

Outmanoeuvring Defence: The Australian Debates over Gay and Lesbian Military Service, 1992¹

ABSTRACT: On 24 November 1992, Australia overturned its longstanding ban on gay and lesbian service in the Australian Defence Force. The ban was on the political agenda throughout 1992, though it was never a government priority or subject to mass protest. The debates over gay and lesbian military service have subsequently received scant attention from historians. The arguments against gay and lesbian service centred on troop morale, security concerns, fears of predatory homosexuals and the spread of HIV/AIDS. The arguments to permit gay and lesbian service hinged to an extent on principles of non-discrimination, but even more so on international law. This article examines the debates in 1992 leading up to the ban repeal, focusing in particular on the Labor Party divisions and the ways international law influenced the decision-making process.

On 24 November 2012, a significant anniversary quietly passed in Australia: twenty years since repealing the ban on gays and lesbians serving in the Australian Defence Force (ADF). For its part, the ADF acknowledged the significance of this anniversary; Defence Force Chief David Hurley declared, “We have progressed beyond outdated thinking on homosexuality to give all ADF members the same access to the range of service benefits regardless of their sexual orientation or gender.”² The twenty year anniversary barely received any attention in both the mainstream and lesbian, gay, bisexual, transgender and intersex (LGBTI) press.³ Twenty years earlier the debates over repealing the ban received some mainstream media

¹ The author gratefully acknowledges the gracious participation of interviewees: former Attorney-General, the Hon. Michael Duffy, former Senator the Hon. Terry Aulich and former Keating advisor Anne Summers. Former Defence Minister, Senator the Hon. Robert Ray, declined invitations for an interview.

² Benn Dorrington, “Gay defence ban 20 years on”, *Star Observer*, 23 November, 2012, p. 3.

³ See Ibid.; “Twenty years since ADF ends gay ban”, *The Australian*, 24 November, 2012, online, available from <http://www.theaustralian.com.au/news/latest-news/twenty-years-since-adf-ends-gay-ban/story-fn3dxiwe-1226523279658?nk=a991eb7faa6ee56e13f777c3a449de8e>, accessed 25 June 2014.

coverage, but the ban never became a major political issue. This is in sharp contrast with the United States, where the issue of LGBTI military service generated debate from the 1992 election of President Bill Clinton until the final repeal of the “don’t ask, don’t tell” policy in 2011. Juxtaposed with the American experience, what seems most remarkable about Australia is how *unremarkable* the decision to permit gay and lesbian military service was.⁴

Notwithstanding the relative swiftness with which the Keating Labor Government overturned the ban, there were still significant debates in 1992. Historians, legal experts and political scientists alike have only summarised the arguments and outcomes of the debates without significantly investigating the process of reform.⁵ This article analyses a variety of documents including Hansard excerpts, LGBTI and mainstream media coverage, reports of the Human Rights and Equal Opportunities Commission (HREOC), the ALP Caucus Joint Working Group on Homosexual Policy in the Australian Defence Force, politicians’ papers and interviews with some of the key political figures involved in the debates. Those who argued to retain the ban relied primarily on four arguments: health, security, protecting minors and troop morale. Opponents of the ban believed they could easily debunk these arguments, yet they went further than mere moral or anti-discrimination reasoning; they invoked international law as the principal grounds why Australia must permit gay and lesbian military service. Analysis suggests that because the Defence Minister would not budge, advocates of repealing the ban turned to international law as the only remedy to wrest the decision from him. International law essentially became a legal justification to fill the void where Commonwealth anti-discrimination legislation failed to protect gays and lesbians in the ADF.

⁴ In this article I am specifically referring to gay, lesbian and by extension bisexual men and women. The repeal of the ban was not related to transgender or intersex personnel.

⁵ To date the best overviews are Aaron Belkin and Jason McNichol, “The Effects of Including Gay and Lesbian Soldiers in the Australian Defence Forces: Appraising the Evidence”, Center for the Study of Sexual Minorities in the Military, University of California, Santa Barbara, 19 September 2000, pp. 7-13; Hugh Smith, “The Dynamics of Social Change and the Australian Defence Force”, *Armed Forces & Society*, Vol. 21, 4 (summer 1995), pp. 544-546.

Putting the ban on the agenda

Australia banned gay men from military service from as early as the Boer War, adopting the British military code. There were still homosexuals who served in all conflicts, and there is especially evidence of there being a crackdown on “sodomites” in Second World War New Guinea after the US passed the names of several men to the Australian Army.⁶ There were also lesbian subcultures in the women’s services during the Second World War, and these subcultures would continue in the post-war era.⁷ While all three of the services maintained their own individual regulations against homosexuality, it was not until 1982 that Parliament became involved. The *Defence Forces Discipline Act* introduced a rewritten, streamlined military code across the ADF and also brought ADF personnel under the jurisdiction of the *ACT Criminal Code*.⁸ After the ACT government fully decriminalised homosexual acts in December 1985, the Defence Force Chief responded in September 1986 with Defence Instruction 15-3, explicitly stating: “The ADF policy on homosexuality is that when a member admits to or is proven to be involved in homosexual conduct, consideration is to be given to the termination of that member’s service.”⁹ Though not all cases of homosexuality necessarily ended in lesbian or gay members’ termination, this instruction was the legal document banning gay and lesbian military service until November 1992.

⁶ Yorick Smaal and Graham Willett, “Eliminate the ‘females’: the New Guinea affair and medical approaches to homosexuality in the Australian army in the Second World War”, in *The Pacific War: Aftermaths, Remembrance and Culture*, eds Christina Twomey and Ernest Koh (Abingdon, UK; New York), pp. 233-250; Graham Willett and Yorick Smaal, “‘A Homosexual Institution’: Same-sex Desire in the Army During World War II”, *Australian Army Journal*, Vol. X, 3 (2013), pp. 23-40; Robert French, *Camping by a Billabong: Gay and Lesbian Stories from Australian History* (Sydney, 1993), pp. 75-88; Garry Wotherspoon, “Comrades-in-Arms”, in *Gender and War: Australians at War in the Twentieth Century*, eds Joy Damousi and Marilyn Lake (Melbourne, 1995), pp. 205-222; Robert French, “Is that a pistol in your pocket?” *Sydney Star Observer*, 26 June, 1992, p. 13.

