

Teen Suicide, Sexuality and Silence

Christopher Kendall and Sonia Walker

Sexuality in WA schools: the criminal law response.



Almost from the beginning, I knew that I was somehow different from the other guys. I was always an outcast at school. Books were my best friends. I ostracised myself from the rest of the world because I felt as if I could trust no one, not even my parents. The pressure of feeling so alone manifested itself in fits of manic depression, hysterical outbreaks and, eventually, suicidal tendencies. I would spend hours sitting on my windowsill, wondering whether jumping would make things better and wishing that someone would help me. All that I needed was to be told that my feelings were normal and I wasn't the only one who had them.

Devin Berringer, age 17¹

Research concerned with the problems facing lesbian and gay youth indicates two recurring elements that require immediate attention on the part of educators and social activists. The first is an alarming suicide rate amongst lesbian and gay adolescents.² The second is what has been referred to as a 'second wave' of HIV/AIDS transmission amongst young gay men between the ages of 14 and 19.³

This article will examine the ability of high school educators in Western Australia to effectively deal with these issues in light of Western Australia's *Law Reform (Decriminalization of Sodomy) Act 1989*, which makes it a criminal offence to 'promote homosexual behaviour' and which ultimately resulted in discriminatory age of consent provisions being added to the State's *Criminal Code*.⁴ It is submitted that legislation of this sort impedes the ability of educators to effectively address these issues.

Youth suicide

Gay youth counsellor Kevin Jennings explains that in a society in which homophobic violence and gender inequality remains rampant, being a gay or lesbian youth is, suffice to say, less than easy. What makes lesbian and gay youth different from other traditional 'minority' groups is that they do not, for the most part, grow up with people like themselves.⁵ Their isolation becomes more encompassing, for a homophobic social environment can be duplicated in the home. As Jennings writes, lesbian and gay youth are predominantly the product of heterosexual families, and come from communities where lesbian and gay adults are rarely visible. They also attend schools with no openly gay staff, and belong to peer groups where 'fag' is the favoured insult and 'that's so gay' is a common term of abuse.⁶

According to Professor James Sears of the University of South Carolina, the average student realises his or her sexual orientation at the age of thirteen.⁷ For a heterosexual adolescent, there are many avenues of support through which they can overcome, or at least discuss, developmental or peer pressure difficulties that inevitably accompany adolescence. By contrast, gay students rarely feel able to ask their families, friends, schools, or communities to help them out, fearing the possible negative response they might receive.⁸ This is supported by research conducted by the 'London Gay Teenage Group,' who found that 25% of

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young lesbians and gays felt isolated, 21% suffered verbal abuse, 12% were beaten up and one in five young lesbians and gays attempted suicide because of anguish, loneliness and despair.⁹ Isolation thus becomes intrinsic to the existence of a large number of lesbian and gay adolescents, and this feeling of isolation is often accompanied by self-loathing and confusion as to their future.¹⁰

The WA Health Department recently released a Report aimed at reducing the increase in youth suicide in WA entitled *Making A Difference: Youth Suicide Prevention Manual*.¹¹ With respect to lesbian and gay youth, its findings indicate the following:

- gay, lesbian and bisexual people often live in hostile and condemning environments. This is reflected in our legal system. For example, whilst homosexuality is decriminalised in all Australian States, subject to discrepancies regarding age of consent, only New South Wales has legislation to prevent the vilification of gay men and lesbians.¹² Further, Western Australia has yet to include sexual orientation within the scope of its Anti-Discrimination Act, which is at odds with other States.¹³ In school settings they may feel unable to escape from or defend themselves against verbal and physical assaults.
- There is a lack of positive role models and information about homosexuality. The existence of gay, lesbian and bisexual young people is often denied, ignored or treated with contempt by society, especially the media, and the education system so that there is little opportunity for them to recognise, take pride and act on their sexual identity. This can seriously affect the self-esteem of young people, leaving them isolated and vulnerable. They may react by maintaining a secret life away from family and friends, by internalising self-hatred or denying their sexuality.
- Young people may be ambivalent about sexual identity. Youth is a period of experimentation when roles and identities are being questioned in relation to a range of issues. Whilst there is great pressure to have heterosexual relationships in adolescence, many young people experience homosexual feelings. This can cause turmoil for young people who may try to force themselves to have heterosexual relationships and become confused about why this doesn't feel 'right' to them. Their level of heterosexual activity may be increased, or their homosexual activity may take place anonymously (such as at 'beats') or gay and lesbian bars and nightclubs. Being forced into the adult 'scene' like this can increase a young person's sense of isolation, and also exposes them to the risks of access to alcohol and other drugs, and the chance to engage in opportunistic sex work.

