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Homosexual 'Pedophilia' and the NSW Police Royal Commission

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More than anyone else, the New South Wales Royal Commission into the NSW Police Service has been instrumental in fixing in the popular mind the ideas that all men who have sex with underage boys are pedophiles and that, generally, pedophiles are men who have sex with underage boys. The purpose of this paper is to analyse that development from a perspective within the Sydney gay male community.²

An investigation into corrupt policing of pedophile activities

From the moment in December 1994 when the Royal Commission's terms of reference were amended to include pedophilia *and pederasty*³ it was clear the gay male communities in Australia were in for a bumpy ride. The pressure to set up this Royal Commission came from the floor of the NSW Legislative Assembly. While the impetus for its establishment came principally from a veteran parliamentary opponent of corruption, Mr Steve Hatton MLA, the inspiration for

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² Generally, the subject of the impact of the activities of the Royal Commission upon the lives of lesbians (for an example of which, see Ackerman, note 21 below) is outside the scope of this paper.

³ The original letters patent were issued on 16 May 1994 and relevantly amended on 21 December. The relevant parts of the terms of reference as amended were -

- ...
- (d) The impartiality of the Police Service and other agencies in investigating and/or pursuing prosecutions including, but not limited to, paedophile activity;
 - (d1) Whether any members of the Police Service have by act or omission protected paedophiles or pederasts from criminal investigation or prosecution and, in particular, the adequacy of investigations undertaken by the Police Service in relation to paedophiles or pederasts since 1983; however you may investigate any matters you deem necessary and relevant which may have occurred prior to 1983;
 - (d2) Whether the procedures of, or the relationships between, the Police Service and other public authorities adversely affected police investigations and the prosecution, or attempted or failed prosecution, of paedophiles or pederasts;
 - (d3) The conduct of public officials related to the matters referred to in paragraphs (d1) and (d2);
 - (f) Any other matter appertaining to the aforesaid matters concerning possible criminal activity, neglect or violation of duty, the inquiry into which you consider to be in the public interest.

the amendments came principally from a parliamentarian obsessed with the subject of homosexual pedophiles in high places, Mrs Diedre Grusovin MLA. Not content to commission an investigation into pedophilia, by the amendment of December 1994 the Legislative Assembly specifically focussed on the subject-matter of "pederasty" - homosexual relationships between male adults and boys,⁴ and called for investigation to go back as far as 1983 and earlier if necessary.

The political background to the reference was an ongoing sensationalist controversy generated by Mrs Grusovin over the supposed existence of a "circle" of homosexual pedophiles in "high places" in Sydney who had some sort of police protection. As with many aspects of this paper, what follows must be read subject to the caveat that the Royal Commission is yet to report - but it has to be said that the reports of the now concluded, extensive public hearings of the Royal Commission into pedophilia have revealed no such circle. The most prominent of those mentioned in evidence as possibly having any sort of corrupt relationship with police were the late former Justice David Yeldham and one wealthy businessman, currently the subject of proceedings for his extradition from South Africa.⁵ No connection between the two has been suggested, and the published reports show that Yeldham was interested in no more than sexual contact with men at gay 'beats'.⁶

Again, remembering its report on its pedophile reference has still to be delivered, it seems the conclusion to be drawn is that, in relation to police attention to pedophile activities, the Royal Commission has achieved little that can be regarded as positive other than to reveal the masterly inactivity of the Police Service, the established Christian churches and the NSW Departments of Community Services and Education when it came to investigating complaints of child sexual abuse by teachers and ministers of religion.

The lack of evidence of a circle of homosexual pedophiles under corrupt police protection did not deter the Royal Commission from embarking with enthusiasm upon a detailed examination of decades-old homosexual relations between adult males and what, if it happened now, would be regarded as underage boys. That police corruption in relation to the conduct of gay bars which served alcohol might have had something to do with the facts that all homosexual behaviour which is now legal was then illegal, and that homosexuality was even more stigmatised then than it is today, seems to not to have been understood at all. If the Royal Commissioner, Justice Jim Wood,

⁴ Definition taken from *The Macquarie Dictionary* 2nd ed, 1991, p.1307.