⁷ Ruth Ford, “Lesbians and loose women: female sexuality and the women's services during World War II”, in *Gender and War*, pp. 81-104; “Disciplined, punished and resisting bodies: lesbian women and the Australian armed services, 1950s/ 60s”, *Lilith* 9 (1996), pp. 53-77.

⁸ Senator the Hon. Gareth Evans, (Commonwealth Parliamentary Debates (CPD), Senate, 15 December 1982), pp. 3591-3592.

⁹ Defence Instruction 15-3, “Homosexual Behaviour in the Australian Defence Force”, 26 September 1986.

It was not the politicians who initially put overturning the ban on the agenda, nor was it the work of gay rights activists. Rather, it was a dismissed lesbian naval officer named Anita Van Der Meer who challenged the ban in the HREOC in 1990, shortly after sexual orientation was added to the Commission's terms of reference. The HREOC investigated Van Der Meer's complaint. Although the HREOC had no legal grounds to compel Van Der Meer's reinstatement, after eighteen months the ADF did agree to restore her employment.¹⁰ Meanwhile, the HREOC investigated the wider matter of the ban on lesbian and gay service and entered into negotiations with the ADF. There were no federal anti-discrimination statutes that prohibited employment discrimination on the basis of sexual orientation. As such, there was no explicit basis in Australian law to compel the ADF to repeal Defence Instruction 15-3. Instead, the HREOC turned to international law, arguing that the ban contravened Australia's obligations under International Labour Organization (ILO) Conventions and, more significantly, the International Covenant on Civil and Political Rights (ICCPR). Over the next fourteen months the HREOC and ADF negotiated a new policy on unacceptable sexual behaviour in the ADF, which the HREOC envisioned would be neutral as to sexuality.¹¹

In late February 1992 the press reported that the ADF was considering lifting the ban. The government responded that discussions were still under way with the Service Chiefs. There are suggestions that some Service Chiefs were amenable to lifting the ban, but these positions were never public. On 18 June 1992, Defence Minister Robert Ray announced in the Senate that the ADF would be adopting a new instruction on "Unacceptable Sexual

¹⁰ Suzanne B. Goldberg, "Open Service and Our Allies: A Report on the Inclusion of Openly Gay and Lesbian Servicemembers in U.S. Allies' Armed Forces", *William & Mary Journal of Women and the Law*, Vol. 17, 3 (2011), p. 552; "Army reinstates lesbian", *Sydney Star Observer*, 7 August, 1992, p. 5. See also Hugh Smith, *Homosexuality and the Australian Defence Force: Individual Rights vs Organizational Realities*, Australian Defence Studies Centre Working Paper No 5 (Campbell, ACT: University College, University of New South Wales, Australian Defence Force Academy, July 1992), p. 25.

¹¹ Australia, Human Rights and Equal Opportunity Commission, *Report of the Human Rights and Equal Opportunity Commission on Australian Defence Force Policy on Homosexuality* (Canberra, 25 September 1992), pp. 1-20.

Behaviour by Members of the Australian Defence Force.” At the same time, he announced that the ban on gay and lesbian service would remain, though he conceded “that this policy may end up in the courts if cases of dismissal are challenged.”¹² The reaction across the LGBTI press was not surprisingly condemnatory of Ray’s announcement, as were reports in the Fairfax press. Journalist Laurie Oakes speculated that Ray, who was fighting on behalf of his department, was worried about an electoral backlash and therefore hoped court challenges would overturn the ban. Yet Justice Minister, Senator Michael Tate, declared in Parliament that “No court can overturn the policy itself and, provided the policy is lawfully implemented, an aggrieved individual cannot ask the court to substitute its idea of public policy for that of the Minister.”¹³ Other members of the ALP were also unhappy with Ray’s decision, but wresting the decision from the Defence Minister would require clever manoeuvring.

International Dimensions

Within a few days there were already reports of dissent from other Cabinet ministers, most notably Attorney-General Michael Duffy, Health Minister Brian Howe and Minister for Industrial Relations Peter Cook. Duffy was particularly incensed, but there was no Commonwealth anti-discrimination legislation explicitly covering sexual orientation. The HREOC and Human Rights Division within the Attorney-General’s Department convinced Duffy that the ban contravened Australia’s obligations under the ICCPR, to which Duffy was firmly committed.¹⁴ The HREOC highlighted three particular sections: the right to privacy (article 17), the right to access to public service (article 25) and the right to equality before the law and equal protection of the law (article 26). On privacy grounds, the HREOC asserted

¹² Senator the Hon. Robert Ray, (CPD, Senate, 18 June 1992), p. 3952.

¹³ Senator the Hon. Michael Tate, (CPD, Senate, 22 June 1992), p. 4158; Laurie Oakes, “Ray’s gay gauntlet”, *The Bulletin*, 7 July, 1992, p. 19.