Research undertaken in the United States exposes similar difficulties and dangers faced by lesbian and gay youth in that country.¹⁴

1. Violence. According to the US Department of Justice, 'Homosexuals are probably the most frequent victims' of hate crimes, which are crimes directed against people because they belong to a certain group (racial, ethnic, etc.). Lesbian and gay youth are hardly immune to this society-wide phenomenon. A survey by the National Gay and Lesbian Task Force found that 45% of gay men and 25% of lesbians reported being harassed or attacked in high school because they were perceived to be lesbian or gay.

2. Verbal abuse. It comes as no surprise to any teenager that lesbian and gay students are often subjected to verbal

abuse. Comments like 'fag', 'dyke', and 'that's so gay' are used so regularly in high schools (often even by teachers) that few even notice such hateful language as being anything out of the ordinary. According to a survey conducted by the Massachusetts Governor's Commission on Gay and Lesbian Youth, 97% of students at one suburban high school had heard homophobic language used in school. Another Commission survey found that 43% of students said they heard such language 'often', 51% 'sometimes', and only 6% said 'never'. Finally, 53% of the students surveyed said they had heard teachers use such language. Few teachers sympathetic to gay youth feel able to intervene to stop such harassment for, as one teacher put it, 'Most teachers, gay or straight, are afraid to speak up when they hear homophobic remarks. They're afraid people might say, "What are you, gay?"', which remains a frightening question in today's climate.'

3. Homelessness. Many families react badly when they find out one of their children is lesbian or gay. A University of Minnesota study found that 26% of young gay men reported being forced to leave home because of conflict over their being gay.

4. Substance abuse. Under such stress, many lesbian and gay youth turn to alcohol or other drugs to escape their problems. The University of Minnesota study found that 58% of the young gay men surveyed could be classified as having a substance abuse disorder.

5. High drop-out rates. The United States Department of Health and Human Services found that 28% of gay youth drop out of high school altogether, usually to escape the harassment, violence, and alienation they face at school.

All of the above create an environment where suicide is considered a tangible option by far too many young lesbians and gay men. As Jennings notes, according to the United States Department of Health and Human Services, lesbian and gay youth are two or three times more likely to *attempt* suicide than heterosexual youth (with 500,000 suicide attempts in the United States annually).¹⁵ Up to 30% of *successful* teen suicides each year are by lesbian or gay teens (1500 out of a total of 5000 deaths). Using the Department's statistics, this means that a gay or lesbian youth tries to kill him or herself every 35 minutes in the United States, and that a gay or lesbian youth succeeds in killing him or herself every six hours.¹⁶

As noted, in light of this disturbing reality, the Health Department of Western Australia has recently released a campaign strategy aimed at assisting educators responsible for educating and counselling gay youth in West Australian high schools.¹⁷ The thrust of this report is a recognition that being sensitive to and knowledgeable about some of the issues and problems these young people face will greatly improve the level and type of support educators are able to offer them. Its recommendations for educators, summarised in a resource manual distributed to all West Australian schools, are as follows:

- Be aware of the issues, and equip yourself with current, accurate information about the particular needs of gay, lesbian and bisexual service users and where they can go for help. Create a resource list of relevant community groups.
- Acknowledge the reality of homophobia (which is fear of and prejudice against homosexual men and women). Be prepared to confront your own attitudes as well as those of others. This is especially important in schools, refuges and youth agencies where we need to provide positive examples of sensitivity to, and acceptance of, difference.

- Challenge all anti-homosexual language and behaviour.
- Ensure that policies and procedure in your agency reflect a commitment to non-discrimination of gays, lesbians and bisexuals. Make sure this is included in all published service documents.
- Include relevant material for young lesbians, gays and bisexuals in all service programs.
- Display pamphlets, books and posters on gay, lesbian and bisexual issues.

