostered by society in families, that all its members will be heterosexual, marry and establish nuclear families, has severe effects on families from which a homosexual comes, and on homosexuals themselves.

- 2.11 The **two** major problems **resulting from** this are:
 - 2.11.1 the development of an awareness of her/his sexuality;
 - 2.11.2 the great difficulty of sharing their sexual orientation **with** the family.
- 2.12 This places obstacles in the way of developing good family relationships and forces the homosexual to lead a hidden life.
- 2.13 If the homosexual does summon the courage to open her/his life up to the family, it immediately has a crisis of failure. This is produced by the strong success/failure syndrome operating in society which brands all deviations as failures.
- 2.14 In most families there then ensues a period of great strain and estrangement while the family adjusts.
- 2.15 Unfortunately, in most cases there is no adjustment and the family rejects the homosexual, often by turning her/him out of the family home.
- 2.16 CAMP looks forward to a society in which no pre-determined sex-roles or models are present to hinder the full development of the potential of individual people.

Homosexual families

- 2.17 Homosexual families, so far as society is concerned, do not exist.
- 2.18 This status is shared with all other variations from the nuclear family, since society is obsessed with maintaining the nuclear family as its basic unit.
- 2.19 Suppression of the homosexual family is shown most obviously in the provisions of various laws and regulations relating to financial benefits (e.g. taxation, superannuation, allowances) for the dependent members of families. In these, only dependency in nuclear families is recognised.

Re-definition of family

- 2.20 What is necessary is a re-definition of family to mean: a group of people, however constituted, which considers itself a family.
- 2.21 This definition would be incorporated into all relevant legislation and regulation, so that:
 - 2.21.1 dependency in all family situations would be recognised;
 - 2.21.2 the current benefits accruing to nuclear families would extend to all families.
- 2.22 The instances to which this would apply include: taxation claims for dependants; social security benefits; inheritance rights; death duties; education allowances; housing loans; employment allowances; superannuation.
- 2.23 This dependency would, in all instances, have to be proved.

Children

- 2.24 Homosexual families meet oppression also where children are concerned.

- 2.25 The practice fostered by society is that children are possessions and projections of their parents.
- 2.25.1 This contributes to the high expectations of parents discussed earlier;
- 2.25.2 It contributes to the belief that the nuclear family is the only suitable atmosphere in which to raise children.
- 2.26 The consequence of this for parents in non-nuclear family situations is that they are labelled as deviants and accept this label for themselves.
- 2.27 For homosexual parents, gaining legal custody of their children is almost impossible. The hearsay dictum, "Lesbians are unfit mothers" is, for instance, sufficient grounds upon which to refuse custody to a lesbian mother. The position with male homosexuals is unclear.
- 2.28 This, despite the fact that this dictum has never been proven.
- 2.29 The restrictions on homosexuals adopting children are absolute.
- 2.30 State legislation actively discriminates against homosexual parents (New South Wales, Adoption of Children Act 1965-66, section 19).
- 2.31 Australian Capital Territory legislation is not so prescriptive, since it does not specifically define the person or persons who may adopt. However, in the light of the social attitudes outlined in this section, section 19(1), Adoption of Children Ordinance 1965-66 would obviously be used against homosexual applicants.
- 2.32 We draw the Commissions attention to pages 3-13 of Female Homosexuality (Document A attached) which we include in this section of our submission.

Recommendations

- 1 That the Royal Commission on Human Relationships use the extended definition of family outlined in section 2.20, in its deliberations, research and reports.
- 2 That the Commission urge the implementation of this re-definition and the concomitant recognition of the rights of alternative families in all relevant Australian Government legislation and regulations.
- 3 That the Commission recommend the financing of education programs by CAMP NSW designed to inform the community about alternative life-styles.
- 4 That the Commission undertake research into the effect of sex roles on the development of individuals within the family.
- 5 That the Commission recommend changes to all adoption laws so that the restrictions would not be based on the sexual nature of the family or person wishing to adopt children.

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3. SOCIAL ASPECT

Conditioning

- 3.1 The conditioning which enforces certain sex roles on people discussed in the preceding section also operates in society at large.
- 3.2 It is manifested in such institutions and situations as sporting activity, clubs and hotels, social groups of various kinds, education.

