

## Australasian Gay and Lesbian Law Journal

Vol. 4, June 1994  
The Federation Press, Annandale,  
NSW; \$20.00 per issue.

The objective of the Journal 'is to provide a forum for discussion of the law and to disseminate legal information on issues which may affect the lives of and/or be of interest to gay men and lesbians'. This volume brings together some informative and accessible articles that will appeal to a wide readership.

Anne Scahill's 'Can Hate Speech Be Free Speech?' provides a clear and appropriately cautious defence of homosexual vilification legislation in New South Wales.

The history of the passage of the legislation, which Scahill recounts, is itself fascinating. In 1993, two Bills were brought forward proposing the outlawing of homosexual vilification. The first, introduced by Independent Member for Bligh, Clover Moore, was rejected by the Parliament. The second, proposed by NSW Attorney-General, John Hannaford, was almost identical to the first. It should be noted that in New South Wales, the balance of power in the Legislative Assembly (Lower House) is held by three non-aligned independents, Clover Moore being one of them. Moore represents an electorate containing a large number of gay men.

Hannaford did not proceed with his Bill, Scahill notes, because of political pressure. So, Moore's Bill was reintroduced and passed with an amendment exempting public acts performed during the course of religious instruction.

Scahill discusses the contents of the legislation, racial vilification legislation as a model for the homosexual legislation, equality before the law, and judicial treatment of freedom of speech. In the process, she identifies the caveats associated with vilification legislation in the context of Australian and international law. She argues that the primary value of vilification provisions may be educative, and that in New South Wales the provisions appear calculated to discourage both prosecution and conviction. Further, she argues, there is a range of public behaviour which is not addressed by the legislation, and the ultimate targets of

the Act may not be the most desirable from a 'free speech' point of view.

Scahill's style is sober and detached, and this article serves as an excellent introduction to the legislation.

In 'Gay and Lesbian Inequality: The Anti-Vilification Measures', Ryan Takach also looks at the New South Wales legislation. He states that the Bill was unarguably prompted by the high level of violence directed against gay men and lesbians because of their homosexuality, and acknowledges the work of the Gay and Lesbian Rights Lobby in documenting such violence. He takes up the free speech question, as Scahill does, and examines the tensions between the liberal democratic ideals of protecting speech and regulating harm. Takach claims that the difficulty of establishing vilification claims lies in selecting the appropriate legal standard. 'It is strongly arguable' he says 'that what is (severe) ridicule from the viewpoint of gays and lesbians is often not so perceived by the general community, that is by heterosexual standards . . . if there was no conflict of standards, there would probably be no perceived need for such legislation.'

Kees Waaldijk's 'Standard Sequences in the Legal Recognition of Homosexuality — Europe's Past, Present and Future' proposes a model of standard sequences that will be welcomed by gay and lesbian rights activists throughout the world.

Waaldijk asks us to think of the legal recognition of homosexuality as a number of parallel developments in more than ten different fields (he himself nominates eleven, including homosexual safety, employment of lesbians/gays, same sex partnerships and lesbian/gay parenthood). Within each field, he identifies three major sequential developments which are in turn broken down into a series of smaller steps leading towards equality (with heterosexuality) before the law. He acknowledges that not all countries have followed his sequences exactly (for example, in Ireland, some form of anti-discrimination legislation was introduced before the decriminalisation of sex between adult men, contrary to developments in other EC countries), but in proposing a logical sequence, he does provide a useful point of reference. He argues that successful law reform involves being aware of what is going on in other countries to find out

where political pressure can most effectively be applied.

Even if you don't agree with Waaldijk's 'checklist' approach to the eradication of anti-homosexual laws, his model certainly provides a solid starting point for debate on strategic directions for law reform. Although he has used Europe as the basis for his model, it would be interesting to see how the various Australian States measure up. A paper which explores Waaldijk's model in an Australian context would be an invaluable reference.

Charles Chauvel's punchy 'New Zealand's Unlawful Immigration Policy' leaves me with no doubt that the Kiwi Government has a problem on its hands. The *Human Rights Act* which proscribes discrimination on the grounds of sexual orientation, family status and marital status is soon to come into force. However, the New Zealand Immigration Service plans to continue implementing its current discriminatory policy of allowing heterosexuals to gain residency if they have been in a relationship for between eighteen months and two years, whereas homosexuals must have been in a relationship for four years to achieve the same end.

Chauvel pulls the plug on this one. He says that the *Human Rights Act* does not deal with the powers of the New Zealand Government to grant or refuse residence permits, despite the fact that the Human Rights Commission has publicly stated that the Immigration Service will be able to discriminate legally under the provisions of that Act. Sounds like someone didn't do his/her homework.

John Mountbatten confesses he is not averse to ruffling a few ideological feathers. Consider those of this little black duck ruffled. In 'Out of the Closet and into the Ghetto', Mountbatten begins by launching a broadside at the Gay and Lesbian Rights Lobby in relation to a perceived confusion over the inclusion of transgender issues in certain reform agendas. Mountbatten sets himself up as the man to lead us out of this confusion with a vision that many of us hold, but few dare to imagine will materialise at this point in history:

The time has surely come to put aside humane and sympathetic rhetoric which is inherently patronising and to adopt instead a language which recognises and respects a new order of human, social and