Finally, the Manual notes that, when working directly with young lesbian, gay and bisexual people who may be at risk of suicide or injury, educators should consider the following:

- Wherever possible, encourage the use of gay, lesbian and bisexual counselling services and support groups if this is what the young person wants.
- Create a safe, accepting environment in which the young person can discuss issues of sexuality. Sometimes it is important to let the person know that you are comfortable talking about these issues by asking open, direct questions.

Recommendations such as these are aimed at assisting lesbian and gay youth feel more accepted by the community in which they live — an objective which, if successful, may ultimately have the concurrent effect of reducing the sense of isolation so often felt by those youth so clearly at risk of self inflicted injury.

HIV/AIDS education in secondary schools

The WA Health Education Report also notes that the issue of HIV/AIDS education is of the utmost importance for all young people and recommends implementing education programs that reflect the need for safe sexual behaviour as well as those which focus on sexual identification. This is of crucial and urgent need given recent North American statistics which indicate an alarming increase in HIV/AIDS transmission amongst gay male adolescents between the ages of 13 and 19.¹⁸

Reasons for the increase in HIV transmission rates amongst young gay men are unclear, although many in the gay community believe it reflects a failure on the part of both society at large and the gay community itself to offer the type of support needed to develop the level of self-confidence and self-respect required for safe sexual practices to be a viable option.¹⁹ It has been argued, for example, that if we do not offer young gay men positive role models and instil in them a sense of self-worth that merits preservation, we do little to encourage them to protect themselves, for we merely reinforce the belief that they are socially devalued, hence not worthy of the protection offered by safe sexual practices. Similarly, we need to ensure that safe-sex education programs deal with the realities of same-sex sexual activity such that young gay men are made aware of what is and what is not safe sexual activity. This requires an, at times, blunt and explicit description of what gay sex is and how best to ensure that any sexual activity engaged in is, in fact, safe. Given that high schools throughout Australia have adopted sex education curriculums, the responsibility to do so should and must rest on those charged with developing and implementing these programs. Not only will this assist in saving lives, it will indicate to gay youth, and students in general, that homosexuality is not a taboo subject best not discussed, that homosexuals are not socially deviant (hence worthy of abuse and ridicule) and that heterosexuality is not the only sexual orientation worthy of respect, support and quite basic human rights protections.

The likelihood of implementing these recommendations

Despite the need for same-sex safe education campaigns, and a general need for homosexuality to be addressed within the school structure in order to combat the stark reality of gay youth suicide, it is clear that within Western Australia many obstacles prevent the implementation of programs aimed at improving what is clearly a quite desperate situation. While the recommendations outlined thus far in this article must be addressed, the question arises whether or not they *can* be. This is particularly relevant in light of the *Law Reform (Decriminalization of Sodomy) Act*, which seems to at least imply that some of these recommendations are either illegal or legally questionable. It is our contention that, at a minimum, this statute, even if not actively enforced by the State, may dissuade educators from taking the types of steps necessary to tackle youth suicide and HIV/AIDS transmission.

The Law Reform (of Sodomy) Act 1989 (WA)

In 1989, the WA Government introduced the *Criminal Code Amendment (Decriminalization of Homosexuality) Bill* into the Legislative Council. The Bill was ultimately passed as the *Law Reform (Decriminalization of Sodomy) Act* and resulted in a number of amendments to the State's Criminal Code. The Bill's aim was to legalise consensual same-sex sexual activity. In order to be accepted by the conservative majority in the Upper House in Western Australia, however, certain amendments to the Bill needed to be accepted. These amendments, introduced by a Liberal member, the Hon. Peter Foss, were aimed at outlining in law the express concept that although homosexual sexual activity should not be illegal, the Government should not be seen to be 'encouraging' or 'promoting' homosexuality.²⁰

As Morgan notes, the lengthy preamble to the *Act*, a rare feature of Western Australian legislation, seems to indicate a general desire on the part of those conservative members who pushed through the amendments to outline in law an already entrenched homophobic rejection of same-sex sexual activity.²¹ Specifically, the preamble states:

WHEREAS, the Parliament does not believe that sexual acts between consenting adults in private ought to be regulated by the criminal law:

AND WHEREAS, the Parliament disapproves of sexual relations between persons of the same sex;

AND WHEREAS, the Parliament disapproves of the promotion or encouragement of homosexual behaviour;

AND WHEREAS, the Parliament does not by its action in removing any penalty for sexual acts in private between persons of the same sex wish to create a change in community attitude to homosexual behaviour;

AND WHEREAS, in particular the Parliament disapproves of persons with care supervision or authority over young persons urging them to adopt homosexuality as a lifestyle and disapproves of instrumentalities of the state so doing:

Be it therefore enacted..., etc.