Support for nuclear family

- 3.3 The rigidity of the division between masculinity and femininity builds up those roles which prepare people to take their expected place in the nuclear family.
- 3.4 All the main institutions of society work towards supporting the nuclear family and its concomitant sex-roles, so oppressing all deviant life-styles.
- 3.5 These institutions are principally: medical, religious, legal, educational and media.
- 3.6 The tenacious support of the status quo by these institutions is carried out by their individual power structures, which have been built up by the people in them conforming, throughout their lives, to social expectations. Therefore, they resist altering anything that might threaten their power base.

Medical Institutions

- 3.7 The family doctor is traditionally one of the first to whom those in trouble have gone for help. The general ignorance of doctors about homosexuality and, indeed, about sexuality in general, means that this avenue is closed to most.
- 3.8 The psychiatric profession, together with religious institutions and dogmata, must bear the responsibility for being the source of the most systematic oppression of the homosexual.
- 3.9 Psychiatrists are responsible for the labels which have been given to homosexuals of "curable", "abnormal", "sick", "deviant".
- 3.10 These conclusions have been based on the most questionable of evidence, viz., by interviews and study of homosexuals who had approached psychiatrists for treatment.
- 3.11 It seems logical that if any study of a group in society takes as its sample group a sub-group which classifies itself as sick, then an invalid result will occur.
- 3.12 Recent psychiatric research has seen the error of previous procedure and has produced results which show that former labelling of homosexuals is simply untrue.
- 3.13 A bibliography of recent psychiatric research will be forwarded.

Religious Institutions

- 3.14 It is not the place of this submission to debate the positions of the various churches on homosexuality, although there is a wealth of material to challenge those positions.
- 3.15 The point which should concern the Commission is the attempt by the major churches to force their beliefs on the rest of society, and to have society moulded around and based on their beliefs.
- 3.16 The fact that they have, in the past, succeeded in this attempt has resulted in much of the oppression which we homosexuals suffer today.
- 3.17 We submit that the perspective which should guide the Commission in its deliberations is that of a pluralist society.
- 3.18 The legal and educational institutions will be discussed in later sections of this submission.

Media

- 3.19 CAMP's experience shows the near impossibility of minority groups gaining sensitive coverage by the media.
- 3.20 Generally, only that which actively supports the status quo is given prominence by the media.
- 3.21 Probably the most influential educational forums, therefore, are closed to those seeking to change attitudes.

Effects on homosexuals

- 3.22 The major consequences for homosexuals of the oppression we have outlined are rejection of their life-style as fulfilling and rejection of their person because it does not fit in with the pattern which society dictates.

Concealment of sexual orientation

- 3.23 The reaction of most homosexuals to these situations is to hide their sexuality from as many people as possible.
- 3.24 Most homosexuals structure their life-styles around this attempt to conceal their sexuality and thus try to escape the opprobrium of society.
- 3.25 Many homosexuals give into society's pressures totally and sublimate their homosexuality, usually by marriage.
- 3.26 One of the greatest problems for the homosexual movement is this very concealment of their sexuality by homosexuals. An essential part of the movement's education of the community is for the community to meet homosexuals. This can only be done by individual homosexuals having the courage to confront the covert and overt violence of society, and reveal their true personality.
- 3.27 The society towards which we hope we are moving is one in which there will be no need for people to have to endure the traumatic experience of "coming out", because no assumptions will be made about people. That is, people will not, as now, begin from the premise that everyone they meet is heterosexual.

Blackmail

- 3.28 A direct consequence of the forced concealment of their sexuality for homosexuals is the problem of blackmail: emotional, social, legal, financial.
- 3.29 The extent of this problem is impossible to gauge, but it can confidently be described as wide-spread and the effects destructive.
- 3.30 But blackmail is only a problem when homosexuals are forced to hide their sexual orientation. As soon as there is no subject for blackmail, the problem disappears.