¹⁴ The Hon. Michael Duffy, interview with Noah Riseman, Melbourne, 1 May 2014; Margo Kingston, “Defence Gay Ban Prompts Review by Key Ministers”, *The Age*, 22 June, 1992, p. 4.

that Defence Instruction 15-3's authorisation to collect and retain data about ADF members' sexuality went beyond inherent requirements of the job. The HREOC further argued that ICCPR article 17 included the right to a private life, and consequently the ban constituted "arbitrary" interferences with ADF members' privacy. In terms of article 25, the HREOC indicated that the ADF clearly represented a form of public service and threatening homosexuals with discharge was a denial of their right to participate in the public service. Article 26 presented a descriptive but not exhaustive list of social groups guaranteed equal protection before the law. Although sexuality was not explicitly on this list, since 1990 Australia's Human Rights and Equal Opportunity Commission Regulations included sexual preference as one of twelve additional grounds applicable to the HREOC Act. Therefore, Australia's application of the ICCPR also included sexual preference.¹⁵

Invoking breaches of the ICCPR was significant not only symbolically, but also because in September 1991 Australia had acceded to the Optional Protocol to the ICCPR. The Optional Protocol allowed Australian citizens to challenge alleged violations of the ICCPR in the United Nations Human Rights Committee (UNHRC).¹⁶ *The Age* was quick to pick up on this possibility, reporting that "The Federal Government faces appeals to the United Nations for breaches of two international human rights treaties after its decision yesterday to endorse the continuation of its ban on homosexuals in the Australian Defence Force."¹⁷ Another person who appreciated this possibility was Democrats Senator Janet Powell, who was the most outspoken politician opposing the ban. Within days of Ray's 18 June announcement, Powell introduced amendments to the *Defence Act* which would have overturned the ban. She withdrew the amendments because they did not have sufficient

¹⁵ Human Rights and Equal Opportunity Commission, *Report of the Human Rights and Equal Opportunity Commission on Australian Defence Force Policy on Homosexuality*, pp. 14-19.

¹⁶ On Australia's accession to the protocol, see Devika Hovell, "Lifting the Executive Veil: Australia's Accession to the First Optional Protocol to the International Covenant on Civil and Political Rights", *Adelaide Law Review* 24 (2003), pp. 187-216.

¹⁷ Margo Kingston, "Defence Force Gay Ban may Bring UN Appeals", *The Age*, 19 June, 1992, p. 1.

support, but later in the year she threatened to introduce similar amendments again and to force a vote.¹⁸ In the Senate, Powell also questioned the government about international obligations which the ban may breach. Later in the year, Powell linked the ADF ban with Nicholas Toonen's pending challenge to Tasmania's sodomy laws in the UNHRC.¹⁹ Duffy had given Toonen a fiat because he was a firm believer that if Australia were signing up to international treaties like the ICCPR, they must fully comply. In the case of the ADF ban, Duffy considered it better to lift the ban rather than to open Australia up to potentially embarrassing challenges in the UNHRC.²⁰

Whether or not a case at the UNHRC would have been successful is speculative. While gay rights advocates believed the UNHRC would interpret Australian society as opposing discrimination against homosexuals, there was no guarantee that such arguments would extend to military service.²¹ It is intriguing that reform advocates argued that the UNHRC could "shame" Australia considering that only a small number of nations, mostly in Western Europe, permitted gays and lesbians to serve.²² The majority of nations, including those which were signatories to the ICCPR, did not permit gay and lesbian service. Throughout 1992 both sides of the debate frequently looked to overseas examples. Opponents of the ban talked about the successful integration of gay and lesbian troops in some Western

¹⁸ CPD, Senate, 23 June 1992, pp. 4336-4342; CPD, Senate, 7 October 1992, p. 1326; Janet Powell, "Gay and Lesbian Organisation of Business and Enterprise: Speech Notes", 21 September 1992, in National Library of Australia (hereafter NLA), Ms Acc09/198, Papers of Janet Powell, 1977-1993 [manuscript]. On Powell's opposition to the ban, see also Jan McKemmish, "Imagining the new political", *Capital Q* (Sydney), 9 October, 1992, p. 12; Peter O'Shea, "ADF ban sell out: Powell Forces Issue", *Capital Q*, 28 August, 1992, pp. 1; 3; "Powell looks hopeful over Gays and Lesbians in the ADF", *PanDa* (Canberra), 6 November, 1992, p. 3.

¹⁹ Senator the Hon. Janet Powell, (CPD, Senate, 22 June 1992), p. 4158; (CPD, Senate, 8 September 1992), p. 491.

²⁰ Duffy interview.

²¹ "A Submission to the ALP Caucus Committee on the Australian Defence Force Policy on Homosexuality", Prepared, endorsed and submitted by a coalition of state and territory based lesbian and gay rights organisations, available from Australian Lesbian and Gay Archives (hereafter ALGA).

²² Depending on the source, the number of nations varies between eight and fifteen. This is because each source uses different evidence. Some sources count countries which did not have an explicit ban, whereas others only include countries which specifically indicated that they permitted homosexuals to join. See Stanley E. Harris, "Military Policies Regarding Homosexual Behavior: An International Survey", *Journal of Homosexuality*, Vol. 21, 4 (1991), pp. 67-74; Smith, *Homosexuality and the Australian Defence Force*, pp. 21-23; "A Submission to the ALP Caucus Committee on the Australian Defence Force Policy on Homosexuality". See also David R. Segal, Paul A. Gade and Edgar M. Johnson, "Homosexuals in Western Armed Forces", *Society*, Vol. 31, 1 (November/December 1993), pp. 37-42.

European militaries; supporters of the ban pointed to the Anglosphere – the United States, New Zealand, United Kingdom and Canada – which all banned homosexuals from their militaries (although even those nations were debating their bans). There were questions of whether or not the United States in particular would permit joint exercises with Australia if the ban were lifted. The Service Chiefs indicated that precedents in NATO suggested that this would not be a major problem.²³ Ultimately while both proponents and opponents of the ban could point to international examples, the overseas cases had little bearing on the Australian decision-makers. As Shadow Defence Minister Alexander Downer summarised shortly after the ban was lifted:

Why should Australia be governed by Canada and the United States? Equally, why shouldn't Australia be followed by the lead of dozens and dozens and dozens of other countries around the world? I mean, the Left of politics, on the one hand, have howled down Coalition governments for generations for kowtowing to the United States, and now they're saying we should kowtow to President-elect Clinton. Forget it.²⁴

Downer's approach reflected the attitudes of many members of both the government and Opposition towards following international examples. Still, opponents of the ban invoked international law, primarily because of its ramifications on the decision-making process. Duffy himself acknowledges that while there was *a* case to be made about international law, really it was an excuse to bring the issue out of the exclusive purview of the Defence Minister. For Duffy and others seeking to repeal the ban, it was actually a moral issue about ending discrimination against homosexuals. In explaining his invocation of international law, Duffy remarks:

²³ *Report of the Caucus Joint Working Group on Homosexual Policy in the Australian Defence Force (ADF)* (September 1992), pp. 5-6; The Hon. Terry Aulich, interview with Noah Riseman, Melbourne, 14 May 2014.