Morgan also notes that, 'as evidenced by the wording of the Preamble, the Liberal Members who voted for the legislation were concerned to ensure that the decriminalisation of sodomy and private acts of gross indecency between males should not lead to a change in public values and morality on matters of homosexuality and to young people modelling their behaviour on this revised morality'.²² As such, while the Act should have served as a source of liberation for lesbians and gay men in Western Australia (in that it finally

legalised homosexual relations), any emancipatory potential was soon undermined by the fact that homosexuality as an unacceptable 'lifestyle' remains a stereotype actively endorsed by the legislation. Socially conditioned subordination thus becomes ingrained as a part of government policy. This is further evidenced in s.23 of Part 2 of the *Law Reform (Decriminalization of Sodomy) Act*, entitled 'Proselytising Unlawful', which reads:

It shall be contrary to public policy to encourage or promote homosexual behaviour and the encouragement or promotion of homosexual behaviour shall not be capable of being a public purpose.²³

As Morgan again explains, 'the purpose of this section is to ensure that contracts for the promotion or encouragement of homosexuality are void as contrary to public policy and that public funds cannot be spent or charitable trusts established with such objectives'.²⁴

In a similar vein, s. 24 of the Act provides that it shall be:

unlawful to promote or encourage homosexual behaviour as part of the teaching in any primary or secondary educational institution.²⁵

These sections are clearly based on the constructivist notion that sexuality can somehow be imposed on a person through mere exposure to that sexuality. They also rely heavily on the discriminatory and rather offensive stereotype of gay men and lesbians as predatory and eager to recruit vulnerable youth. This concept also underlies s.322A of the *Western Australian Criminal Code* (as amended by the Act) which now makes sodomy unlawful for gay men under the age of 21. The age of consent for heterosexuals is 16.²⁶

Given the above, one must query whether it is in fact possible to implement the types of education strategies needed to reduce youth suicide and reduce the level of HIV/AIDS transmission in Western Australia. Put simply, s.23 of the *Decriminalization of Sodomy Act* makes any frank and open discussion of homosexuality potentially very difficult. Safe sex education and suicide prevention campaigns aimed at gay youth (all of which require some degree of public funding if they are to have any substantial effect), could fall victim to this section. Indeed, campaigns of this sort, aimed as they are at presenting the realities of gay sex and giving confidence to gay youth through the promotion and distribution of positive images of same-sex sexuality, could be seen as contravening the anti-proselytising element of this section if they are interpreted as 'promoting' homosexuality. Similarly, within the school environment (which we submit has a fundamental contribution to make within the context of same-sex sexuality education and suicide prevention), s.24 could intervene to prevent any such educational programs, again because they might be seen to promote homosexuality.

Lest it be assumed that provisions of this sort do not have any negative impact on the types of education strategies needed to combat youth suicide and HIV transmission rates, one need only examine the effect of similar legislation in the United Kingdom.²⁷ Specifically, in England, s.28 of the *Local Government Act 1988* prevents a local authority from giving financial or other assistance to any person for the purpose of publishing or promoting homosexuality as an acceptable family relationship or for the purpose of teaching such acceptability in any maintained school. Commentators write that Peter Foss, the Minister responsible for Western Australia's anti-proselytising clause, based his amendments on that section.²⁸ The homophobic undertones that resonate

behind such legislation are most apparent, and are blatantly displayed by one of the drafters of s.28, The Earl of Halsbury:

One of the characteristics of our time is that we have for several decades past been emancipating minorities who claim that they will be disadvantaged. Are they grateful? Not a bit. We emancipated races and got inverted racism. We emancipated homosexuals and they condemn heterosexism as chauvinist sexism, male oppression and so on. They will push us of the payment if we gave them a chance.²⁹