Employment

- 3.31 A large area of discrimination which homosexuals encounter is employment.
- 3.32 Once homosexual orientation is admitted, none of their basic rights as workers is guaranteed or safe-guarded.
- 3.33 The basic tools used to protect the rights of workers in Australia are the Committees on discrimination in employment. The powers of these Committees are based on International Labour Organisation Convention no. 111.
- 3.34 Section 1 of Article 1 of that Convention reads:
For the purpose of this Convention the term "discrimination" includes:
(a) any distinction, exclusion or preference made on the basis of race, colour, sex, religion, political opinion, national extraction or social origin, which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation;
(b) such other distinction, exclusion or preference which has the effect of nullifying or impairing equality of opportunity in employment or occupation as may be determined by the Member concerned after consultation with representative employers' and workers' organisations, where such exist, and with other appropriate bodies.
- 3.35 It is clear from a reading of that section that the rights of homosexuals are not safe-guarded:
 - 3.35.1 since part (a) excludes the term "sexual orientation";
 - 3.35.2 since part (b) has not been used in Australia for the benefit of homosexuals.
- 3.36 We would point out that the rights of the aged and handicapped are similarly ignored by Convention 111.
- 3.37 The experience of CAMP NSW with unions is that they wish, with few exceptions, to simply ignore the homosexual issue.
- 3.38 While it is essential that the rights of homosexuals be guaranteed in legislation and/or regulation, we are under no delusion that this will be the end of our struggle.
- 3.39 With homosexual oppression and liberation becoming something of a political issue, employers are very reluctant to give homosexuality as a reason for dismissal or refusal to employ.
- 3.40 From the homosexual's point of view, the greatest problem with employment is the fear that their sexual orientation will be discovered and they will be discriminated against.

- 3.41 What is needed principally, then, is a change in community attitudes towards the homosexual: for, in this case, employers to realise that peoples' sexuality has nothing to do with the job they perform.

Defence Forces

- 3.42 The area of employment in which the most official discrimination against homosexuals occurs is in the Defence Forces. The policy of the Defence Forces on homosexuals in the Armed Forces is included as Exhibit 1. This submission's comments on the policy are included as Exhibit 1A. The inclusion of this document and the comments as an Exhibit is only for reasons of length, and in no way lessens its importance.

Homosexual Women and Employment

- 3.43 Problems in employment are duplicated for homosexual women, since they encounter discrimination first as women, and then as homosexuals.
- 3.44 This discrimination is very real and very personal because most homosexual women are, or must seek to be, self-supporting.
- 3.45 Remedies for them, therefore, must cover both areas of discrimination.

Civil Liberties

- 3.46 As with their employment rights, the civil liberties of all homosexuals are ignored.
- 3.47 The Human Rights Bill introduced by the Australian Government into Parliament in 1973 could have been one way in which the rights of homosexuals were recognised.
- 3.48 However, since sexual orientation was excluded (following the international covenant) from the list of fundamental rights and freedoms in section 7 of the Bill, another chance to guarantee them for homosexuals was lost.
- 3.49 Correspondence with various government departments on this subject is included as Appendix 2.
- 3.50 An amended form of the Human Rights Bill (a Sex Discrimination Bill) is being discussed and will only have application in the Australian Territories.
- 3.51 Since the Government will be legislating under its powers over its Territories, there will be no constitutional or legal limits.
- 3.52 The Government must, then, be persuaded to introduce a Rights Bill which deals with all rights.

Recommendations

- 6 That the Commission encourage the development of programs of education on sexuality in general, and homosexuality in particular, in medical faculties and all nursing schools.

7 That the Commission gives its support to the principle that the laws of a country should recognise the rights and beliefs of all its citizens and not only those of some sectional interests.

8 That the Commission urge the Australian Government to take urgent steps to open all forms of the media to the public for their use.

9 That the Commission urge the Australian Government to use its powers under section 1(b) of article 1 of International Labour Organisation Convention 111 to amend that Convention in its Australian applications so that the rights of homosexuals in employment will be recognised and safe-guarded.

10 That the Commission, in representations to the Australian Government, support the right of homosexual defence personnel to live openly as homosexuals within the Defence Services.

11 That the Commission make immediate representations to the Australian Government with a view to encouraging the Government to introduce a Bill guaranteeing human rights and all human rights.

12 That the Commission recommend to the Government that it move in the United Nations for an International Homosexual Year as one means of education about homosexuality.

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4. EDUCATIONAL ASPECT

Conditioning into roles

- 4.1 The main expressed aim of the educational system is to condition people.
- 4.2 It aims to condition people into the roles demanded for their required place in the nuclear family.
- 4.3 This has been established by a wide variety of research and has been recognised by the Schools Commission in its Report for the Triennium 1976-1978.
- 4.4 This means that no alternatives are presented to students; that the options which they might adopt are limited; and that they are not allowed to find their natural position in society.