²⁴ The Hon. Alexander Downer, MP, "AM", *ABC Radio*, 24 November 1992.

Well you wouldn't have got any move from it in the Defence Department and I don't think that if you looked at all the other departments, no there was only one place it could come from and that was the Attorney-General's....We're signing up protocols, we're signing up on at that stage various, various international treaties, and we're just breaching them. And so that was really the other reason why it had to be Attorney-General's; they had to build the legal case.²⁵

Thus it was only by invoking the international human rights treaty obligations that the ban could come under the Attorney-General's portfolio. Now confronted with conflicting views from multiple ministers and their departments, Cabinet faced clear divisions.

The Caucus Joint Working Group on Homosexual Policy in the Australian Defence Force

Though the ALP split over the issue, it never became divisive per se, and that was due to the conscious efforts of all parties involved. The media was already reporting the differences of opinion between Ray and Duffy. Minister for Social Security Neal Blewett described the 25 June Cabinet meeting thus: "With Duffy's stubbornness and Ray's obduracy, hell is likely to freeze over first."²⁶ Michael Duffy asserts that Blewett's recollections are overblown, but clearly the divisions worried Prime Minister Paul Keating. Duffy recalls, "he said to me one day, 'You know, mate, have you seen the polls?' and I said, 'Well I haven't seen the private polling,' and he said, 'Well it's not good and I don't know whether we can do with a dispute between you and Robert Ray which will get out of hand.' And I said, 'Well I don't think it will.'"²⁷ Duffy's intuition proved correct, for neither Ray nor Duffy did any

²⁵ Duffy interview.

²⁶ Neal Blewett, *A Cabinet Diary: A personal record of the first Keating government* (Adelaide, 1999), p. 164.

²⁷ Duffy interview.

interviews about the ban. While they had a disagreement over the policy, throughout the next six months it never erupted into anything bigger.

To defuse the issue, Keating established a Caucus Joint Working Group on Homosexual Policy in the Australian Defence Force. Chaired by Senator Terry Aulich and with six members from across factions, the Caucus Joint Working Group was an attempt to build a consensus within the ALP to resolve the matter.²⁸ Aulich and the Caucus Joint Working Group worked through the issue methodically, first determining the key players whom they should consult: the Service Chiefs and key gay rights lobbyists. They also agreed to take submissions from anyone and then identified the issues in order of importance. At the top of that list were the questions: what does the law say in Australia, and what do international legal obligations and treaties indicate that the government ought to do?²⁹

The next big question to address was whether or not the ADF was exempt from human rights and anti-discrimination covenants. This was the fundamental area of disagreement between Duffy's and Ray's supporters. Answering this question was not so straightforward. As early as March 1992 Robert Ray argued that "The Defence Force is a separate and specialist unit to which a whole series of conditions apply that do not apply to the general community."³⁰ The Opposition endorsed this position, with Shadow Minister for Defence Science and Personnel Senator Jocelyn Newman describing the Defence Force as having "special and unique needs."³¹ Even the HREOC acknowledged that there were provisions under ILO conventions limiting their applicability to defence forces and when

²⁸ Senator Janet Powell later claimed that her threat to force a vote in Parliament on the ban was the impetus for the ALP to establish the Caucus Joint Working Group. Based on Aulich and Duffy's interviews, as well as the media coverage in 1992, Powell's assertion seems inaccurate. See Janet Powell, "Gay and Lesbian Organisation of Business and Enterprise: Speech Notes", 21 September 1992, in NLA, Ms Acc09/198.

²⁹ Aulich interview.

³⁰ Senator the Hon. Robert Ray, Senate Estimates Committee B, 27 March 1992.

³¹ Senator the Hon. Jocelyn Newman, (CPD, Senate, 23 June 1992), p. 4341.

there are inherent requirements to perform particular jobs.³² Robert Ray deemed these exceptions applicable to the ADF; at a Senate Estimates Committee hearing he commented:

There is one view, shared by the Human Rights Commissioner and an element of Attorney-General's, that my decision to retain the ban on homosexual entry into the defence forces is in breach of an international convention. On my reading of the international convention, it seems to me to allow exceptions to be made. That is the nub of the argument, I guess.³³

The HREOC and Human Rights division of the Attorney-General's Department clearly disagreed with Ray's assessment that ICCPR or ILO exceptions applied to the ADF in this case. While the Caucus Joint Working Group eventually erred on the side of the HREOC, it too acknowledged that attempting to enforce the ICCPR or ILO Conventions on the ADF could lead to a High Court challenge.³⁴

The Caucus Joint Working Group then had to examine the particular justifications contained within Defence Instruction 15-3, which were still the main arguments for retaining the ban. Those four main arguments were about national security, health, protecting minors and troop morale. The security concerns were that homosexuals may be subject to blackmail and therefore pose a security risk. Reform advocates argued that heterosexual behaviour could be just as prone to blackmail. Studies from the United States and Canada even suggested that heterosexuals were more likely to be blackmailed for behaviours such as gambling or extramarital affairs. When it came to homosexuals, it was the threat of sanction which made them prone to blackmail. An article in *Outrage* described this as a self-fulfilling

³² Human Rights and Equal Opportunity Commission, *Report of the Human Rights and Equal Opportunity Commission on Australian Defence Force Policy on Homosexuality*, pp. 6-8

³³ Senator the Hon. Robert Ray, Senate Estimates Committee B, 8 September 1992. The Opposition also adopted this argument. See Senator the Hon. Jocelyn Newman, (CPD, Senate, 23 June 1992), pp. 4341-4342.