A similar attitude is also apparent in statements given by Peter Foss, presently the Attorney-General of Western Australia, who in justifying his Government's discriminatory age of consent provisions has stated that:

We are protecting those people who have the ability to respond both heterosexually and homosexually ... We are protecting them from being pushed too early into responding homosexually when they have the opportunity to be responding heterosexually, of getting married and having a full and satisfying life as a heterosexual person ... Homosexuality is not normal in our society. I do not want it to be normal in our society.³⁰

At a very basic level, one needs to ask how legislation of this sort, accompanied as it is by comments of the sort noted above, cannot compound the isolation and disenfranchisement of lesbian and gay youth — hence maintaining, if not contributing to, the high rate of youth suicide amongst gay youth. As Stevie Clayton, Co-convenor of the Gay and Lesbian Rights Lobby notes:

Young gay men, like young straight men, have sexual feelings and are capable of giving informed consent to sexual conduct long before reaching [21] years of age. Framing our laws in such a way as to require gay men to wait until they are [21] before they can be sexually active does not prevent such activity, it simply helps to create an environment where young men are secretive about their sexual conduct, are often forced to have anonymous sex such as at beats, have low self-esteem, and develop a negative attitude to a society which they see as oppressing them. There seems little doubt that such laws contribute to the high rate of male youth suicide in Australia.³¹

Admittedly, the argument can be made that no one has ever been prosecuted under the s.177 of the *Criminal Code* for contravention of the provisions in question.³² True enough but, as indicated, this ignores the symbolic harm of actually having such legislation in existence. In addition, as recent experience regarding abortion in Western Australia testifies, merely because a provision is idle need not mean that it will not be employed on impulse.³³ Similarly, while s.28 in England remains idle in that it has never been successfully used to prosecute a council for disobeying it, it remains true that legislation of this sort potentially acts as a deterrent to assisting gay youth. This, in turn, can have some potentially explosive effects, for as Stevie Clayton notes within the context of discriminatory age of consent provisions, proselytisation clauses like those found in the *WA Criminal Code* and preferred safe sex education strategies:

[t]hese laws can have a major impact on the self-esteem and sexual development of young gay men, and can greatly hinder the fight against HIV/AIDS ... It has long been accepted that the criminalisation of victimless conduct involving behaviours which risk transmission of HIV and other STDs, simply serves to isolate individuals from preventive education, early diagnosis and appropriate treatments, making it more difficult to achieve widespread behaviour change. Such problems are compounded by laws ... which in effect make it illegal to counsel young gay men about safe sex.³⁴

In a similar vein, Powell writes with regard to the presence of s.28 that sections like this may in fact prevent educators (for fear of prosecution) from doing what they must do in order to educate those most in need of education:

We will never know how many teachers have never given honest and open teaching about sexuality for fear of breaking the law. We will never know how many services or youth groups have closed or never even begun because local authorities feared that to fund them would be to break the law. Further, we will never know how many young, vulnerable lesbians and gay men might not have taken such drastic action (suicide) had they had understanding people in authority to speak to or had access to positive images of gay people.³⁵

One needs to ask whether or not we can risk having educators not educate on a matter in need of urgent attention for fear of possible prosecution. Experience seems to indicate that this is in fact a very real consequence of laws similar to those now present in WA. Indeed, this has been the conclusion of UK research analysing the effect of s.28 on sexuality education in the UK.³⁶ As Vicki Powell notes referring to a survey report compiled by the Terrance Higgins Trust which surveyed teachers in England and Wales:

98% of teachers surveyed said their schools had sex education policies which give a high profile to HIV and AIDS awareness. And yet, only half of these courses dealt with gay issues, and teachers were keen to stress that teaching about homosexuality was not promoting it as a positive lifestyle. The survey further found that the existence of Section 28 was sending a clear signal that there 'may be something dangerous or wrong about addressing the needs of lesbian, gay and bisexual pupils'. The report concluded that 'this is an unnecessary, damaging and confusing message for teachers that adversely affects the lives of the young people with whom they work'.³⁷

Its effect is such that in failing to address such issues, ignorance and prejudice remain the norm — a situation that merely compounds the isolation and sense of lack of self-worth of lesbian and gay students. As Watney explains, 'our respective education systems manifestly fail to acknowledge the actual diversity of human sexuality within the curriculum or outside it. In effect, children are taught that homosexuality is beyond consideration. This is bad for everyone in education, but most especially lesbian and gay teachers, and lesbian and gay students.'³⁸