Homosexual Students

- 4.5 Homosexual students thus come to accept that their natural life-style is a second-best and that, to be accepted by society, they must attempt to conform to the norm.
- 4.6 Other students are confirmed in their conditioned belief that homosexuals are perverts, only fit to be ridiculed, or worse.
- 4.7 This belief is manifested openly in their actions.

Responsibility of educational authorities

- 4.8 Educational authorities must accept that there are homosexual students in schools and colleges.
- 4.9 They must recognise that, in a pluralist society, they have a responsibility to those students, as to other students, to see that their natural personalities are able to develop fully.

Homosexual Teachers

- 4.10 One way in which this could be achieved is by homosexual teachers being allowed to be honest, in the school situation, about their own life-style.
- 4.11 Homosexual students would then be provided with a model and the belief that the homosexual life-style is a fulfilling one.
- 4.12 But the freedom of teachers is severely restricted both by social attitudes and by the conditions under which they are employed.

Education hierarchies

- 4.13 Education systems are very tightly knit and, being hierarchies, have authority devolving from the top.
- 4.14 This structure is maintained and reinforced by the Act from which it derives its power.
- 4.15 In the case of the Australian Government, this is the Commonwealth Teaching Service Act 1972 (as amended).
- 4.16 Even a cursory reading of this Act reveals the wide-ranging powers given to the Commonwealth Teaching Service Commissioner.

- 4.17 These powers are always used to protect the existing structure and to oppress homosexual teachers and homosexual students.
- 4.18 Specifically for homosexual teachers, section 35 of the Act means that they are wary of doing anything which might be construed as "misconduct", and thus jeopardise their employment.

Sex education

- 4.19 A specific area of education curricula which could and should discuss homosexuality as a valid life-style, but which only ignores or downgrades it, is that of sex education.
- 4.20 These courses should present homosexuality as one part of the continuum of human sexuality.

Recommendations

13 That the Commission gives its support to the concept that the function of an education system is to promote the development of the natural potential of all the people in it, not to mould them into roles.

14 That the Commission devise programs which will promote the achievement of that aim in Australian education.

15 That the Commission support submissions by CAMP NSW to the Schools Commission for funding of projects to produce material on homosexuality.

16 That the Commission recommend amendments to the Commonwealth Teaching Service Act which would provide greater trust and autonomy for individual schools and teachers.

5. LEGAL ASPECT

Law

- 5.1 The only reference to homosexuality in the Statute Law of Australia is the proscription of male homosexual activity in all States and the Australian Capital Territory (except for token exceptions in the Territory and South Australia, both in the process of adoption).
- 5.2 The effect of Australian law is, therefore, to destroy homosexual relationships.
- 5.3 CAMP NSW supports no law which defines human relationships; it supports only those which protect them.
- 5.4 This means, so far as criminal law is concerned, that CAMP NSW supports a program to repeal all laws relating to sexual conduct and to replace them with a single law making sexual conduct criminal only in situations where assault, threats or coercion are used.
- 5.5 A proposal to achieve this aim is contained in Exhibit 2.
- 5.5.1 This proposal is substantially the same as that submitted to the Commission by Ms Alicia Lee.
- 5.5.2 Reservations about this proposal centre on punishment, minors and incest. We are encouraging and would welcome discussion on these subjects.

Prison

- 5.6 Many homosexuals are suffering under the oppressive nature of the prison system.
- 5.7 We support moves to find alternatives to the prison system which are humane and which have as their basis the interests of the prisoner.
- 5.8 Rights for the partners of all relationships should be guaranteed, and not left to the whim of prison officials.

Legal Profession

- 5.9 The legal profession, which is closely associated with the application of the law, should be the leaders of moves to improve it.
- 5.10 The legal profession is renowned for its conservatism and is not willing to be associated with moves for change, for whatever reason.
- 5.11 It, therefore, must take a part of the blame for the oppression resulting from the many unjust laws which abound on Australian statute books.

Sexism of legislation

- 5.12 Male dominance, which this submission has shown to be at the basis of homosexual oppression, manifests itself in the sexist manner in which laws are framed.
- 5.13 Even though the laws are relating both to females and males, masculine pronouns and adjectives are always used.

- 5.14 The justification of this practice is section 23A, Acts Interpretation Act. This justification is rejected, because of its sexism.
- 5.15 We believe that the framing of laws in a non-sexist manner would be an important contribution to the removal of sexist attitudes, and the improvement of human relationships.

Recommendations

17 That the Commission, in representations to the Australian Government, support the implementation of the law and associated program of law repeal, outlined in Exhibit 2 of this submission.