⁵ Significantly, although the extradition application is said to be in respect of some 215 charges, the report of the South African President's surrender consent (*Sydney Morning Herald*, 21 January 1997, p.1) made no mention of a charge such as Bribery or Conspiracy to Pervert the Course of Justice.

⁶ See, eg, K McClymont "Yeldham's confession on day of his suicide" & M Brown "Judge feared blackmail over gay liaisons" *Sydney Morning Herald*, 11 December, 1996, p.1, ff.

sought an amendment of his terms of reference⁷ so that a rational basis for inquiry might not be so skewed by the word “pederasty” toward homosexual relationships between adult men and boys, then such an attempt received no publicity. Instead, publicly the Commissioner took his lead from the presence of the word “pederasts” in the terms of reference.⁸

The Royal Commission’s definition of pedophilia

The Royal Commission decided to interpret its pedophilia/pederasty terms of reference as meaning sexual relationships between adult men and children who would, if the events concerned had happened after 1984, have been underage,⁹ and thus the relationships now illegal.¹⁰ The result was that if a homosexual relationship involved a youth under the age of 18 or a heterosexual relationship involved a girl under the age of 16, the Royal Commission was interested.¹¹ The fact that, for the purposes of its investigations, these ages differed from each other and from ages of consent in other, comparable countries¹² does not seem to have troubled the Royal Commission. In its evidence taking on aspects of the homosexual community in the late 1970s and early 1980s, the Commission used the terms “paedophile” and pederast” interchangeably.¹³

The discrepancy with the scientific definition

The discrepancy between the Royal Commission’s definitional approach to its pedophilia reference (as it has usually been termed) and the scientific definition of pedophilia has received very little treatment generally and none in the

⁷ As he did to secure amendments on 16 May 1995 and 23 October 1996 of the reporting deadline.

⁸ Statement of Commissioner Wood to the *Sydney Morning Herald*, 24 May 1996, p.8: “The Royal Commission is required expressly by its terms of reference to look at pederast activity as well as paedophile activity.”

⁹ The sources of the current ages of consent in NSW are s.78K *Crimes Act* 1900 for homosexual sex and s.66C(1) for heterosexual sex. S.78K was inserted at the time of the relative decriminalisation of homosexual sex by the *Crimes (Amendment) Act* 1984.

¹⁰ The Kafkaesque distortion of reality involved in treating as if it was legal, conduct which was, for most of the time being investigated, both as a matter of law and experience illegal and stigmatised, is deserving of another paper in itself.

¹¹ Eg, transcript of Royal Commission public hearings, 16 May 1996, p. 25401, 20 May 1996, pp.25472, 25498.

¹² Some 20 European countries have ages of consent lower than 16. The minimum ages are effectively 12 in the Netherlands, Spain, Portugal and Malta. It is 14 in Slovenia, Iceland, Montenegro, Serbia, Italy, San Marino and Albania and, in certain circumstances, Germany. All these countries’ laws apply equally to heterosexual and homosexual sex.

¹³ Eg, transcript, 16 May 1996, p.25401.

popular media. We must await the Royal Commission's report for enlightenment as to its reasons for ignoring the discrepancy.

The fact is of course that pedophilia is not sex between adult men and boys under the legal age of consent. The scientific definition of pedophilia has for a long time been sexual activity with a prepubescent child (generally aged 13 years or younger), or fantasies or urges to engage in such behaviour.¹⁴ Even a more discursive approach would still have pedophilia referring to "sexual attraction to the very young".¹⁵

It is difficult to see how it could sensibly be argued that the Royal Commission was compelled by the presence in its terms of reference of the unscientific word "pederasts"¹⁶ to ignore the scientific definition of the more modern term, "paedophiles". Rather, it would seem the Royal Commission sniffed the political wind and simply took what might be regarded as the "safe" option of plugging for that which is illegal now and fitting that definition to the task it was set by its terms of reference.

The Royal Commission seemed untroubled in its public hearings¹⁷ and reportedly in its investigations¹⁸ that it was, occasionally, examining sexual activities between men and youths as old as 17 and indeed well over the age of 18. Reports of Royal Commission investigations of overage heterosexual sex cannot be found.