With respect to prosecution, it is also worth noting that, given recent federal efforts to silence quite legitimate youth sexuality campaigns, the question must be asked whether or not prosecutory attempts will *not* be made. Indeed, the recent experience of the WA AIDS Council is at odds with the argument that no-one in their right mind would attempt to limit materials aimed at preventing youth suicide. In 1997, the WA AIDS Council, after receiving a grant from the National Youth Suicide Prevention Strategy, submitted a draft booklet and poster aimed at sexually confused youth contemplating suicide to the Federal Minister for Family Services, Judi Moylan. Ms Moylan rejected the campaign, arguing that it served only as 'a recruitment aid for a particular lifestyle'.³⁹ Apart from the fact that Ms Moylan based her conclusions on a discriminatory view of lesbian and gay sexuality, her actions do little to address the very real reality of gay youth suicide. Indeed, Ms Moylan's further statement that 'our primary concern has to be saving young lives and that means that community has to come to a better understanding about the issues that give rise to suicide among young people'⁴⁰ reveals a quite remarkable level of ignorance regarding the connection between sexuality and youth suicide. Indeed, while the WA AIDS Council youth campaign was not

banned under Western Australian legislation, given the fact that the funding came from the Federal Government, the views of the Federal Minister are indicative of the chronic lack of understanding within government generally, at both an elected and non-elected level, about this connection.

In sum, one needs to ask what kind of message is sent to lesbian and gay youth when their government thinks so little of them as human subjects that it is willing to legally silence quite legitimate efforts to ensure that these youth have real life options. The symbolic impact of this legislation (legislation which does little more than tell gay youth that their innate sexual desires are in fact not capable of being accepted by the society in which they live), does nothing but ensure young lesbians and gay men continue to suffer from the pressures of social marginalisation and the very real dangers resulting from ostracism and silencing.

Conclusion

There is one difference that sets sexual minorities apart from other minorities — that is that we can be invisible, and are assumed to be part of the heterosexual majority until we blatantly and publicly declare otherwise. Some of you might think this to be a boon — I can just pretend to be straight and avoid all this discomfort. I tried that for a while, going so far as to use a guy to try to prove to myself that I could be straight if only I tried hard enough. But instead of being accepted into the mainstream, I lost my self-respect ... This initiated a downward spiral of self-hatred and anger motivated by homophobia. I hated myself for being what seemed to be everyone's worst nightmare, a homosexual. I was angry because no matter what I did, I couldn't change that ... For me, my silence equalled the death of my sanity. I'm not telling you this to make you feel sorry for me, the poor disillusioned lesbian, or to preach to you, but because I want to give you an idea of what it is to be ostracised from society because I don't conform to its standard of 'normal'.

Lee Fearnside, age 16.⁴¹

In light of the many problems facing lesbian and gay youth, problems which have manifested themselves in unacceptably high rates of suicide and HIV/AIDS transmission, it is clear that what is most needed to curtail further tragedy is an environment conducive to frank, open and progressive discussion on sexuality issues. Unfortunately, as this discussion has demonstrated, prevailing Western Australian law appears to prohibit the implementation of those education strategies aimed at creating such an environment. Indeed, Western Australia's criminal law, replete with provisions that prohibit the 'promotion of homosexuality' and age of consent laws that discriminate against those engaging in consensual same-sex sexual behaviour do little more than add to the isolation and exclusion experienced by young lesbians and gay men, while discouraging those best suited to alleviate this pain from doing anything about it. What one now finds is an educational system in which insecurity and ignorance about sexuality remain the norm.