18 That the Commission recommend the repeal of section 23A, Acts Interpretation Act and the future practice of framing legislation in a non-sex-specific manner.

6. SEXUAL ASPECT

Community attitudes

- 6.1 The general liberation of attitudes towards sexual activity must entail liberation for homosexuals.
- 6.2 The general ignorance of the community about sex is even more acute for homosexuals as their sexual activity and practice is a forbidden subject.
- 6.3 The development of open sex education programs would help to overcome this problem, particularly if these were designed by liberated homosexuals who have become aware of their sexuality.

Female sexuality

- 6.4 The work of the women's movement to raise awareness of sexuality and to educate women about the functioning of their bodies must lead to better sex education for homosexual women.
- 6.5 The work of the women's movement must be supported, funded and aided.

Sex roles

- 6.6 The adoption of roles in social functioning carries over into sexual activity. This leads to a limiting of personality.
- 6.7 Education must be aimed at the discarding of these artificial roles, thereby showing the possibilities for personal development.

Recommendations

19 That the Commission recommend the establishment of community sex education programs, which present the validity of the homosexual life-style as an integral part.

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SUMMARY OF RECOMMENDATIONS

- 1 That the Royal Commission on Human Relationships use the extended definition of family outlined in section 2.20, in its deliberations, research and reports.
- 2 That the Commission urge the implementation of this re-definition and the concomitant recognition of the rights of alternative families in all relevant Australian Government legislation and regulations.
- 3 That the Commission recommend the financing of education programmes by CAMP NSW designed to inform the community about alternative life-styles.
- 4 That the Commission undertake research into the effect of sex roles on the development of individuals within the family.
- 5 That the Commission recommend changes to all adoption laws so that the restrictions would not be based on the sexual nature of the family or person wishing to adopt children.
- 6 That the Commission encourage the development of programmes of education on sexuality in general, and homosexuality in particular, in medical faculties and all nursing schools.
- 7 That the Commission give its support to the principle that the laws of a country should recognise the rights and beliefs of all its citizens and not only those of some sectional interests.
- 8 That the Commission urge the Australian Government to take urgent steps to open all forms of the media to the public for their use.
- 9 That the Commission urge the Australian Government to use its powers under section 1(b) of article 1 of International Labour Organisation Convention 111 to amend that Convention in its Australian applications so that the rights of homosexuals in employment will be recognised and safe-guarded.
- 10 That the Commission, in representations to the Australian Government, support the right of homosexual defence personnel to live openly as homosexuals within the Defence Services.
- 11 That the Commission make immediate representations to the Australian Government with a view to encouraging the Government to introduce a Bill guaranteeing human rights and all human rights.
- 12 That the Commission recommend to the Government that it move in the United Nations for an International Homosexual Year as one means of education about homosexuality.
- 13 That the Commission give its support to the concept that the function of an education system is to promote the development of the natural potential of all the people in it, not to mould them into roles.
- 14 That the Commission devise programmes which will promote the achievement of that aim in Australian education.

15 That the Commission support submissions by CAMP NSW to the Schools Commission for funding of projects to produce material on homosexuality.

16 That the Commission recommend amendments to the Commonwealth Teaching Service Act which would provide greater trust and autonomy for individual schools and teachers.

17 That the Commission, in representations to the Australian Government, support the implementation of the law and associated program of law repeal, outlined in Exhibit 2 of this submission.

18 That the Commission recommend the repeal of Section 23A, Acts Interpretation Act and the future practice of framing legislation in a non-sex-specific manner.

19 That the Commission recommend the establishment of community sex education programs which present the validity of the homosexual lifestyle as an integral part.

EXHIBIT 1

POLICY REGARDING HOMOSEXUALS IN THE ARMED SERVICES

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 an 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 Forces 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 interests 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 servicewoman 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. Servicewomen 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 servicemen 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 is reasonable to assume that the serviceman or servicewoman is not a confirmed homosexual and is unlikely to become involved in further incidents, he or she may be retained in the Service and warned of the consequences of further involvement in homosexual behaviour.

13. If, however, it is apparent that the serviceman or servicewoman 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 serviceman or servicewoman is discharged, "services no longer required" or "unsuited for further service", he or she is normally given an opportunity to apply for discharge "at own request".

