

AGE OF CONSENT FOR SEXUAL ACTIVITY

Findings From The Scientific Literature To
Support Equality Of Age Of Consent For
Same-Sex and Different -Sex Sexual Behaviours

Paper Prepared For The Committee On Gay
And Lesbian Law Reform

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INTRODUCTION

1. Discussion of the age at which males should legally be allowed to engage in same-sex sexual activity is usually characterised by emotive debate with little or no reference to factual scientific data.
2. Those who maintain that equality of age of consent for same-sex and different-sex sexual behaviours is desirable usually base their arguments on the need for equal human rights and point to the consequences that arise when such rights are lacking for homosexual and bisexual youth (eg, adolescent suicide).
3. Those who are against equality usually present an argument that homosexuality is undesirable and should be deterred where possible, especially among young people who, it is argued, are easily led and may be 'converted' to homosexual sexual orientation. This group bases its case on a number of assumptions:
 - a) Homosexual sexual orientation is not acceptable and is to be deterred where possible.
 - b) Homosexual sexual orientation can be developed by simply observing and copying the behaviour of others (this is called 'fax' model).
 - c) Homosexual behaviour and a homosexual lifestyle are so attractive to a young male that he will be seduced by this and find himself 'converted' to homosexuality.
 - d) Homosexual sexual orientation is not fully developed in adolescence. Hence, deterring a young adolescent male from engaging in same-sex sexual activity can stop the development of such a sexual orientation.
 - e) All boys who engage in same-sex sexual activity experience sexual romantic attraction to other males. Hence, all males who engage in same-sex sexual activity are gay or potentially gay.
 - f) Adolescent boys who are sexually and romantically attracted to other males do not have the same maturity as boys with attraction to females and so cannot make appropriate decisions about their sexual attractions.

Pop psychology, pseudo-scientific literature and common mythology are often used in emotive fashion to backup these claims.
4. An examination of the scientific literature in the relevant areas of maturation, adolescent development, sexual development, sexual orientation development and homosexual identity formation shows all the assumptions of Point 3 to be false.
5. As a result, the arguments arising from such assumptions against equality of age of consent are invalid.

II DEVELOPMENT OF SEXUAL ORIENTATION

6. Sex play in childhood is common. In a large survey of 4,000 14-year olds (1969), more than half of young boys and one third of young girls had masturbated and engaged in some form of erotic play with same-sex peers. One third of each sex had engaged in erotic play with another -sex playmate.
7. Sexuality assumes greater importance once children experience puberty and become sexually mature. Adolescents have become increasingly liberal in their thinking about sex, especially during the 1960s and 1970s. This has led to their engagement in more intimate forms of sexual activity at earlier ages than seen in past eras. Heterosexual and homosexual sexual involvement is now part of many adolescents' sexual experience.
8. A sizeable number of adolescents engage in same-sex sexual activity. (See Tables I and II for a summary of these figures).

TABLE I

FINDINGS FROM KINSEY ET AL, 1953

- 50% of males had no overt same-sex sexual experience (overt or covert) nor emotional reactions to other males (1 in 2)
- 37% of males had engaged in some overt same-sex sexual experiences since puberty (2 in 5)
- 25% had more than an incidental same-sex sexual experience or emotional reactions for at least 3 years between the ages of 16 and 55 years (1 in 4)
- 10% of males were more or less exclusively homosexual for at least 3 years between the ages of 16 and 55 years (1 in 10)
- 4% of white males were exclusively homosexual throughout their lives from puberty.
- 30% of collegemen had at least one homosexual experience since puberty:
 - Of these,
 - 16% had the experience before the age of 15 years *and not after*
 - 9% had most experienced during adolescence *but not after 20*
 - 5-6% had either exclusive homosexual experiences or bisexual experiences including a substantial homosexual history throughout their lives

TABLE II

FINDINGS FROM LAUMANN ET AL., 1994

- 9.1% of men engaged in some specific same-sex sexual activity since puberty
- 4.9% of men engaged in some specific same-sex sexual activity since 18 years
- IE, of the 9.1% who engaged in some same-sex sexual activity since puberty
 - 42% had experiences before 18 years *but not after*
- Of those who engaged in same-sex sexuality with a partner:
 - 90.7% had been with both men and women partners since puberty
 - 9.3% had *only* been with male partners

9. Table I outlines the famous Kinsey et al. results while Table II presents the figures from a large, well-documented survey of sexual practices (Laumann et al., 1994). The notable findings are:

a) **Many males engage in same-sex sexual activity during adolescence** (37% in the Kinsey study and 9.1% in the Laumann study). The difference in the figures between the two studies is thought to be due in part to societal changes (e.g., the greater visibility of homosexuality in modern society and the recent notion that homosexual behaviour equates with *being gay*) which are likely to inhibit the amount of adolescent sexual experimentation in current times.

b) **Many males who engage in same-sex sexual activity in adolescence ceased doing so by adulthood** and the vast majority then engaged in other (i.e., heterosexual) sexual activity.

