Sexuality and Australian Law

Justice Kirby Collection

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A CHANGING LEGAL ENVIRONMENT

My participation in a session on this topic could not, and would not, have happened even a few years ago. The attendance of many senior judges and lawyers from a number of countries, considering this question, would have been unthinkable. Same-sex relationships were the outward manifestation of impermissible emotions. Such emotions, or at least the physical acts that gave them expression, were criminal in many countries. If caught, those involved would be heavily punished, even if their acts were those of adults, performed with consent and in private. Needless to say, such laws, whether enforced or not, led to profound alienation of otherwise good citizens, to serious psychological disturbance when people struggled to alter their natural sexual orientation, to suicide, blackmail, police entrapment, hypocrisy and other horrors.

It is fitting that, as the modern criminalisation of homosexual conduct can largely be traced to the laws of England, which were copied faithfully throughout the old British Empire (even in places where the previous developed law had made no such distinctions), leadership in the direction of reform should eventually have also come from the United Kingdom. The Wolfenden Report and the reform of the law which followed became the model whose influence gradually spread throughout the jurisdictions of the Commonwealth of Nations, or at least amongst the old Dominions. Some of the more autocratic societies within the Commonwealth have recently rediscovered the sodomy offences and utilised them against political critics.

The Wolfenden reforms in England, and their progeny, both responded to and stimulated changes in community opinion about homosexual conduct. These changes, in turn, have influenced social attitudes to people who are homosexual, bisexual or transgender in their sexual orientation. Once the lid of criminal punishment and social repression was lifted, people came to know their gay and lesbian fellow citizens. They came to realise that, boringly enough, they have all the same human needs as the heterosexual majority. The needs for human love, affection and companionship; for family relationships and friendships; for protection against irrational and unjustifiable discrimination; and for equal legal rights in matters where distinctions cannot be affirmatively justified.

A measure of the continuing erosion of public opposition to legal change in this area, and of strong generational differences in attitudes to such subjects, can be seen in a recent survey

conducted in the United States of America. Accepting that country as probably the most conservative on this subject amongst the Western democracies, what is notable in the comparison with the results of a similar survey conducted thirty years ago is the strong shift towards acceptance of the legalisation of homosexual relations (then 55%; now 82%), and the strong support amongst younger people for legalising homosexual relations. The young tend to be those who know someone who identifies openly as gay or lesbian. Similar surveys in other Western countries, including my own, indicate identical and even stronger shifts in public opinion.

Significantly, the principal reason given in the American survey by those personally opposed to homosexuality is "religious objections" (52%). Yet even amongst the major religions in many Western countries, there has been a cautious shift to recognition of the need for change. Many commentators on the Pope's visit to the United States in January 1999 remarked on the "sharp generational polarisation" on issues such as homosexuality, premarital sex and the ordination of women priests . In Australia, some thoughtful commentators within the Catholic Church (now the largest religious denomination in the country) have begun to talk of sexuality beyond the absurd proposition that would insist upon acceptance of sexual orientation but prohibit all of its physical and emotional manifestations. Thus Bishop Patrick Power in Canberra, Australia has called for "solidarity with the poor, the marginalised, the oppressed" . He said: "[There] is a very real difficulty for the Church in terms of its credibility in the wider community. Some members of the Church community and hierarchy appear to act quite cruelly towards people such as single parents, homosexuals, divorced and remarried couples, former priests and religious."

The advent of the Human Genome Project and the likelihood that, in many cases at least, sexual orientation is genetically determined, make it totally unacceptable to impose upon those affected unreasonable legal discrimination or demands that they change. It was always unacceptable; but now no informed person has an excuse for blind prejudice and unreasonable conduct. If we are talking about the unnatural, demands that people deny their sexuality or try to change it, if it is part of their nature, are a good illustration of what is unnatural. An increasing number of citizens in virtually every Western democracy are coming inexorably to this realisation. People are not fools. Once they recognise the overwhelming commonalities of shared human experience, the alienation and demand for adherence to shame crumbles. Once they reflect upon the utter unreasonableness of insisting that homosexuals change their sexual orientation, or suppress and hide their emotions (something they could not demand of themselves), the irrational insistence and demand for legal sanctions, tends to fade away. Once they know that friends and family, children, sisters or uncles, are gay, the hatred tends to melt. In the wake of the changing social attitudes inevitably come changing laws: both statutes made by Parliaments and the common law made by judges.