14. In conclusion, the reviewed policy now means that, although confirmed homosexuals are not retained in the Armed Services, their cases are treated with sympathy and discretion, and it is possible for them to leave the Services with an honourable discharge.

EXHIBIT 1A

COMMENTS ON POLICY REGARDING HOMOSEXUALS IN THE ARMED SERVICES

General comments: 1. The aim and effect of the policy is to force homosexuals to deny their true personality, to hide their true life-style, or to be forced out of an area of employment which might best suit them. At all of these situations we protest most strongly.

2. In the light of these denials of basic human rights, the "sympathy and discretion" expressed in the policy are meaningless and empty phrases.

Paragraph 2: 3. The policy assumes, but nowhere demonstrates, how homosexuals adversely affect "command relationships, high morale and a measure of discipline". Since this is the basic assumption of the document, it would seem that some effort should be made to demonstrate it. We believe that this would be impossible to do.

Paragraph 3: 4. Another unproven and untested assumption is made that "the public view of the Armed Services would be seriously eroded if open tolerance of homosexual behaviour was to be accepted behaviour".

5. We challenge the assumption that to act in loco parentis means to support the stereotype of the heterosexual nuclear family.

6. The reference to life in the services as "an outdoor and vigorous one; one of essentially normal and healthy endeavour" is puzzling. Nowhere does the document indicate why this precludes homosexuals from joining the forces. We presume that the reference is based on the general belief that all homosexuals are unmanly and effeminate. That is a belief in no way supported by fact, as any elementary research amongst the homosexual community would indicate; and, further, this stereotype refers, of course, only to male homosexuals.

Paragraph 5: 7. The statement that "homosexuality ... does occur occasionally" is a gross understatement of the situation.

Paragraph 6: 8. The embarrassment referred to is only felt by the command structure of the Armed Services, and because they allow it to embarrass them. Homosexuals feel no embarrassment at being homosexual.

Paragraphs 11-12: 9. These paragraphs highlight the total lack of awareness and understanding of homosexuality as a life-style and not just a sexual activity, which has pervaded the whole document. Without this understanding, no one could devise a rational Policy on Homosexuals.

Paragraph 13: 10. The expectation that homosexuals could possibly or would possibly wish to refrain "from further involvement" again demonstrates the total lack of awareness of the homosexual life-style.

Conclusion: 11. The document demonstrates a shallowness of understanding, a total lack of research, and a general insensitivity.

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EXHIBIT 2

PROPOSED AMENDMENT TO ALL AUSTRALIAN CRIMES ACTS TO REGULATE CRIMINAL SEXUAL CONDUCT

Preamble: To implement this amendment or series of amendments, it would be necessary to repeal those sections of each statute which deal with criminal sexual conduct as this amendment would provide a complete code to regulate all aspects of such conduct.

S1. Definition section

As used in S2,

(a) "Actor" means a person, including the spouse of a victim, accused of sexual criminal 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 a narcotic, anaesthetic, alcoholic, or other substance 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 or actor's intimate parts, if the intentional touching can be construed reasonable as being for the purpose of sexual arousal or gratification.

(h) "Sexual penetration" means sexual intercourse, including cunnilingus, fellatio, anal intercourse or any other intrusion, however slight, of any part of a person's body or of any object into the genital or anal openings of another person's body, but emission of semen is not required.

(i) "Victim" means the person alleged to have been subjected to sexual criminal conduct.

S2. (1) A person is guilty of sexual criminal conduct if she or he engages in sexual penetration with another person and if any of the following circumstances exists:

- (a) That the other person is under thirteen years of age;
- (b) That the other person is at least thirteen but less than sixteen

years of age and the actor is a member of the same household as the victim, the actor is related to the victim by blood or affinity to the fourth degree to the victim or the actor is in a position of authority over the victim and used this authority to coerce the victim to submit.

(c) The actor is aided and abetted by one or more persons and either of the following circumstances exists:

(i) The actor knows or has reason to know that the victim is mentally defective, mentally incapacitated or physically helpless.

(ii) The actor uses force or coercion to accomplish the sexual penetration. Force or coercion includes but is not limited to any of the circumstances listed in subdivision (e) (i) to (v).

(d) 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.

(e) The actor causes personal injury to the victim and force or coercion is used to accomplish sexual penetration. Force or coercion includes but is not limited to any of the following circumstances:

(i) When the actor overcomes the victim through the actual application of physical force or physical violence.