10. This data is significant because it shows that:

a) **Same-sex sexual activity is equally a normal part of adolescence for those who later adopt gay, bisexual or heterosexual identity**.

b) **Many adolescents who could be criminally charged under present West Australian laws for engaging in same-sex sexual activity are not expressing a homosexual or bisexual sexual orientation**. This has two implications:

(ii) Participation in same-sex sexual activity is clearly shown to have no effect on the development of sexual orientation since those with a heterosexual orientation move to sexual activity with females (usually as social opportunities become available). There is considerable anthropological evidence across many different societies that support the finding that males readily engage in sexual

activity with someone for whom they have no sexual/romantic attractions. Sex in prisons is another example of the separation between behaviour and attraction.

(ii) In addition to homosexual and bisexual males, many heterosexual males are at risk of acquiring a criminal record on the basis of their adolescent same-sex sexual activity.

11. There is strong evidence that for most gay men, homosexual sexual/romantic attractions are established by puberty. Drawing upon research from 19 studies of gay men (1971 -1994) and 9 studies of bisexual men (1977 -1995), it has been found that **the average age at which awareness of attractions for another male first occurred was 12.5 years for gay men and 14.8 years for bisexual men** (Table III). However, two recent studies of gay and bisexual youths suggest **these figures are now much lower**.
12. For those adolescent boys who are attracted to other males, **first sexual experience with another male occurs on average during early to mid adolescence (14.8 years for gay men and 16.4 years for bisexual men)**. These figures tend to be *lower* than those for other -sex sexual activity (See Tables IV, V & VI).
13. On average, there is a seven year gap between awareness of same -sex attractions and acceptance of oneself as gay (the acceptance of self as bisexual takes even longer). The process of developing an identity as gay or bisexual (Cass, 1979, 1984, 1996) requires the adolescent to work through any negativity he feels or receives about his attractions for other males and to come to a positive sense of self. Successful completion of this homosexual/bisexual identity formation process is necessary if the adolescent is to become a mature and confident adult. The current high age of consent in W.A. places considerable stress on the development of such maturity. W.A. adolescents are, on the one hand, trying to develop a positive self -image in order to make a successful transition to adulthood, while on the other being confronted with society's negative stance on homosexuality.
14. There is no evidence for the myth that adolescent boys develop homosexual sexual/romantic attractions by being seduced by an older man. The majority of adolescents engage in same -sex sexual activity with those of similar age and have not had experiences with an older male.
15. The development of sexual orientation involves a complex mixture of biological, psychological and environmental influences. Therefore, it is impossible to identify a single factor as leading to the development of same -sex sexual/romantic attractions.
16. Recent research into the biological aspects of homosexuality suggests that a genetic predisposition probably exists in some males, especially those who have strong and persistent attractions for other males. Although the process is not yet understood, it is likely that hereditary factors interact with psychological and environmental factors during childhood, adolescence and adulthood to shape and maintain attractions. There is greater evidence for hereditary playing a significant part in the development of homosexual sexual orientation in males than in females.

	GAYMEN	BISEXUALMEN
FIRST AWARENESS OF SEXUAL ROMANTIC ATTRACTION FOR ANOTHER MALE	<p>AVERAGE AGE (Mean): 12.5 yrs (Range of ages: 10.6 - 14.9 yrs)</p> <p>73% by 15 yrs; 87% by 18 yrs (Cass, 1986, Australian - only sample)</p> <p>97% by 14 - 17 yrs 92% by 17 yrs</p> <p>Two 1993 studies, combining gay and bisexual youth: AVERAGE AGE: 10 yrs</p>	<p>AVERAGE AGE: 14.8 yrs (Range of ages: 12.6 - 17.1 yrs)</p>
SEXUAL EXPERIENCES WITH ANOTHER MALE	<p>AVERAGE AGE: 14.8 yrs (Range of ages: 12.6 - 17.1 yrs)</p> <p>Two 1993 studies, combining gay and bisexual youth:</p>	<p>AVERAGE AGE: 16.4 yrs (Range of ages: 13.9 - 18.6 yrs)</p> <p>AVERAGE AGE: 15 yrs; 13 yrs</p>
FIRST RELATIONSHIP WITH ANOTHER MALE	<p>AVERAGE AGE: 22.5 yrs (to 1983 only) (Range of ages: 21 - 23.9 yrs)</p>	<p>AVERAGE AGE: 21.3 yrs (Range of ages: 19.1 - 23.5 [2 studies only])</p>
AGE AT WHICH LABEL SELF	<p><i>As Gay</i> :</p> <p>AVERAGE AGE: 19.6 yrs (Range of ages: 16.8 - 21.1)</p> <p>Difference of 7 yrs on average from first awareness to labelling.</p> <p>Two 1993 studies, combining gay and bisexual youth:</p>	<p><i>As Bisexual</i> :</p> <p>AVERAGE AGE: 26 yrs (Range of ages: 22.6 - 29 yrs)</p> <p><i>As Gay</i> :</p> <p>AVERAGE AGE: 22 yrs (Range of ages: 21.6 - 22.3 [2 studies only])</p> <p>AVERAGE AGE: 15 yrs</p>

