

---

# Submission in Favour of Equalising the Age of Consent

---

## 1 Why the Shopfront Youth Legal Centre has taken an interest in supporting the equalisation of consent laws

- 1.1 The Shopfront Youth Legal Centre is a free legal service for homeless and disadvantaged young people aged 25 and under. We are based in Darlinghurst, Sydney, and have been operating since 1993. Our four solicitors represent and advise young people in a range of legal issues including criminal law, victims compensation, family law, discrimination, social security, tenancy and debt.
- 1.2 We are a legal centre that specialises in providing free legal services to young disadvantaged people, many of whom are gay, lesbian or bisexual. The Shopfront Youth Legal Centre is therefore well placed to comment on discriminatory age of consent laws.
- 1.3 Many of the young gay, lesbian and bisexual people we serve suffer from problems with drugs, alcohol, self esteem and homelessness - often as a (partial) result of homophobia in the home and community. In fact, it has been reported that more than 6% of senior school students are attracted to members of their own sex, and that these students are up to four times more likely to engage in binge drinking and injecting drugs largely because they feel socially isolated and grow up in a "hostile, threatening and potentially violent environment".<sup>1</sup> It is submitted that s78K of the Crimes Act 1900 (NSW) serves to entrench the stigmatisation of gay sex, at least amongst sixteen and seventeen year old males, and that this may serve to validate homophobia.

---

## 2 The Law as it stands

- 2.1 CRIMES ACT 1900 - SECT 78K - A male person who has homosexual intercourse with a male person of or above the age of 10 years, and under the age of 18 years, shall be liable to imprisonment for 10 years.
- 2.2 CRIMES ACT 1900 - SECT 66C (1) Any person who has sexual intercourse with another person who is of or above the age of 10 years, and under the age of 16 years, shall be liable to imprisonment for 8 years.  
(2) Any person who has sexual intercourse with another person who: (a) is of or above the age of 10 years, and under the age of 16 years, and (b) is

---

<sup>1</sup> A study by the Australian Research Centre in Sex, Health & Society at La Trobe University, published in *Australian and New Zealand Journal of Public Health*. Reported in Whelan, Judith, *Students admit same sex attraction*, The Sydney Morning Herald, 29 December 1999.

(whether generally or at the time of the sexual intercourse only) under the authority of the person, (2) shall be liable to imprisonment for 10 years.

---

### 3 Why The Shopfront Youth Legal Centre Supports an Equal Age of Consent

- 3.1 The International Covenant on Civil and Political Rights aims to eliminate all forms of discrimination including on the basis of sex. Australia, as a signatory to this convention is bound by this obligation.<sup>2</sup> However, the inconsistency in the age of consent laws in Australia seem to contradict this duty.
- 3.2 Section 66C of the Crimes Act 1900 (NSW) satisfactorily safeguards children above the age of ten and below the age of sixteen from sexual exploitation, regardless of gender.
- 3.3 Equal age of consent laws ensures the law treats everyone equally. Discriminatory age of consent laws, in their current form, operate for the benefit of no particular group. Arguments in favour of maintaining the age of consent for gay sex at eighteen on the grounds that this law operates as an effective safeguard of vulnerable children from sexual exploitation is fallacious - if the argument were correct then sixteen and seventeen year old girls/women are not effectively protected by the law and the age of consent for heterosexual sex should thereby be raised to eighteen. However, the better view is that, given the reality of sexual relations between young people in New South Wales it would be inappropriate to criminalise sexual relations between sixteen and seventeen year olds generally. To do so would not afford greater protection from sexual exploitation for any particular group and would perpetuate and extend the injustice of current age of consent laws by widening the class of people whose sexual conduct would thereby be inappropriately criminalised<sup>3</sup>. A recent research report on the age of consent found that there was no evidence that the current age of consent laws had any impact on the age of first sexual activity.<sup>4</sup>
- 3.4 Discriminatory age of consent laws are not only harmful to the interests and wellbeing of sixteen and seventeen year old males engaging in homosexual sex but are also sexist in their nature. This is because, as the law currently stands, the maximum penalty for engaging in sex with a seventeen year old male is harsher than that for engaging in sex with an eleven year old girl.<sup>5</sup> The former crime attracts a maximum penalty of ten

---

<sup>2</sup> Human Rights and Equal Opportunity Commission, *Human Rights for Australia's gays and lesbians*, Sydney, February 1997.