References

1. Quoted in Jennings, Kevin, *Becoming Visible: A Reader in Gay and Lesbian History for High School and College Students*, Alyson Publications, Boston, 1994.
2. See US Department of Health and Human Services statistics, as quoted in Jennings, above, ref. 1, p.264. See also Bagely, Christopher, 'Suicidal Behaviours in Homosexual and Bisexual Males', (1997) 18(1) *Crisis* 24; Remafedi, G., 'Risk Factors For Attempted Suicide in Gay and Bisexual Youth', 87(6) *Paediatrics* 869; *USA Task Force on Youth Suicide (1989) Final Report*, specifically chapter by Gibson, P., (1989)

- 'Gay Male and Lesbian Youth Suicide', US Department of Health and Human Services.
3. A 1993 report by the San Francisco Health Commission found that 'almost 12% of 20 to 22 year old gay men surveyed were HIV positive, as were 4% of 17 to 19 year olds. If those figures are not quickly reversed, health officials say, the current generation of young urban gay men will have as high an infection rate by the time they reach mid 30s as middle aged gay men are thought to have today — close to 50%.' Bull, C., 'The Lost Generation; the Second Wave of HIV Infections Among Young Gay Men' in *The Advocate*, Los Angeles, May 1994, p.36.
 4. Section 23 of the *Decriminalization of Sodomy Act 1989* (WA) provides: 'It shall be contrary to public policy to encourage or promote homosexual behaviour and the encouragement or promotion of homosexual behaviour shall not be capable of being a public purpose'. Section 24 provides: 'It shall be unlawful to promote or encourage homosexual behaviour as part of the teaching in any primary or secondary educational institution'.
 5. Jennings, above, ref. 1, p.262
 6. Jennings, above ref. 1, p.262.
 7. Sears, James, *Growing Up Gay in the South*, Harrington Park Press, New York, 1991, cited in Jennings, above, ref. 1, p.263.
 8. Jennings, above, ref. 1, p.263
 9. As quoted in Jeffrey-Poulter, S., 'A Smell of Weimar 1987-8', in *Peers, Queers, and Commons*, Routledge, London, 1991, p.222.
 10. Jennings, above, ref. 1, p.263.
 11. *Making a Difference: Youth Suicide Prevention Manual*, Health Department of WA, Perth, 1994
 12. *Anti-Discrimination Act 1977* (NSW), s.49, as amended in November 1993.
 13. *Anti Discrimination Act* (NSW) refers to 'homosexuality' which is defined to mean a male or female homosexual: s.4(1); *Anti Discrimination Act* (Qld) refers to 'lawful sexual activity': s.7(1)(1); *Equal Opportunity Act* (SA) refers to 'sexuality' which is defined to mean 'heterosexuality, homosexuality, bisexuality and transsexuality': s.5(1); *Discrimination Act* (ACT) refers to 'sexuality' which is defined to mean 'heterosexuality, homosexuality (including lesbianism) or bisexuality': s.4(1); *Anti Discrimination Act* (NT) refers to 'sexuality' which is defined to mean 'the sexual characteristics or imputed sexual characteristics of heterosexuality, homosexuality, bisexuality or transsexuality': s.4(2); *Equal Opportunity Act* (Vic.) refers to 'lawful sexual activity': s.6(d). Legislation aimed at including sexual orientation protections in that State's anti-discrimination legislation have now passed the Lower House in that State and await approval in the Upper House.
 14. This research is outlined in Jennings, K., above, ref. 1, pp 263-4. It is also reported in the Massachusetts Commission on Gay and Lesbian Youth, *Making Our Schools Safe for Gay and Lesbian Youth* (1993). No similar statistical survey has been conducted in Australia, although there is little reason to doubt the validity of the findings in the Australian context. It should be noted that in 1997 a House of Representatives Standing Committee Report entitled *Aspects of Youth Suicide* included confusion over sexuality as being a factor that may trigger suicide through behaviour, House of Representatives Standing Committee, *Aspects of Youth Suicide*, Australian Government Publishing Service, 1997, p.9 The Report was, however, shamefully inadequate in so far as providing any recommendations for dealing with the specific needs of lesbian and gay youth.
 15. Jennings, above, ref. 1, p. 264.