(ii) When the actor coerces the victim to submit by threatening the use of force or violence against the victim and the victim believes that the actor has 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 purposes which are medically recognized as unethical or unacceptable.

(v) When the actor, through concealment or by the element of surprise, is able to surprise the victim.

(f) The actor causes personal injury to the victim, and the actor knows or has reason to know that the victim is mentally defective, mentally incapacitated or physically helpless.

(2) Criminal sexual conduct in the aforesaid section is a felony punishable by imprisonment for life or for any term of years.

S3. (1) A person is guilty of criminal sexual conduct if the person engages in sexual contact with another person and if any of the following circumstances exists:

(a) That the other person is under thirteen years of age.

(b) That the other person is at least thirteen but less than sixteen years of age and the actor is a member of the same household as the victim or is related by blood or affinity to the fourth degree to the victim, or is in a position of authority over the victim and the actor used this authority to coerce the victim to submit.

(c) The actor is aided or abetted by one or more other 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 S2 (1) (e)(i) to (v).

(d) The actor is armed with a weapon, or any article used or fashioned in a manner to lead a person to reasonably believe it to be a weapon.

(e) The actor causes personal injury to the victim and force or coercion is used to accomplish the sexual contact. Force or coercion includes but is not limited to any of the circumstances listed in S2 (1)(e)(i) to (v).

(f) The actor causes personal injury to the victim and the actor knows or has reason to know that the victim is mentally defective, mentally incapacitated, or physically helpless.

(2) Criminal sexual conduct in the aforesaid section is a felony punishable by imprisonment for not more than fifteen years.

S4. (1) A person is guilty of sexual criminal conduct if the person engages in sexual penetration with another person and if any of the following circumstances exists:

(a) That the other person is at least thirteen years of age and under sixteen years of age.

(b) 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)(e)(i) to (v).

(c) The actor knows or has reason to know that the victim is mentally defective, mentally incapacitated, or physically helpless.

(2) Criminal sexual conduct in the aforesaid section is punishable by imprisonment for not more than fifteen years.

S5. (1) A person is guilty of sexual criminal conduct if she or he engages in sexual contact with another person and 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)(e)(i) to (v).

(b) The actor knows or has reason to know that the victim is mentally defective, mentally incapacitated or physically helpless.

(2) Criminal sexual conduct in the aforesaid section is a misdemeanor punishable by imprisonment for not more than two years or by a fine of not more than \$500 or both.

S6. (1) Assault with intent to commit criminal sexual conduct involving sexual penetration shall be a felony punishable by imprisonment for not more than ten years.

(2) Assault with intent to commit criminal sexual conduct is a felony punishable by imprisonment for not more than five 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:

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 of 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)(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 counsel or the victim or actor 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 order and details of the alleged offence be suppressed until such time as the actor is arraigned on the information, the charge is dismissed, or the case is otherwise concludes, whichever occurs first.

APPENDIX 1

REFERENCES (not exhaustive)

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APPENDIX 2



OFFICE OF THE PRIME MINISTER

CANBERRA

22 OCT 1974

Dear Mr Clohesy,

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

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

Yours sincerely,

A handwritten signature in cursive script that reads 'Michael Delaney'.

Michael Delaney.

Mr Michael Clohesy,
Secretary,
CAMP,
G.P.O. Box 5074,
SYDNEY, N.S.W. 2001.



DEPARTMENT OF FOREIGN AFFAIRS

CANBERRA, A.C.T. 2600

558/3/9

2 September 1974

Dear Mr Clohesy,

The Minister has asked me to reply to your letter of 24 July concerning inclusion of the term "sexual orientation" in the International Covenant on Civil and Political Rights.

The Government is, of course, sympathetic to all groups which have been discriminated against or persecuted in the past. This is the basis of the Government's proposed Human Rights Bill and of our support for international instruments on the subject.

The International Covenant, on which the proposed Australian Bill is based, is, however, a delicate compromise that was reached after much international negotiation. To attempt to re-open the drafting of the Covenant for the purpose of including one amendment would most likely open the way to a host of other suggested amendments, some worthy some not, which could put the very existence of the Covenant in jeopardy.

You may be assured, however, that in the drafting of any future international instruments on human rights, the Government will certainly bear interests of your organisation in mind.

Yours sincerely,

(H. Gilchrist)
First Assistant Secretary
Consular and Legal Division

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CAMP,
Box 5074, G.F.O.,
SYDNEY, 2001

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