<sup>3</sup> Report of the Ministerial Committee, *Lesbian and Gay Law Reform*, June 2001 p. 123.

<sup>4</sup> From Roberts, R & Maplestone P, *The Age of Consent and Gay Men in New South Wales* (2001) from hrc-admin@younglawyers.net sent on 15/04/02 at 9.24.41am.

<sup>5</sup> See ss 78K and 66C of the Crimes Act 1900 (NSW) respectively.

years, whereas the latter attracts a maximum penalty of eight years. Therefore, girls between ten and fifteen years of age are not afforded the same level of protection as boys of the same age, hence, current age of consent laws are implicitly discriminatory against the interests and wellbeing of girls.

The argument is sometimes advanced that boys mature later than girls and therefore are in greater need of protection. We do not support this argument. Taken to its logical conclusion, this would require significant changes to other laws, so that girls are criminally responsible, and treated as adults in the eyes of the law, at an earlier age than boys.

- 3.5 Discriminatory age of consent laws can operate to discourage young men from getting vital health information because their conduct is illegal<sup>6</sup>. Young men need advice about safe sex to prevent the spread of HIV/AIDS and other health problems. Equalising the age of consent laws will help to promote the safe sex message amongst young men.<sup>7</sup>
- 3.6 Furthermore, it has been found that many young homosexual males are more inclined to be involved in sex work, with one in four supplementing their income at some stage of their lives in this way.<sup>8</sup> Three quarters of gay sex workers have indicated that they are involved for economic reasons or because they had been forced to leave home and were too young to receive any government income support.<sup>9</sup> Many become victims of sexual assault and acts of violence and are often deterred from reporting these incidents for fear of their illegal conduct being made known to police.<sup>10</sup>
- 3.7 Section 78K of the Crimes Act 1900 (NSW) operates not to protect but to criminalise the sexual activities of sixteen and seventeen year old homosexual and bisexual males and should be repealed. A high age of consent for gay sex reflects a traditional, negative judgment about its moral standing, rather than a genuine concern for sexual exploitation and promotes homophobic attitudes in the community generally.<sup>11</sup> Research conducted in the USA has found that such attitudes contribute to a higher incidence of homelessness, with one in four gay and lesbian youth being forced to leave home because of their sexuality.<sup>12</sup> These findings have been confirmed in Australia, with only 25.9% gay youth living with their families.

---

<sup>6</sup> Report of the Ministerial Committee, *Lesbian and Gay Law Reform*, June 2001 p. 117.

<sup>7</sup> Taken from the Gay and Lesbian Rights Lobby, *Age of Consent* factsheet dated November 2000.

<sup>8</sup> Report on Lesbian and Gay Youth Homelessness, Irwin, J & Winter B: "As Long as I've Got my Doona" p52

<sup>9</sup> Note 8 at 20

<sup>10</sup> Note 8

<sup>11</sup> See also on this point, Bogunovich, M "It's time NSW Consented to Gay Equality" (15/01/02) *The Sydney Morning Herald* at <http://smh.com.au/news/0201/15/opinion/opinion4.html> sourced on the 15/01/02 and Report of the Ministerial Committee, *Lesbian and Gay Law Reform*, June 2001 p. 123.

<sup>12</sup> Note 8

3.8 New South Wales is now the only Australian State that has a discriminatory age of consent regarding gay sex. The effect of this discrimination is that homosexual experimentation by sixteen and seventeen year old males in New South Wales is criminalised and thereby stigmatised. The criminal, and hence deviant status, of gay sex for sixteen and seventeen year old males can effect the self esteem of young men, this in turn may increase the risk of youth depression and suicide.<sup>13</sup>

---

## 4 Conclusion

The Shopfront Youth Legal Centre believe that the equalisation of the age of consent is long overdue, and supports the Crimes Amendment (Sexual Offences) Bill 2002.

Katherine Bennett

Ragnii Grainger

Rebecca Ong

Jane Sanders

John Truswell

The Shopfront Youth Legal Centre

8 November 2002

---

<sup>13</sup> Note 11