 16. Jennings, above, ref. 1, p. 264
 17. Health Department of WA, *Clearing the Way*, Perth, 1997
 18. See above ref. 2.
 19. See generally Kendall, Christopher, 'HIV/AIDS Education and the (Mis)Representation of Safe Sex', (1997) 22(3) *Alternative Law Journal* 130 and Kendall, Christopher, 'Gay Male Pornography After Little Sisters Book and Art Emporium', (1997) 12(1) *Wisconsin Law Review* 21
 20. See Morgan, Neil, 'Legislation Comment: Law Reform (Decriminalisation of Sodomy) Act', (1990) 14 *Crim LJ* 180
 21. Morgan, above, ref. 20
 22. Morgan, above, ref. 20, p. 187
 23. Morgan, above, ref. 20.
 24. Morgan, above ref. 20
 25. Morgan, above, ref. 20, p. 188.
 26. In so far as attaching a penalty to any violation of these sections is concerned, it was argued in Parliament that criminal sanctions would apply to such conduct via s.177 of the *Criminal Code*. This provides a penalty of one years imprisonment where any person 'without lawful excuse, the proof of which lies on him, does any act which he is, by the provisions of any public Statute in force in Western Australia, forbidden to do or omits to do any act which he is, by the provisions of any such Statute, required to do ...' As noted in Morgan, above, ref. 20, p.188.
 27. An excellent overview and analysis of the situation in Britain is provided in Stychin, Carl, 'Prohibitions and Promotions: A Comparative Analysis of Legal Interventions', (1995) 5 *Australasian Gay and Lesbian Law Journal* 42. See also Cooper, Davina, 'Positive Images in Haringey: A Struggle for Identity' in C. Jones and P. Mahoney, *Learning Our Lives: Sexuality and Social Control in Education*, Routledge, London, 1989; Evans, David, 'Section 28: Law, Myth and Paradox', (1989-90) 27 *Critical Social Policy* 73; Jeffrey Poulter, S., 'A., above, ref. 9
 28. Entretien, Brenden, 'Just Another Case of History Repeating', *West Side Observer*, 5 June, 1998 p.5.
 29. House of Lords, Hansard, 18 December, 1986, p.310. An excellent synopsis of the House of Lords debate in this regard is provided by Stychin, above, ref. 27.
 30. Anthony, Shaun, 'Foss Silent on Sex Age Conflict', *West Australian*, February 28, 1997, p.29. See also 'Anomalies Plague Consent Laws', *West Australian*, 9 July 1994, p.22; Day, Michael, 'Sex Laws Confuse: Carnley' *West Australian*, 24 October 1994, p.9; Reid, Eugene, 'Anti-Gay Law Wrong' *UN' West Australian*, 12 April 1994, p.9; 'Both Sides Err in Gay Law Dispute', *West Australian*, 24 August 1994, p.18; Fitzpatrick, Catherine, 'Court Rebuffs Gay Lobby', *West Australian*, 9 July 1994, p.5; Anthony, Shaun, 'Gay Law Under Pressure', *West Australian*, 27 February 1997, p.9
 31. Clayton, Stevie, 'Equal Age of Consent', (1997) 8(1) *HIV/AIDS Legal Link* 12.
 32. Above ref. 25.
 33. Sections 199-200 of the *Criminal Code* (WA) made abortion illegal in WA prior to amendments introduced in 1998. These sections had remained inactive for decades until utilised against two Perth Doctors who had carried out what they believed to be a legal abortion. For an outline of the circumstances surrounding the application of this legislation, and the heated public debate that ensued, see Price, M., 'Body of Evidence' *Weekend Australian*, February 14-15, 1998, p.26; Cica, N., 'Ordering the Law on Abortion in Australia's Wild West' (1998) 23(2) *Alternative Law Journal* 89-90, 98.
 34. Clayton, above, ref. 32, p. 12.
 35. Powell, Vicki, 'We May Never Know' in *Equality 2000: A Supplement to Gay Times*, August 1998.
 36. Powell, above, ref. 35, p.17.
 37. Powell, above, ref. 35.
 38. Watney, S., 'Schools Out' in D. Fuss (ed.), *Inside/Out*, Routledge, New York, 1991, pp.386-7.
 39. Macdonald, Janine, 'Anti-Suicide Program Had Gay Message', *West Australian*, 15 August 1997, p.11. See also Ross, Rebecca, 'Moylan Pressured on Ad. Gays', *West Australian*, 16 August 1997, p.30; Ashworth, Keryn, 'Boos, Hisses at Gay Education Debate', *West Australian*, 25 August 1997, p.10.
 40. Brook, Stephen, 'Poster Ban Could Kill: Gay Lobby', *Weekend Australian*, 16-17 August 1997, p.5
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