Virtually every jurisdiction of the common law is now facing diverse demands for the reconsideration of legal rules as they are invoked by homosexual litigants and other citizens who object to discrimination. To some extent the standards of change have been set by regional bodies such as the European Court of Human Rights, and international bodies such as the United Nations Human Rights Committee . In the past, litigants to prosecute these

issues could not be found. This was because of various inhibitors: the risk of criminal prosecution; the fear of social or professional stigmatisation; the desire to avoid shame to oneself or the family. Now that these controls are removed, it must be accepted that courts and legislatures will face increasing demands that legal discriminations be removed and quickly. The game of shame is over. Reality and truth rule. Rationality and science chart the way of the future. The same thing happened earlier to laws and practices which showed discrimination on the grounds of race and gender. The same opposition was mooted in the name of religion, of nature or of reason. No one of value believes the myths of racial or gender inferiority anymore. There is no reason to believe that it will be different in respect of discrimination on the ground of sexuality.

Sometimes litigants will be able to invoke a national charter of rights, as has happened in Canada . Sometimes their cases will involve very large questions as in a case in New Zealand . At other times they will involve something as tedious as the construction of the Rent Act, as occurred recently in England. Australia has also been affected by these developments. The purpose of my contribution is to explain some of the developments.

THE AUSTRALIAN CONSTITUTIONAL SETTING

In order to approach Australian legal developments it is necessary to appreciate the nature of the Australian federation. The Constitution divides the lawmaking power in Australia between the Commonwealth (the federal polity) and the States. Generally speaking, as in the United States of America, if a legislative power is not expressly granted by the Constitution to the federal Parliament, it remains with the States. The result of this arrangement, again speaking very generally, is that large areas of private law - and especially of criminal law - are left to State lawmaking. The federal Parliament, outside the Territories where it enjoys plenary constitutional powers, has tended to be concerned in matters of lawmaking on subjects of national application and in federally specified areas.

This general description must be modified by appreciation of three important developments which have gathered pace in recent decades. First, the federal Parliament, encouraged by expansive decisions on the grants of federal constitutional power, has extended its legislation into areas which almost certainly were not expected to be regulated federally when the Constitution was enacted in 1900. Thus, by the use of tax incentives, a large framework of federal legislation has recently been enacted governing the law of superannuation in Australia .

Secondly, although Australia (now almost alone) does not have either a comprehensive constitutional charter of rights, nor a statute-based guarantee of fundamental civil entitlements, much anti-discrimination legislation has been enacted, including at the federal level. Some of this has been supported by the federal power to make laws with respect to external affairs. International treaties to which Australia has subscribed have become a means of supporting the constitutional validity of federal legislation outside traditional federal fields. It was in this way, in reliance upon Australia's obligations under the International Covenant on Civil and Political Rights that the federal or Commonwealth

Parliament enacted the Human Rights (Sexual Conduct) Act 1994. That Act was adopted in response to the decision of the United Nations Human Rights Committee in Toonen v. Australia . That decision found that the sodomy laws of Tasmania, the sole Australian State then to retain such laws, imposed an arbitrary interference with Mr Toonen's privacy in respect of his adult, consensual, private sexual relationship with his partner. Following a decision of the High Court of Australia in favour of Mr Toonen and his partner, upholding the constitutional viability of the proceedings, the Tasmanian Parliament repealed the offending provisions of the Criminal Code. It has since enacted a non-discriminatory offence which makes no distinction on the basis of sexuality.