Resulting increase in homophobic stigma

One of the Royal Commission's tools was well-publicised public hearings. This a recognised and familiar pattern of operation, particularly where an arm of the state is set up to combat entrenched interests, particularly corrupt interests. Public hearings have an important role as a public educative function.¹⁹ Further,

¹⁴ American Psychiatric Association *Diagnostic and Statistical Manual of Mental Disorders* 4th ed (DSM-IV), 1994, pp.527-8. The World Health Organisation's *International Statistical Classification of Diseases and Related Health Problems* (ICD-10) (10th rev, 1992) defines paedophilia as "a sexual preference for children, boys or girls or both, usually of prepubertal or early pubertal age" (vol.1, p.367).

¹⁵ A Graycar, preface to M James *Paedophilia*, issues paper no.57, Australian Institute of Criminology, Canberra, June 1996.

¹⁶ The word "paederast" comes from classic Greek, meaning "boy lover", but in the eighteenth century it took on its connotation of sodomite or pertaining to sodomy: *Oxford English Dictionary* vol.VII, p.372. Interestingly, there is no entry in that early 20th century work for "paedophilia" or "paedophile".

¹⁷ Eg, transcript 20 May 1996 pp.25506-7.

¹⁸ Eg, J Catt "Gay raids: Items seized by Police Royal Commission" *Sydney Star-Observer* 27 June 1996, no.309, pp.1,4; S Harben, C Phillips et al "Offense is where you find it" *The Woodworm* newsletter, no.2, Sydney, 10 August 1996, p.2.

¹⁹ See generally S Prasser "Royal Commissions and Public Inquiries: Scope and Uses" and G Sturgess "The NSW Independent Commission Against Corruption" in P Weller (ed.) *Royal Commissions and The Making of Public Policy* MacMillan, Melbourne, 1994, chaps. 1 & 8, esp. at 118.

whilst public inquisitorial proceedings risk unwarranted damage to reputations, the pejorative nature of the term “Star Chamber” typifies the strong argument against secret hearings generally.

The NSW Police Royal Commission’s hearings into pedophilia, however, focussed in large measure on homosexual underage sex. Apart from pointing to the instruction to investigate “pederasty”, the argument for the Royal Commission essentially came down to this: because homosexual underage sex of the kind investigated occurred more visibly than heterosexual underage sex, which occurred more in the family home, it was easier to police. And investigating the efficacy of policing was what the Royal Commission was all about.²⁰

A consequence of this focus, however, was the distinct impression via the media that the problem of pedophilia was confined to homosexual underage sex.²¹ This impression found a receptive audience in the public mind because of existing stigma against homosexuality and because of the false stereotype that adult homosexual men prey upon young boys. High profile media commentators noted for their homophobia had a field day.²² It goes without saying that the media is a critical factor in social conditioning and that the exposure of a population over a period of time to so much material hostile to homosexuality has the potential both to buttress and to significantly increase the homophobic nature of society probably for generations.

More particularly, the work of the Royal Commission fed the misconception that pedophilia is not just sex with a person under the age of consent, but homosexual sex:

To a man each of the pedophiles interviewed by the Commission or the media so far has claimed to be a homosexual with an interest in young men but not a

²⁰ Statement of Commissioner Wood to the *Sydney Morning Herald*, 25 May 1996, NR p.35: “... he noted that abuse outside the family was different from heterosexual abuse within families because it required police to be proactive, rather than reactive.”

²¹ As a result of the Royal Commission’s hearings into homosexual pedophilia, the Australian print and electronic media was awash over a roughly two year period with material on the subject. Attempts by the organised gay and lesbian communities to correct the record only resulted in hostile stories in even the broadsheet press: eg, “Wood is right to reject gay claims” *The Australian* (ed.) 30 May 1996; K McClymont “Gay backlash unfair in light of evidence” *Sydney Morning Herald*, 7 June 1996; A Meade “Wounded gay pride” *Aust*, 3 July 1996, p.11. The references to the late former Justice Yeldham, particularly the statements by Mrs Franca Arena MLC, continually assimilated the homosexual in him to “pedophilia”: eg, “MPs, judges ‘not investigated’ by commission” *SMH* 17 March 1997, p.3. Occasionally, features were published which called for balance and which tried to put differing degrees of adult/child sexual relations into perspective: eg, B Ellis “A quest for justice or sexual Macarthyism?” (sic) *SMH*, 8 November 1996; R Guillatt “Sexual hysteria” *SMH*, 9 December 1996.