³⁴ Aulich interview.

prophecy, and as Professor Hugh Smith of the Defence Studies Centre argued, “a policy of accepting homosexuality in the Defence Force would obviously eliminate the risk.”³⁵

The health justification for Defence Instruction 15-3 was that gay men posed health risks, alluding to HIV/AIDS. The more outrageous claim was that gay men could spread HIV through blood transfusions on the battlefield. Army medics debunked this argument because the prospects of ever performing blood transfusions from men in the field were almost nil. Gay rights advocates were also quick to condemn the conflation of homosexuality with HIV/AIDS.³⁶ A 1991 study identified only twenty-four known cases of HIV among ADF members, proving that “HIV infection is a negligible threat to ADF capability.”³⁷ Moreover, *Campaign* reported in September 1992 that heterosexual sex was responsible for the rise of HIV cases in the Navy.³⁸ The Caucus Joint Working Group concluded that allowing gays and lesbians to serve would not increase the risk of HIV transmission. If anything, it would be more in line with the Keating Government’s wider HIV/AIDS strategy of cooperation with at-risk groups.³⁹

The argument about protecting minors concerned fears of predatory sexual behaviour in the ADF. This argument more than any other played on prejudices against homosexuals, implying that they are sexually depraved. Like the arguments about health, reform advocates pointed out that there was no evidence that homosexuals were any more likely to commit sexual offences than heterosexuals.⁴⁰ The Caucus Joint Working Group dismissed this argument both as unfounded and covered anyway under the new “Defence Instructions on

³⁵ Smith, *Homosexuality and the Australian Defence Force*, pp. 17-18; Martyn Goddard, “we’re in the army now?” *Outrage*, April 1992, p. 40. See also Human Rights and Equal Opportunity Commission, *Report of the Human Rights and Equal Opportunity Commission on Australian Defence Force Policy on Homosexuality*, p. 10; “A Submission to the ALP Caucus Committee on the Australian Defence Force Policy on Homosexuality”.

³⁶ Goddard, “we’re in the army now?” p. 41.

³⁷ Lieutenant Colonel Kevin Farrell, “Human Immunodeficiency Virus (HIV) Testing in the Australian Defence Force”, *Australian Defence Force Journal* 94 (May/June 1992), p. 23. A report in 1992 indicated that this number had increased to thirty-three. See “ADF Detects 33 AIDS Cases”, *Adelaide GT*, October 1992, p. 3.

³⁸ “Hets Spread Navy HIV”, *Campaign*, September 1992, p. 7.

³⁹ *Report of the Caucus Joint Working Group*, 4. See also Dr. Guenter Plum, “Defence and AIDS”, *Sydney Star Observer*, 10 July, 1992, p. 11.

⁴⁰ “A Submission to the ALP Caucus Committee on the Australian Defence Force Policy on Homosexuality”.

Unacceptable Sexual Behaviour”. As one *Outrage* article even observed of the new Instructions, “some of them appear to have been drafted with homosexual behavior specifically in mind: how often do men and women live together ‘communally in a mess or barrack block’ in the ADF?”⁴¹ The sexuality-neutral nature of the instructions is not surprising, as these were the rules negotiated between the HREOC and ADF since 1991. Ray for his part had even acknowledged that the security, health and predatory behaviour justifications for the ban did not stand up to scrutiny:

I am not particularly concerned about the matter of health and the homosexual community in terms of service in the armed forces. I am certainly not concerned about the security matter these days, because the world has moved a long way in the last 20 years. I had to say those two things. Whilst they were in the original policy, they were not permanent in our thinking. It was the cohesiveness and effectiveness of today's Defence Force that led [Minister for Defence Science and Personnel] Gordon Bilney, and especially me, to make that decision to leave the existing policy.⁴²

The notion that permitting homosexuals to serve could hurt troop cohesion, morale and discipline was the final argument. This one had the most clout because it related directly to the important issue of troop effectiveness. Proponents of this case essentially argued that because many members of the ADF may be homophobic, allowing gays and lesbians to serve would damage the effectiveness of the ADF.⁴³ This position was very popular among former and serving members of the Defence community. Patrick Jones, Executive Officer of the Armed Forces Federation, stated: “In very close situations – if you’re in a bunker or in an armoured personnel carrier or in an aircraft – it will make members who have heterosexual

⁴¹ Adam Carr, “neither up nor down”, *Outrage*, August 1992, p. 56.

⁴² Senator the Hon. Robert Ray, (CPD, Senate, 23 June 1992), p. 4339.

⁴³ See Smith, *Homosexuality and the Australian Defence Force*, pp. 14-17.

inclinations to be very uncomfortable and to be distrustful of the homosexual colleague.”⁴⁴ Returned and Services League (RSL) national president Brigadier Alf Garland described homosexuals as “sexual deviants who have a medical problem and should not be treated any differently to drug addicts.”⁴⁵ On a *Four Corners* studio debate about the ban, several ex-servicemen, including former service chiefs, expressed similar sentiments. Air Vice Marshall David Evans (Head Royal Australian Air Force 1982-85) stated, “90% are not homosexual[,] are heterosexual[,] and a good majority of those people and certainly in the service, find the practice offensive and don’t like- would be uncomfortable being with homosexuals in intimate living conditions.”⁴⁶ Advocates for reform countered this argument by comparing it with contentions against racial integration of the American armed forces in the 1940s. A submission to the Caucus Joint Working Group from a coalition of gay rights organisations stated, “we now accept that these [racial] concerns, based as they are on prejudice rather than reason, have proven to be unfounded and there is every reason to assume that similar fears in regard to homosexual service personnel are also unfounded.”⁴⁷ The Caucus Joint Working Group ultimately determined that repealing the ban would probably lead to some morale and discipline problems. Even so, they indicated that this was not legitimate grounds to retain the ban.⁴⁸