Thirdly, there has been a rapid growth in the number and importance of federal courts and of federal jurisdiction in Australia over the past twenty years. This has been, in part, a response to the general enlargement of federal law, the growth of the federal bureaucracy, the expansion of federal administrative law rights, and the need for effective judicial supervision to bring the rule of law into every corner of federal administration in Australia.

There are six States in Australia. As well, there are two mainland Territories (the Northern Territory of Australia and the Australian Capital Territory) which have been granted substantial self-government under federal legislation. Accordingly, outside the areas regulated directly by federal law in Australia, there are eight significant legal jurisdictions. All have their own separate statutory regimes dealing with the vast array of private law matters, local administrative law and most matters of criminal law. It is beyond the scope of this chapter to review the legislation in each of the eight sub-national Australian jurisdictions. I will therefore concentrate on the State of New South Wales, which is the most populous State in Australia.

CHANGES IN STATE LEGISLATION

As in most jurisdictions which inherit statutes going back to much earlier colonial times, a large number of enactments of the New South Wales Parliament (and some of them not so old) reflect discrimination against homosexual citizens. This has been called to notice by the Anti-Discrimination Board. The examples are many and found in every corner of the law - even unexpected corners. Thus, the Stamp Duties Act 1920 (NSW) provides that, if a share of a jointly owned property is sold by one party in a heterosexual relationship following the end of that relationship, and if so ordered by a court, the remaining partner may be exempted from paying stamp duty. There is no such entitlement to exemption for a same-sex partner. Similarly, the Superannuation Act 1916 (NSW) contains a definition of "spouse", in relation to a death benefit, which has the consequence that, where a contributor to a superannuation scheme dies without leaving a legally recognised "spouse" (or, in some cases, children), the deceased contributor will receive only a refund of contributions without interest. This involves less favourable treatment for partners of the same sex and some others who are less likely to have a lawful "spouse" or child.

The Adoption of Children Act 1965 (NSW) provides that a court may make an adoption order in favour of a married couple or, in certain circumstances, to a man and a women in a de

facto relationship. Such an order cannot be made in favour of persons in a same-sex relationship, whatever its duration and whatever the exceptional circumstances of the case. The Evidence Act 1995 (NSW) contains certain legal privileges in respect of opposite-sex couples which are not extended to same-sex partners. The New South Wales Anti-Discrimination Board has repeatedly submitted to the State Parliament and Government that the legislation of the State needs to be changed to afford wider recognition to relationships involving same-sex partners and persons in non-traditional and/or extended family relationships. Because of the growing numbers of persons in a variety of human relationships who fall outside the protection of the present law, reform of the law is needed. The first, partial and limited reforms took place in 1998 and 1999.

The Equal Opportunity Tribunal established by the Anti-Discrimination Act 1977 (NSW) is empowered to hear complaints in certain circumstances where a person claims to have suffered discrimination on the ground of his homosexuality. Such complaints are now regularly taken to the Tribunal. In 1995, it found that a health fund which had refused to allow the complainants a "family" or "concessional" rate was guilty of unlawful discrimination. The complainants were two males bringing up the son of one of them. They had joint bank accounts, joint ownership of a motor vehicle and a joint mortgage. Although the couple did not fit within the "spouse" relationship under the rules of the fund, they did come within the "family" relationships as defined. They were entitled to the concessional rate. An appeal by the fund to the Supreme Court of New South Wales failed.

As a background to what now follows, it is appropriate to say that such studies as have been conducted in Australia to sample the opinion of same-sex partners seem to indicate that the majority surveyed (80%) do not consider that marriage or marriage equivalence is desirable in their cases . However, they want the discrimination removed and the provision of legal protections against discrimination. At least in New South Wales, the legislators are responding.