TABLE III
AGE-BASED DATA ON THE DEVELOPMENT OF GAY AND BISEXUAL SEXUAL ORIENTATION

AGEOFFIRST INTERCOURSE – MEN	1977 -81	1972 -76	1967 -71
<15yrs	10.5%	9.7%	12.9%
By15yrs	19.5%	21.8%	23.8%
By16yrs	Unavailable	39.7%	42.3%
By18yrs	Unavailable	75.1%	71.9%

TABLEIV

CUMULATIVEPERCENTAGESOFADOLESCENTBOYSWHOHAD SEXWITHFEMALESBYYEAROFBI RTH
(FromMaticka -Tyndaleetal,2000)

AGEOFFIRST INTERCOURSE - WOMEN	1977 -81	1972 -76	1967 -71
<15yrs	13.4%	9.1%	9.3%
By15yrs	25.6%	21.9%	19.5%
By16yrs	Unavailable	38.7%	35.7%
By18yrs	Unavailable	66.7%	69.4%

TABLEV

CUMULATIVEPERCENTAGESOFADOLESCENTGIRLSWHOHAD SEXWITHMALESBYYEAROFBIRTH
(FromMaticka -Tyndaleetal,2000)

%EngagingIn SexualIntercourse	1988 –1990		1974 –1979	
	M	F	M	F
13 -18years	60%	50%	75%	75%
18 -20years	80%	75%	60%	40%

TABLEVI

PERCENTAGEOFADOLESCENTS ENGAGINGIN HETEROSEXUALSEXUALINTERCOURSE
(FromBaieretal,1992;Reinischetal1992;CentresforDiseaseControl,1992)

III PSYCHOLOGICAL MATURITY

17. There is no evidence of differences in psychological maturity between heterosexual, homosexual or bisexual youth.
18. It is incorrect to say that females are more mature than males. Maturity is measured on a variety of factors, including emotional, cognitive, social and physical development. In some areas adolescent males mature faster than females and in other areas it is girls who mature faster. However, among adolescent males and among adolescent females, there are also considerable differences. Hence, *some* males may be more mature than *some* females in certain aspects of maturity and vice versa. Male and female youth are far more psychologically similar than they are different and most of the touted differences are modest (Shaffer, 1996).
19. Sexual maturity begins in boys about 11-12 years, and puberty is reached by 14-15 years in most boys. In girls, sexual maturation begins about 11 years and puberty is reached by 12-13 years in most girls. Puberty brings with it the development of the sexual parts of the body and a greater awareness of sexual responses. Sexual responses may be expressed overtly (eg, sexual activity with a partner, masturbation, looking at someone attractive) or covertly (eg, erotic dreams, fantasies, feelings of love). These responses often provide the adolescent with information about the kind of persons to whom sexual romantic attractions are directed.
20. Adolescence is the time in which identities develop. Adolescents must separate from their parents psychologically and develop an identity of their own. Developing a positive, stable identity is the key to becoming confident, high in self-esteem and mature.
21. Adolescents who belong to minority groups often lag behind majority-group peers in developing a positive identity because they must resolve inner conflicts between a majority culture that is seen as acceptable and their own minority culture which is treated less favourably. The literature shows the following factors to be important in helping minority adolescents to develop positive identity and self-esteem:
 - a) Teaching pride in themselves as a member of a minority group
 - b) Preparing them with skills for constructively dealing with prejudice
 - c) Providing acceptance in the community around them.
22. Perhaps surprisingly, some studies show that gay, lesbian and bisexual youth are no less mature than their heterosexual counterparts. It appears that obtaining support from peers and, where possible, family and community groups, can offset the negativity they encounter. However, other studies indicate a large percentage of them have considered suicide as a result of rejection and prejudice received. Like heterosexual youth, they do not have the skill to deal with these situations, but are likely to be subject to considerably more rejection and prejudice in which family do not provide supportive backup.

IV CONCLUSIONS

23. Adolescents with sexual romantic attractions for the same sex are recurrently disadvantaged by W.A. laws which outlaw their natural attractions at a time when they, like heterosexual youths, are exploring their sexuality. This exploration is a natural part of adolescence and will occur *despite* the law.
24. Adolescent sexual exploration is not done in a state of *sexualis nullis*. By mid-teens, many gay and bisexual youth find their same-sex sexual romantic attractions are strong enough to be noticed and to be expressed overtly as well as covertly. Similarly, heterosexual youths may also experience different-sex attractions, even where engaging in sex with other males.
25. Given the degree to which sexual orientation is established by mid-teens for most gay and bisexual males, it cannot be argued that raising the age of consent for same-sex sexual activity will prevent the development of homosexual/bisexual sexual orientation.
26. Overall, based upon the scientific literature, there is no evidence to support an argument for heterosexual youth having a lower age of consent than gay and bisexual youth. Nor is there any scientific support for the notion that the age of consent should be different for male and female adolescents.

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