²² A classic was the call by Bers Ackerman for “the cancellation of the next Mardi Gras as a mark of respect for those collaterally damaged by homosexual activity”: “Time to look at the real issues: Pink lobby ignores the victims” *Sunday Telegraph* (Sydney), 26 May 1996, p.131 & *The Sunday Times* (Perth), 26 May 1996.

pedophile, despite evidence that each has had sex with boys barely into their teenage years and younger.²³

Incidence of child sex abuse

The current state of knowledge about child sex abuse is that the vast bulk is perpetrated by adult men upon girls.²⁴ At the height of media hysteria over homosexual pedophilia generated by Royal Commission hearings, the Australian Institute of Health and Welfare reported that 74% of all reported cases of child sex abuse concerned females.²⁵

More pertinently, current data from the same source points the finger squarely at the heterosexual, nuclear family:

A natural parent was believed responsible in 72% of substantiated cases, a step-parent in 6% and a de facto in 5%.²⁶

Another study, considered to be the most reliable to date, says only 8% of abusers were strangers with 41% being family members including biological relatives and step-fathers or adoptive fathers, with 75% of research subjects reporting the use of coercion.²⁷

Child abuse experts, both academic and at the coalface, tried to be heard:

The facts are quite clear. The vast majority of physical and emotional abuse occurs in the child's own home, usually caused by a parent or caretaker. Only about one quarter of child sex abuse is caused by strangers. Most cases are caused by someone who is in a position of trust, who knows the child and who is often a family member. ... Concentrating on the minority of abusers is more comfortable than facing the fact that most abuse occurs in the child's own home.²⁸

²³ Ackerman, op cit.

²⁴ Eg, see the references in M James ibid (note 14 above) pp-2-3; R K Oates "The Effects of Child Sexual Abuse" *Australian Law Journal* 1992;66:186.

²⁵ R Kreisfeld and J Moller *Injury amongst women in Australia* (Australian Injury Prevention Bulletin no. 12), May 1996.

²⁶ Summary in *Sunday Telegraph* (Sydney), 26 May 1996, p.44.

²⁷ J M Fleming "Prevalence of childhood sexual abuse in a community sample of Australian women" *Medical Journal of Australia* 1997;166:65.

²⁸ R K Oates, Professor of Pediatrics and Child Health, University of Sydney, letter the editor, *Sydney Morning Herald*, 27 April 1996, p.32. See also S Voumard "Abuse of power puts girls at risk" *The Age* (Melbourne), 19 June 1996, and the reported statements of J Manning, co-ordinator, Advocates for Survivors of Child Abuse, T Wilson-Schembri, co-ordinator, Young Women's Electoral Lobby, G Green, Centacare, I Van Beek, director, Kirketon Road Centre, and D Ginn, director, Child Abuse Prevention Service *SMH*, 24 May 1996, p.8.

What is clear is that the work of the NSW Police Royal Commission is considered to have diverted attention from a serious problem which, in terms of resources, is already inadequately addressed.²⁹

Problems in equating all homosexual underage sex with child sex abuse

The dogmatic equation of all adult-male-to-adolescent-male sexual contact with child sex abuse has plenty of adherents outside the NSW Police Royal Commission. There is no argument but that children who experience sexual contact with adults (or even other children) can risk serious and lasting psychological damage. This so irrespective of the gender of the child or the perpetrator. And the younger the child the greater the risk.

However, there is also an argument for a closer examination of the situation of adolescent males who experience sexual attraction to other males. This argument arises from the markedly different situation of those youths from the situation of heterosexual children or, perhaps more accurately, children who do not have homosexual inclinations.