In 1998 the Same-Sex Relationships (Compassionate Circumstances) Bill 1998 (NSW) was introduced into the New South Wales Parliament, to meet what were described as "urgent areas of need which relate to wills, family provision and hospital access" for same-sex partners. The purpose of that Bill, a Private Member's measure, was to pick up on a commitment given by the State Premier to the President of the AIDS Council of New South Wales prior to the election in which his party achieved Government in 1995. That commitment was :

"Labor is committed to reform of legislation around same-sex relationships so that same-sex partners have the same rights and responsibilities as heterosexual de factos when their partner is hospitalised or incapacitated. We will also ensure that same-sex partners are not discriminated against in the operation of the will and probate and family provisions."

This measure was not enacted when the Government cancelled the allocation of time to Private Members for the remainder of the parliamentary session. Several other Private Member's Bills or related topics also lapsed when the New South Wales Parliament was dissolved for a State election held in March 1999.

The new State Parliament, which convened after the re-election of the Australian Labor Party Government led by Mr Carr, moved quickly to enact the Property (Relationships) Legislation Amendment Act 1999 (NSW). The Bill for that Act was introduced into the Legislative Council by the State Attorney-General (Mr J W Shaw QC). It was passed by that Chamber by 37 votes to 3. In the Legislative Assembly, it was passed without division. The debates were notable for enlightened views expressed by members of both Houses and both sides of politics, although there were also expressions of prejudice and ignorance. Mr Shaw described the legislation as "historic", which for Australia it certainly is. He went on:

"In an open and liberal society, there is no excuse for discrimination against individuals in our community based on their sexual preference. To deny couples in intimate and ongoing relationships within the gay and lesbian community the same rights as heterosexual de facto couples is clearly anomalous."

A speech by a National Party member of the Lower House, representing a rural electorate and a party sometimes described as conservative (Mr Russell Turner MP), was specially striking:

"Generally, they [people in same-sex relationships] have faced life, they have been through agonies and they, in a lot of instances, are probably far better adjusted than many married couples who are living in a state of acceptance by the community, the church, and the laws of this country."

The legislation broadly assimilated same-sex partners within the De Facto Relationships Act 1984 (NSW), which has been renamed the Property (Relationships) Act - itself a sign of how common de facto relations of all kinds are in Australia today.

The thrust of the New South Wales Act is to allow for court orders adjusting property relations on the termination of a domestic relationship. The rights affected include real and personal property rights, such as rights of inheritance upon intestacy, taxes in relation to property transfers between partners, insurance contracts, protected estates, family provision (following inadequate testamentary provision), and State judges' pensions. Non-property rights are conferred in relation to human tissue and medical treatment decisions, coroner's inquest participation, decisions about bail for arrested persons, guardianship and mental health decisions, rights in retirement villages and accident compensation.

A number of New South Wales Acts are amended by the 1999 Act to impose on same-sex couples the same obligations to disclose interests as would exist in the case of spouses. Areas acknowledged as still requiring attention include adoption, foster parenting and superannuation for State government employees. The New South Wales Legislative Council's Standing Committee on Social Issues (chaired by Ms Jan Burnswoods MLC) has a reference from the New South Wales Parliament on relationships law reform. The Chair has called for submissions on the ways in which the Property (Relationships) Amendment Act 1999 does not adequately address legal concerns necessary to remove residual legal discrimination. Another matter on the list for the future in New South Wales may be the age of consent laws which, as in England (where reform is expected in November 2000), discriminate between

sexual activity that is male-male (18 years), male-female (16 years) and female-female (16 years).

Following the New South Wales legislation, the Parliament of the State of Queensland enacted broadly similar legislation. However, so far no other Australian State or Territory Government has indicated its intention to follow. A new government in Victoria has committed itself to examining the New South Wales model, which one New Zealand commentator has rejected as not going far enough. On a national level, the importance of the New South Wales and Queenslands Acts should not be exaggerated. But they are significant and symbolic. In a Federation such as Australia, reforms enacted in one jurisdiction tend, in time, to influence developments in others. Once it was South Australia that led the way in such matters (including decriminalisation of homosexual acts and the enactment of anti-discrimination legislation). This time it has been New South Wales.