The Caucus Joint Working Group carefully deliberated all of the above arguments and most importantly considered the views of the Service Chiefs. The Caucus Joint Working Group also received submissions from gay rights advocates, who were running a concurrent

⁴⁴ Patrick Jones, in “Armed Forces Federation unhappy with a decision to allow homosexuals to join the Australian Defence Force; reaction from the public”, *Morning Show (2CN, ABC Radio)*, 24 February 1992. See also Amanda Meade, “Lifting of gay ban disgusting: forces”, *Sydney Morning Herald*, 19 September, 1992, p. 5.

⁴⁵ Meade, “Lifting of gay ban disgusting: forces”, p. 5.

⁴⁶ Air Vice Marshall David Evans, in “Discriminating Service”, *Four Corners*, ABC, 3 August 1992.

⁴⁷ “A Submission to the ALP Caucus Committee on the Australian Defence Force Policy on Homosexuality”. Interestingly, in the United States, General Colin Powell supported the American ban on the grounds that racial differences were only skin deep while sexuality differences went far deeper.

⁴⁸ *Report of the Caucus Joint Working Group*, p. 4. See also Parliamentary Research Service, “Homosexuality and the Australian Defence Force: The Issues”, Background Paper Number 16 1992, 14 August 1992, p. 9; Human Rights and Equal Opportunity Commission, *Report of the Human Rights and Equal Opportunity Commission on Australian Defence Force Policy on Homosexuality*, pp. 11-14.

low-key public campaign urging the repeal of the ban.⁴⁹ On 18 September 1992 Aulich handed down the Report of the Caucus Joint Working Group. In a 4-2 split, the report advocated repealing the ban on gay and lesbian service as well as the implementation of training and education programs to facilitate a smooth transition.⁵⁰ Describing the split, Aulich recalls that the two dissenters simply did not think that ADF members were ready for the ban to be lifted. He also describes the entire Caucus Joint Working Group as “a fair process in place no matter where we were coming from in terms of our initial views.”⁵¹

Although the report carried significant clout for its methodical examination of the issue and the arguments, because the committee did not attain a consensus there was still scope for Cabinet members such as Ray to support the ban. Ray and Duffy had been tasked to prepare a joint Cabinet submission in light of the Caucus Joint Working Group Report. As they still could not come to an agreement, by October it was clear that they would be making separate Cabinet submissions.⁵² With the lines drawn in Cabinet between Duffy and Ray’s respective supporters, it seemed that Keating – who had stayed out of the debate the entire year – might make the final decision.⁵³

Cabinet’s Decision

⁴⁹ See “Rally pushes to end ban”, *Sydney Star Observer*, 10 July, 1992, p. 3; “National action over defence ban”, *Sydney Star Observer*, 24 July, 1992, p. 7; “National action over military ban”, *Capital Q*, 17 July, 1992, p. 3; “Gays Protest outside Hobart Recruitment Office”, *Pink Thylacines* (Tasmania), September 1992, p. 14; “Wreathes laid for Gay and Lesbian Service-Personnel”, *Pink Thylacines*, September 1992, p. 15; “Australia Wide Protest on ADF”, *Westside Observer* (Perth), August 1992, p. 1; “Defence Ban on Homosexuals Upheld”, *Queensland Pride*, July 1992, p. 1; “Protest over uni regiment”, *Capital Q*, 25 September, 1992, pp. 1; 4; “Gays meet ALP committee”, *Sydney Star Observer*, 21 August, 1992, p. 6; “GLAD ADF memo”, *Melbourne Star Observer*, 24 July, 1992, p. 3; “Revoke ban, says gay coalition”, *Melbourne Star Observer*, 7 August, 1992, p. 3; “Gay representatives meet with Senator”, *Capital Q*, 31 July, 1992, p. 4.

⁵⁰ *Report of the Caucus Joint Working Group*, p. 7. The education program was in line with recommendations from Parliamentary Research Service, “Homosexuality and the Australian Defence Force”, pp. 9-10.

⁵¹ Aulich interview.

⁵² “ADF minister delays Cabinet submission”, *Sydney Star Observer*, 2 October, 1992, p. 3; Mark Metherell, “Ray to fight lifting of gay defence ban”, *The Age*, 19 September, 1992, p. 18.

⁵³ “Keating’s Support May End ADF Ban”, *Westside Observer*, October 1992, pp 1; 5; “Defence ban showdown”, *Capital Q*, 20 November, 1992, p. 3.

Ray delayed his Cabinet submission, and in the meantime the issue still festered. Reform advocates feared that given that most proponents of the ban were in Keating's right faction, they may sway him to maintain the ban.⁵⁴ The occasional media reports between October and November suggested that Keating hoped to negotiate a compromise between Duffy and Ray: a phased-in repeal of the ban. The period of the phase-in varied in the press reports from anything between two and ten years.⁵⁵ One op-ed by Hugh Smith proposed: "the dropping of the present ban while giving the services the right to transfer or – as a last resort – dismiss homosexuals whose presence can be shown to affect cohesion and morale."⁵⁶ Summarising the dilemma Cabinet confronted, an Australian Parliamentary Research Services background paper indicated: "The cases put up by each side in this debate are not without merit: if one were wholly false, the choice would be easy."⁵⁷

At last the ban on gay and lesbian service went to Cabinet on 23 November. Though the Cabinet papers are still confidential, Neal Blewett published the particulars of the discussion in his Cabinet diary. Michael Duffy affirms that while at times Blewett dramatises some of the disagreements, fundamentally Blewett's description of the Cabinet debate is accurate.⁵⁸ Duffy stressed the international law case, and he also mentioned the imminent repeal of Canada's ban. Ray retorted that while the ban was admittedly discriminatory, the ADF lawfully discriminated on multiple grounds including age, fitness and ability. The ban was necessary to maintain *esprit de corps* and international covenants did not apply equally to defence forces. Both Duffy and Ray also argued the electoral politics of the case. Ray believed it would hurt the ALP in three seats with large defence constituencies, while Duffy

⁵⁴ "Defence forces: ministers stall", *Melbourne Star Observer*, 16 October, 1992, p. 5. Significantly, Right faction power broker Senator Graham Richardson opposed the ban. See "Richardson joins fight", *Capital Q*, 3 July, 1992, p. 1.