Homosexual boys (and girls) experience their childhoods very differently from their heterosexual (or non-homosexual) peers. The climate of fear of discovery of their sexuality or merely of being perceived as homosexual is a major factor in determining how they develop as an adult - assuming they do not suicide first.³⁰

Any analysis of adult-child sexual contact which ignores the marginalisation of homosexuality, homosexuals and homosexual sex in our society is unlikely to produce reliable conclusions.

²⁹ See statements of Family Studies Institute staff as to lack of resources to deal with the problem reported in *Sunday Telegraph*, 26 May 1996, *ibid*.

³⁰ See, eg, G Remafedi "Male Homosexuality: The Adolescent's Perspective" *Pediatrics* 1987(Mar);79:326-30, "Risk Factors for Attempted Suicide in Gay and Bisexual Youth" *Pediatrics* 1991;87(6):869-876, and "Homosexual Youth: A challenge to contemporary society" *Journal of American Medical Association* 1987;258(2):222-225; H Douek et al "Adolescent maltreatment: Themes from the empirical literature" *Journal of Interpersonal Violence* 1987(Jun);2(2):139-153; P Gibson "Gay Male and Lesbian Youth Suicide" in M Feinleib (ed.), *Report on the Secretary's Task Force on Youth Suicide* vol.3, US Dept. of Health, 1989; A R D'Augelli "Lesbian and Gay Male Undergraduates' Experiences of Harassment and Fear on Campus" *Jo. Interpersonal Violence* 1992(Sep);7(2):383-395; D Peatfield "Culture of suicide" *Capital Q Weekly* 17 June 1994, no.91, p.8; R Roberts, C McLean, J Reid *School Abuse: An Autobiographical Study of the Experiences of Three Australian Gay Men at Primary and High School* National Gay & Lesbian Health Assoc'n Conf, Minneapolis, 1995, unpublished; R Pollard "Sexuality and suicide" (interview of G Remafedi) *Sydney Star-Observer* 13 March 1997, no.345, p.7; D Passey "Schoolyard victims" *Sydney Morning Herald*, 5 April 1997, NR p.38; A Rollings "Gay bashing reported at primary schools" *Sunday Age* (Melbourne) 6 April 1997, p.3; D Plummer (as yet unpublished paper, National Centre for Epidemiology and Population Health, ANU, Canberra, 1997). See also *Suicide in Rural New South Wales* Standing Committee of Legislative Council on Social Issues, NSW Parliament, 1994, pp.79-81.

Whether with older people or not, it is not unusual for adolescent males and females to who have their initial sexual experiences when they are under age (ie, under 16).³¹

Homosexual youth, however, do not have the same outlets for sexual experimentation as do their heterosexual peers. Gay sex is not only not taught in personal development courses - by the process of social conditioning it is made entirely taboo. It is impossible for gay children to learn anything positive about gay sex on the playground. Trying to establish any sort of rewarding relationship containing a sexual component with a peer can be a dangerous task indeed. Yet growing gay youth have the same needs and inclinations to learn about and experience sex and affection as do non-homosexual youth.

One outlet gay kids have - one avenue to explore their budding sexuality - is not only already experienced gay people, often older homosexuals, but also homosexually active, heterosexual men. I would hypothesise that to a greater extent than their non-homosexual peers, homosexually-inclined adolescents seek out sexual contact with adult homosexually active men and women.

There is an abundance of literature on the adverse impact of intergenerational sexual relationships. Surprisingly considering its demonised subject-matter, there is a body of literature, some of it Australian, on positively experienced intergenerational sexual relationships.³² Not so surprisingly, this body of knowledge, even when assembled empirically, is either ignored or else regarded even by other academics as something which should be reported to the police and thence to the Police Royal Commission.³³ What can be said from it, however, is that it is simply incorrect to typify all intergenerational sexual relations as child sex abuse.

³¹ The British National Survey of Sexual Attitudes and Lifestyles, 1990-91, found that half of the almost 19,000 subjects, both heterosexual and homosexual, male and female, had their first sexual experience (not necessarily intercourse) before the age of 16, mostly after the age of 14.