Even before the 1999 reforms were adopted, legislation was enacted by the New South Wales Parliament which provided an interesting model to afford protection to people in same-sex relationships under State law. Thus, the Workers' Compensation Legislation Amendment (Dust Diseases and Other Matters) Act 1998 (NSW) contained, in Schedule 6, a number of amendments to the Workers' Compensation (Dust Diseases) Act 1942 (NSW). Amongst those changes is a new definition of "de facto relationship" in s. 3(1) of the 1942 Act. The redefinition is broad enough to encompass same-sex relationships:

"De facto relationship means the relationship between two unrelated adult persons:

(a) Who have a mutual commitment to a shared life, and

(b) Whose relationship is genuine and continuing, and

(c) Who live together, and

who are not married to one another."

This provision allows for definitional flexibility as social considerations develop and change. Much work remains to be done. But significant reforms have been accepted in Australia's most populous State. A model has been provided for the rest.

CHANGES IN FEDERAL LEGISLATION

The Australian Constitution, celebrating its centenary in 2001, is one of the four oldest documents of its kind still in operation in the world. When adopted, it did not contain a general Bill of Rights, such as became common in the post-independence constitutions of other countries of the Commonwealth of Nations. There is therefore no precise equivalent to the Bill of Rights in the United States Constitution, or the Charter of Rights and Freedoms in the Canadian Constitution, to stimulate and facilitate challenges to discriminatory provisions in federal law. Generally speaking, in such matters Australians must rely on the Federal, State and Territory Parliaments and Governments to secure changes. Only rarely can the aid of the courts be involved.

Sexuality and Australian Law

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Under the Australian Constitution, one matter upon which the federal Parliament enjoys legislative power is "immigration and emigration". Since 1984, in part because of lobbying by the Gay and Lesbian Immigration Task Force (GLITF), changes have been introduced into Australian migration law and practice which have expanded the rights of entry into Australia of persons in same-sex relationships.

The main breakthrough occurred in 1985 when Mr Chris Hurford was Minister for Immigration. Upon his instructions, regulations and practices were adopted which, to a very large extent, removed discrimination and provided for the consideration of applications for migration to Australia largely (but not entirely) on an equal footing.

Entry into Australia of non-residents is governed by the Migration Act 1958 (Commonwealth) and the regulations made under that Act. The regulations now provide for visa subclasses to permit the entry into Australia of people in "interdependent" relationships. This is the adjectival clause which has been adopted to describe same-sex partners. The relevant Australian visa classes are 310 and 301. They permit migration to Australia of a person sponsored by his or her partner. Comparable visas to allow change of status within Australia are visa classes 826 and 814. The two categories mirror, in turn, those applying to persons seeking entry to Australia on the basis of a de facto heterosexual relationship.

The annual migration programme (RAM) for Australia contains an allocated number of places available to persons in the "interdependent" categories. By comparison to the total size of Australia's migration programme, the numbers are very small. For the financial year 1996-97, 400 places were reserved for "interdependency visas".

Some discrimination remains in migration law and practice. Thus, for heterosexual de facto relationships and "interdependency relationships", the partners must be able to prove a twelve months committed relationship before being eligible to proceed with the application. In the case of heterosexual relationships, this precondition can be overcome, quite simply, by marriage, an event substantially within the control of the persons themselves. A similar short-cut is not available to same-sex couples. In some countries which still criminalise, prosecute or stigmatise persons who establish a same-sex household, proof of twelve months cohabitation, especially with a foreigner, may be difficult or even impossible. Provision is made for waiver of this requirement in compelling circumstances.

A second important omission from current immigration law is that persons from overseas, who are not Australian or New Zealand citizens and seek either to migrate or enter Australia temporarily, are unable to include in their application as members of their family unit (and thus bring with them) persons with whom they presently reside in their country of origin in a same-sex relationship. GLITF has made representations for the amendment of the law in this regard. However, the Minister has indicated that a same-sex partner of an applicant for immigration must apply for a visa in their own right if they wish to enter Australia with their partner. Only a person in a same-sex relationship with an Australian citizen (or a permanent resident or an eligible New Zealand citizen) is able to apply for an interdependency visa for migration to Australia, sponsored by the Australian partner .