⁵⁵ Tina Diaz, "Keating to Back Deal on Gays in the Forces", *Sydney Morning Herald*, 6 November, 1992, p. 7; "Keating's Support May End ADF Ban", 1; 5; "hopes fading for gay soldiers", *Outrage*, October 1992, pp. 2-3;

⁵⁶ Hugh Smith, "Gays in the Forces: A Compromise", *Sydney Morning Herald*, 1 October, 1992, p. 11.

⁵⁷ Parliamentary Research Service, "Homosexuality and the Australian Defence Force", p. 10.

⁵⁸ Duffy interview.

believed that it would have little electoral impact.⁵⁹ In fact, Duffy later suggested that maintaining the ban would have had adverse consequences in socially progressive marginal electorates such as Melbourne Ports.⁶⁰

After Duffy and Ray presented their cases, Keating at last laid his position on the table – he did not support any delay tactics and agreed the ban should go. According to Blewett, his key argument in Cabinet was that if the ban were not dropped, then the issue would simmer and keep coming back to Cabinet; better to resolve the matter straight away. Former advisor to Paul Keating, Anne Summers, asserts that Keating had been opposed to the ban all along, and much of the earlier media speculation about his position was wholly inaccurate.⁶¹ The one proposal for delay came from Kim Beazley, who cited both the fear of losing defence votes and the importance of waiting to see what President-elect Clinton did. Other Cabinet members considered the US position to be irrelevant. Blewett even said that “We will simply look ridiculous if we wait for Clinton to make up his mind.”⁶² Anne Summers recalls being with Keating when Clinton won the US election: “And we were watching Clinton on television, and he said something about gays in the military. And Keating said, ‘Well, we don’t want to let him get in first.’”⁶³ Contrary to news reports suggesting that the Clinton factor influenced Cabinet, Duffy describes the decision as “one of the very few occasions where we may have seen ourselves as totally independent of what the Americans were doing.”⁶⁴ Given that Clinton eventually had to compromise by implementing the contentious “don’t ask, don’t tell” policy, the ADF would have quite a different history

⁵⁹ Blewett, *A Cabinet Diary*, pp. 267-268.

⁶⁰ Duffy interview. See also Margo Kingston, “Seats at Risk over Gay Ban, ALP Told”, *The Age*, 27 July, 1992, p. 5; “Claim That Labor Will Loose [sic] Votes if Ban Stays: Cost of Gay Ban is High”, *Pink Thylacines*, September 1992, p. 15; “Gay candidates line up for ’93”, *Melbourne Star Observer*, 30 October, 1992, p. 4; “Thwaites, Holding welcome decision”, *Melbourne Star Observer*, 30 October, 1992, p. 6.

⁶¹ Anne Summers, telephone interview with Noah Riseman, 14 July 2014.

⁶² Blewett, *A Cabinet Diary*, p. 269.

⁶³ Summers interview.

⁶⁴ Duffy interview; Michael Gordon, “Keating Backs Gays in Forces”, *The Age*, 22 November, 1992, p. 1. Aulich, too, believed that waiting for Clinton was never a reasonable proposition. He asserts, “Bill Clinton on economics was prepared to take on his own party, but on other things was not prepared to show courage....So I knew that Hamburger Bill was never going to make that decision [to repeal the US ban].” Aulich interview.

had Cabinet endorsed Beazley's proposed compromise. When the debate concluded, Cabinet decided to repeal the ban.

On 23 November 1992, Keating issued a statement announcing the end of the ban. He made no mention of international law; instead, he stated: "This decision reflects broad support in the Australian community for the removal of employment discrimination of any kind, including discrimination on grounds of sexual preference. The decision brings ADF policy into line with the tolerant attitudes of Australians generally."⁶⁵ Minister for Defence Science and Personnel, Gordon Bilney, who had consistently been more supportive of lifting the ban than Ray, did acknowledge international law in his statement. Yet he still framed international law around Australian values: "these international obligations, which are supported by all Parties in Parliament, do not represent some alien rules forced on us; rather, they are the embodiment of the principles Australians believe in, and a symbol of the enlightened country we believe Australia to be."⁶⁶

The LGBTI press not surprisingly celebrated the Cabinet decision, and *The Age*, too, hailed it as ending one of the remaining "bastions of discrimination" and bringing the ADF into "the 20th Century, a little later than most Australians."⁶⁷ The Opposition disagreed with the decision and announced that their policy would be to follow the advice of the Service Chiefs. If that meant reinstating the ban, then so be it. As Aulich indicates, though, for the sake of policy consistency the Service Chiefs indicated that they would not seek a reversal of Cabinet's decision.⁶⁸ The RSL condemned the decision, but high-profile Second World War prisoner-of-war Weary Dunlop supported the government, stating: "There have always been homosexuals in the services. Don't let us delude ourselves....It is a mistake if you start

⁶⁵ The Hon. Paul Keating, MP, "Statement by the Prime Minister, the Hon P J Keating, MP, Australian Defence Force Policy on Homosexuality", 23 November 1992.