³² See, eg, P Wilson *The Man They Called A Monster: Sexual Experiences Between Men and Boys* UQP/Cassell Australia, 1981; D Tsang (ed.) *The Age Taboo: Gay Male Sexuality, Power and Consent* Gay Men's Press, London, 1981; T Sandfort *The Sexual Aspects of Paedophile Relationships: The Experience of Twenty-Five Boys* Pan/Spartacus, Amsterdam, 1982; G Bennett *Gay Youth, Deviant Subculture or Misrecognized Category* 4th yr hon's thesis, School of Sociology, UNSW, 1982; P Rossmar *Sexual Experience Between Men and Boys* Maurice Temple Smith, Hounslow, Middlesex, England, 1985; T Leahy "Positively Experienced Man/Boy Sex: The Discourse of Seduction and the Social Construction of Masculinity" *Aust & NZ Jo of Sociology* 1992(Mar);28(1):71-88; T Leahy "The Subject as Strategist of Discourse: Approaches to the Prohibition of Intergenerational Sex" *Social Semiotics* (1994;4(1-2):71-100; T Leahy "Sex and the Age of Consent: The Ethical Issues" *Social Analysis* 1996(Apr);39:27-55.

³³ C Sutton "Fears of academic witch hunt" *Sun-Herald* (Sydney) 26 May 1996 p.9.

In justification of its approach to homosexual pedophilia, the Royal Commission pointed to the negative experiences of some of its witnesses,³⁴ a *cri de cœur* taken up by the media.³⁵

That real child sex abuse has devastating consequences for the victims is not in dispute.³⁶ But it does not detract from the pressing need to address child sex abuse to ask some difficult questions about the role played in forensic cases of homosexual intergenerational sex of the social construction of homosexuality.

Is there is ever - in self-reportage by males of the negative impacts experienced of what, on analysis, appear to be voluntary sexual relations with older men - an element of response to the knowledge that homosexual relations are taboo?

In the hands of police officers and of parents anxious that their child not be homosexual,³⁷ is there never any fear in the mind of the boy 'victim' whose sexual relationship with an older man has been discovered that unless he excuses his involvement by alleging coercion or bribery or some other fault in the older party he will be thought to be, nay accused of, being homosexual himself?

How easy can it be for the younger partner in a recently discovered sexual relationship with a man to say he enjoyed it? And yet from empirical research we know that some youths both enjoy and in retrospect believe they profited from sexual relations with an older man.

Conclusion

As a tool in the struggle to combat child sex abuse, the NSW Police Royal Commission has been a very blunt instrument. By its work on its pedophilia/pederasty reference, the Royal Commission has generated a false image of the true nature of homosexual pedophilia. It has propagated a view, now widely accepted, that all underage sex is pedophilia. Abetted by some politicians and journalists, the Royal Commission's work has encouraged a view that homosexual sex is pedophilia. To this extent, it has done a signal disservice to the cause of reducing child sex abuse across Australia. It has done a signal disservice to the cause of reducing homophobia and homophobic violence.

While it has yet to report, there is little sign in its public hearings that the Royal Commission understood the complex dynamics of homosexual intergenerational sexual transactions. The role played by society's crippling fear of homosexuality

³⁴ Eg, transcript, 20 May 1996, p.25549.

³⁵ See note 20 above.

³⁶ By "real child sex abuse" I denote the conduct of men who make use of unwilling children to gratify sexual desires or to exercise power. (See in particular T Leahy, *Submission to the Royal Commission Into the NSW Police Service*, 1996, p.5.)

³⁷ Eg, the reported claim by the father of Christopher Taskalos that his son is not homosexual, just greedy! *Sun-Herald*, 6 April 1997.

was ignored. So pervasive has been the impact of the Royal Commission on the popular mind, there is a risk that generations of gay youth will suffer as a result.

There is no excuse, however, for professionals in the areas of sociology, criminology, pediatrics, child sex abuse and law enforcement to swallow whole what the Royal Commission has dished up. Dispassionate judgment and careful analysis are required to strip away the falsehoods about homosexual men which are borne of fear and ignorance. Formation of public policy requires no less.

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