Notwithstanding these defects, it is clear that Australian immigration law is comparatively enlightened on this subject. As yet, only a dozen countries (the United Kingdom, the Netherlands, Belgium, Iceland, Norway, Denmark, Sweden, Finland, Australia, New Zealand, South Africa and Canada) have a policy of recognising same-sex relationships for immigration purposes. In the case of the United Kingdom, only in October 1997 did the Immigration Minister announce a "concession" whereby most couples legally unable to marry, including same-sex partners (a category formally rejected) would be recognised for purposes of immigration to the United Kingdom.

In the field of refugee law, Australia is a party to the 1951 Refugees Convention, which is incorporated into domestic law. One of the categories of persons entitled to enjoy refugee status is one who "owing to a well-founded fear of being persecuted for reasons of ... membership of a particular social group ... is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country." The possibility that in some countries homosexuals and others in same-sex relationships would be so categorised has been recognised in a number of decisions in Australia and the United Kingdom. In Australia, for at least five years, both the Department of Immigration at the primary level and the Refugee Review Tribunal, have granted refugee status to both male and female homosexuals who could establish a well-founded fear of persecution in their country of nationality. Various difficulties arise in such a case, because of views sometimes taken in the Tribunal concerning the need for applicants to prove their sexual orientation, and because of a paucity of information about the persecution of homosexuals in some countries. Australia has developed policies for the group "women at risk". There may be a need for similar supportive programmes for homosexual refugees and also for their same-sex partners. Many of them are at serious risk in their countries of origin or temporary residence.

Superannuation in Australia is now largely regulated by federal laws. The Senate Select Committee on Superannuation of the Australian Parliament reported in September 1997. The Committee put forward "as a general proposition" a proposal earlier made to it, in the context of a review of superannuation: that persons without defined dependants (such as their widow, widower or eligible children) should have an entitlement under federal law to nominate a beneficiary, so that they do not lose entirely the benefit of entitlements which would otherwise accrue to them were they in a currently eligible relationship. The Senate Committee recognised that the present provisions were a "discrimination against those ... not in a recognised relationship." The Committee held back from making a recommendation that provision should be made for the "nomination of a dependant" because of reconsideration of the current structure of the scheme established by the Act. However, as in the case of the Parliamentary Scheme, applicable to federal politicians, the Committee recommended that the rules under which the benefits were paid "should be reviewed to ensure that they are in accordance with community standards".

A Private Member's Bill, introduced into the House of Representatives of the federal Parliament by an Opposition member, seeks to remove discrimination against same-sex couples in the sphere of superannuation. Earlier, a larger measure was introduced into the Australian Senate, also by an Opposition Senator. It was referred to the Senate Legal and Constitutional References Committee. In December 1997, that Committee tabled a report

recommending that couples or partners should be protected by superannuation entitlements regardless of their sexuality or gender. Neither of the foregoing Bills has yet attracted the support of the Australian Government. In March 2000, a further Private Member's Bill identical to the one that had stalled in the House of Representatives, was introduced into the Australian Senate in the hope of advancing consideration of its proposals in the Parliament. It remains under consideration.

However, the Australian Government has introduced the Superannuation Legislation (Commonwealth Employment) Repeal and Amendment (Consequential Provisions) Bill 1998 (Cth). This proposes amendments to superannuation and like legislation to deal with a number of situations, including one where an "eligible person", who was party to a superannuation scheme, dies without leaving a spouse or child to whom pension payments are made. According to the Bill, in such a situation, there will be payable to the legal personal representative of the deceased person an amount equal to the total of the minimum amounts which the federal authorities would have had to contribute to a complying superannuation fund for the benefit of an "eligible person".