⁶⁶ The Hon. Gordon Bilney, MP, "Statement by Minister for Defence Science and Personnel", 26 November 1992, accessed from ALGA.

⁶⁷ "The Military is Now Marching in Step", *The Age*, 25 November, 1992, p. 13.

⁶⁸ The Hon. Alexander Downer, MP, "AM", *ABC Radio*, 24 November 1992; Rosemary Mullaly, "Coalition may cause gay ruin", *Sydney Star Observer*, 27 November, 1992, pp. 1; 3; Aulich interview.

labelling people too hard.”⁶⁹ Duffy credits Dunlop’s pronouncement as silencing the RSL and other critics of the reform.⁷⁰ As Duffy and others in Cabinet foreshadowed, there was no measurable electoral backlash over the repeal of the ban. At the 1993 election the ALP retained the three seats it feared losing over the ban repeal, and it also held socially progressive seats Melbourne Ports and Sydney. By 1994, the Coalition, too, accepted that gay and lesbian military service was part of the defence landscape.⁷¹

The Keating Government’s November 1992 decision coincided with similar moves around the world. On 27 October, the Federal Court of Canada ruled that the Canadian Defence Force’s ban on homosexuals violated the nation’s Charter of Rights and Freedoms. The Canadian Defence Force Chief accepted the ruling and in December 1992 began the process of implementing it.⁷² Israel, too, reformed its policy in October. Gays and lesbians were previously allowed and even required to serve in the Israeli Defence Force under national service, but they were denied many security clearances. An announcement in October 1992 explicitly welcomed homosexuals and removed security restrictions.⁷³ The Canadian and Israeli reforms were independent of Australia, as were the American debates which would culminate in “don’t ask, don’t tell.” One nation where Australia’s reform did have an impact, though, was New Zealand. New Zealand was already investigating the possibility of lifting its ban, and in December 1992 pressure mounted from reform advocates who were emboldened by Australia’s decision. A leaked document suggested that the lifting of New Zealand’s ban was imminent;⁷⁴ the New Zealand government delayed, though, and

⁶⁹ Michael Millett, Alicia Larriera and Richard Macey, “Now Public Service Gays Seek Rights”, *Sydney Morning Herald*, 25 November, 1992, p. 1.

⁷⁰ Duffy interview.

⁷¹ The Hon. Alexander Downer, MP, interviewed on *Sunday*, ABC, 3 July 1994.

⁷² “ADF ban: Australia isolated”, *Melbourne Star Observer*, 13 November, 1992, p. 3; “US and Canada act to overturn ban”, *Sydney Star Observer*, 11 December, 1992, p. 13; “End of Military Ban in Canada”, *Pink Thylacines*, December 1992, p. 9.

⁷³ “Israel army recognises gays”, *Capital Q*, 23 October, 1992, p. 7; “Israel army recognises gays”, *Melbourne Star Observer*, 30 October, 1992, p. 7

⁷⁴ “NZ military pushes government to follow Australia’s lead on lifting gay ban”, *Capital Q*, 18 December, 1992, p. 6; “New Zealand”, *Sydney Star Observer*, 11 December, 1992, p. 13; “New Zealand”, *Sydney Star*

its ban ended in August 1993 under the new *Human Rights Act*. As Bilney observed, the rapidly evolving policies globally brought Australia “into line with most of our Western allies whom we fought alongside in the Gulf War last year.”⁷⁵ Australia was neither ahead of nor behind the international community, but rather was with the pack.

Conclusion

In 1998, the Australian government submitted its periodic report to the UNHRC, detailing its compliance with the ICCPR since 1991. The document included the repeal of the ban on homosexuals serving in the ADF as one of its achievements.⁷⁶ Thus the Australian government – and a Coalition government at that – cemented the links between the ban repeal and compliance with international law. What began as a legal justification to challenge a ministerial decision was now enshrined in history as the reason Australia overturned the ban on gay and lesbian service. As this paper has outlined, while international law certainly represented *an* argument in the debates, it was not so straightforward and the debates encompassed a wider range of issues. International law was merely the justification to broaden the decision beyond the Defence Minister’s exclusive authority. Through the entire process, though, the ALP managed to keep the issue depoliticised, civilly and methodically addressing all arguments and interest groups. Such a measured approach frustrated activists at times, but it also limited the scope for a drawn-out and divisive debate such as in the United States. Terry Aulich’s reflections on the whole process seem a fitting conclusion:

Observer, 23 December, 1992, p. 9; “NZ Forces may accept gays too”, *Westside Observer*, January 1993, p. 6; “NZ forces willing to lift gay ban”, *PanDa*, November/December 1992, p. 3.

⁷⁵ Bilney, “Statement by Minister for Defence Science and Personnel”. Bilney says that the United States, United Kingdom, Japan and Germany were the only other nations from the Gulf War alliance which imposed a ban. However, New Zealand had yet to repeal its ban and other sources suggest that Germany had no ban in policy but did exclude homosexuals in practice. See “A Submission to the ALP Caucus Committee on the Australian Defence Force Policy on Homosexuality”; Segal, Gade and Johnson, “Homosexuals in Western Armed Forces”, pp. 38-40.

⁷⁶ United Nations, International Covenant on Civil and Political Rights, “Consideration of Reports Submitted by States Parties Under Article 40 of the Covenant: Third periodic reports of States parties due in 1991, Addendum, AUSTRALIA”, 28 August 1998, pp. 237-238.

I think it's an example of a government being prepared to listen, of values coming into the political arena, the values of tolerance, and mutual obligation, and that there are ways to progress political issues that don't have to be knock 'em down, drag 'em out....I think there are ways to go about reform, and you don't cop the notion that now is not the time because you'll be here till the cows come home before you get a change, but I think there are ways to do it and persuasion is better than threat.⁷⁷

⁷⁷ Aulich interview.