The discrimination in the field of superannuation and like benefits has become more noticeable as other federal legislation, and legislatively encouraged moves in Australia, have come to recognise and protect the "employment packages" of persons governed by federal law. Nowadays, it is much more common to look to a person's total employment "package" rather than just their base salary. Where there is a significant differentiation in superannuation and like benefits, unconnected with the quality of their professional performance and concerned only with their private domestic arrangements, unjust discrimination can be seen in sharp relief . According to news reports, politicians of most political alignments in Australia have begun to perceive the serious injustice which is worked by current superannuation and like laws in the case of persons living in stable same-sex relationships .

Recently, an Australian Ambassador, presenting his credentials to the Monarch of the country to which he was accredited by Australia, took along his same-sex partner. Such relationships are legally recognised in that country, where the action of the Ambassador would have been unremarkable. Yet the diplomat and his partner had to suffer the indignity in Australia of a tabloid headline reducing his serious professional career to the insult: "Three Queens in One Palace." Yet it took more courage and honesty for the Ambassador to do as he did than to continue with pretence. It took more courage and integrity than the anonymous by-line writer exhibited in the newspaper concerned. And it must be acknowledged that the Australian Department of Foreign Affairs and Trade has, in this respect, observed a non-discriminatory policy. The certified agreement adopted by the Australian Department of Foreign Affairs under the Workplace Relations Act 1996 (Cth) states:

"The conditions regarding the official recognition of de facto relationships for the purpose of the conditions of service apply regardless of sexual preferences".

Similar statutory "certified agreements" have been adopted by other federal departments and agencies in Australia. In practice, this means that for most benefits of office (but not yet

superannuation), same-sex partnerships enjoy equal employment benefits in the federal public service in Australia. Thus, in the Australian foreign service, they include: airfares to and from posting; the payment of supplementary living allowances as a couple whilst overseas; the payment of other incidental allowances on the same basis where an entitlement arises (eg clothing allowances); and the payment of health cover by the Federal Government for both partners during the posting. It is necessary to have the relationship officially recognised by the relevant Department before the partners proceed to the posting, by the provision of a statutory declaration with accompanying evidence. But these and other benefits are closely assimilated to those of any other non-married de facto partner. The achievement of such entitlements and practices evidences a commitment by those in charge to the principle of non-discrimination in the matter of sexuality and federal public employment.

The Parliament of Australia in respect of its members, and in some areas of its legislative responsibility, has begun to act. The Executive of the federal Government in Australia has quite properly moved, in respect of its officers, to abolish discrimination in employment benefits, and to exercise its powers under delegated legislation in a non-discriminatory way. Even the federal Judicature in Australia has begun to provide benefits of domestic and international travel for non-married partners of federal judges of whatever sex. But the federal Judges' Pensions Act 1968 remains resolutely unchanged.

THE JOURNEY OF ENLIGHTENMENT

There are other changes which are occurring in the statutory regimes governing the benefits of same-sex partners in Australia. The changes are occurring bit by bit and piece by piece. This is what happened earlier with racial and gender discrimination. It is still happening in those fields. The end of unfair discrimination has not yet been achieved. Australia, like other countries, is on a journey of enlightenment. It has taken important steps; but many more remain to be taken. It seems likely that progress towards the removal of discrimination which cannot be rationally justified, will continue. As it serves a people generally committed to equal justice for all under the law, I have confidence that the Australian legal system, and those who make the laws in Australia, will, in due course, eradicate unfair discrimination on the basis of sexuality. The scales are dropping from our eyes. Injustice and irrational prejudice cannot survive the scrutiny of just men and women.

It can only be in the interests of society to protect stable and mutually supportive relationships and mutual economic commitment. It is against society's interests to penalise, disadvantage and discourage them. Australia is accepting this truth. There remain stubborn opponents. Much reform remains to be done. And beyond Australia, there is a world of discrimination and oppression to be shamed and cajoled into reform. That is why it is timely and appropriate to have this topic on the agenda of this conference of the International Bar Association in Amsterdam. We are here discussing one of the big issues of human rights in the coming decades. It is therefore a topic important to the lawyers of the world.