

Straight bar?



In May, a gay bar in Melbourne won the right to exclude women and heterosexual men. **Andrew Norton** and **Alan Soble** debate the merits of the judgement.

Dear Andrew,

Australia's Equal Opportunity Act prohibits discrimination on the basis of sex, yet exceptions are permitted for the benefit of vulnerable groups – like the gay males who frequent The Peel bar. The tribunal ruled that The Peel may rightfully keep straights and lesbians from entering the bar, to protect its gay male patrons. "To protect" here means to prevent "insults and violence" aimed at gay male patrons; to block the "undermin[ing] and destroy[ing]" of the bar's non-threatening, convivial atmosphere for gay males; and to guarantee that the bar's patrons are not "devalue[d] and dehumanise[d]" by being treated as "entertainment". It was argued that to accomplish these goals, The Peel should have power to exclude heterosexuals and lesbians.

That lesbians are excludable is absurd. No person who knows the GBLT [Gay, Bisexual,

Lesbian and Transgender] community and its inclusive politics thinks that gay males require protection from insults or violence of lesbians, or that lesbians in gay bars make gays uncomfortable, or that lesbians see gay males as an entertaining spectacle. Further, by targeting heterosexual and lesbian women, the exclusionary policy allows prohibiting *all* women from entering The Peel. How ironic that the EOA, designed to protect women, is now used against women. Finally, The Peel permits men in drag to enter the bar (see the gallery on The Peel's website). These people are anatomically male. Yet they are socially women, and often conceive themselves as women. They should, then, be excluded. The Peel applies its policy whimsically.

Some males in drag are street-passable as females. So, how will The Peel distinguish, when a person attempts to enter the bar, whether the

person is admissible? I suppose the trannies can discretely prove their “real” maleness to the door police; penisless lesbian and heterosexual women can be effectively excluded. But how to differ between straight and gay males? Will the door police rely on stereotypes of what gay males look like to make that decision? (Another irony.) Will they look for yellow Stars of David that adorn the faces or jeans of straight or gay males? Cannot these be counterfeited? An image on The Peel’s website, titled “All About the Balance”, shows eleven caricatured faces marked with a tick or a cross. Maybe this was meant as a joke. But the identification issue is not frivolous. The workability of the policy depends on it.

To argue that the exclusionary policy protects The Peel’s gay males from insults and violence from straight males is disingenuous. Imagine the fate of a handful of straight dudes who poke fun at the hundred faggots in The Peel. Gay males are not wimps. They can, *in the bar*, take care of themselves. (The Peel’s home page pictures five muscled, tough, macho gay males.) And Gay Pride has already defused brainless anti-gay insults. If the government wants to protect the GBLT community, it could diligently police the streets *outside* The Peel, to ward off gay-bashers. Further, it would seem to advance the goal of straight-gay peaceful relations to invite straights into the bar, to see for themselves that gays are human, fun-loving, regular guys (with a small difference). Inviting them in avoids insulting *them*, by depicting them as idiots who could never genuinely seek edification and perhaps conversion.

The Peel’s caption to the faces-image says that it “continues to welcome everyone – Gay; Straight; or Lesbian,” but reserves the right to toss or keep out those that might threaten its patrons. That’s fair, ejecting troublemakers, but The Peel did not require an exemption to the FOA for that power. All bars may rightfully bounce a boor.

Alan Soble

Dear Alan,

You seem remarkably confident that you can, from Philadelphia if your Wikipedia entry is right, judge whether the gay men who drink and dance at The Peel Hotel 10,000 miles away in Melbourne, Australia, need defending from the insults and violence of lesbians. “No person who knows the GBLT community and its

inclusive politics” could think that gay men need such protection, you say.

But who is better placed to make this call, you and other people claiming to know the “GBLT community”, or Tom McFeely, The Peel’s owner? He was sufficiently worried by the behaviour in his bar of lesbians, along with straight patrons, that he went to the expense and trouble of applying for an exemption to equal opportunity legislation, which otherwise prohibits discrimination on the basis of sex or sexual orientation.

Though the judgment handed down by the Victorian Civil and Administrative Tribunal doesn’t give details of the insulting and violent behaviour, the fact that a police sergeant was called to give evidence suggests that the problems went beyond those usually settled by bouncers. If I recall correctly media reports at the time, a lesbian wielding a billiard cue had been involved in one incident. While a Google search couldn’t verify that story, it did turn up one about an all-in brawl outside The Glasshouse, a nearby lesbian venue. It seems that at least some of the local lesbians aren’t much into “inclusiveness”, not even with each other.

As well as thinking The Peel doesn’t know how its own customers behave, you think it won’t be able to work out how to enforce its door policy. In particular, how will they tell the difference between straight and gay males? You see a negative irony in the possibility that the “door police” may have to rely on stereotypes of gay men (other than the one that they have “inclusive politics”, of course) to decide whom to let in. A more positive irony might be that perhaps the world has changed for the better if straight guys are prepared to pretend to be gay to get into The Peel. We’ve had straight-acting gays, now perhaps we will have gay-acting straights.

In practice, the door policy is unlikely to be hard to police. The Peel’s website indicates that they hold men-only nights, with no reference to whether these men are gay or straight. Except in rare cases, working out whether someone is a man or not is easy. For a couple of nights a week, according to its website, upstairs at The Peel is gay men only. But it is pretty clear why, and I doubt many gay-acting straights will be *that* gay-acting. The door policy will police itself.

I think The Peel has at least a plausible argument that it has both a problem with its patrons and a solution in its door policy. But even if The Peel’s door policy is daft, what would it matter?

There are plenty of other bars for women and straights; and indeed The Peel itself only operates a door policy on some nights.

What matters most to you, I think, are the symbolic rather than the practical issues raised by The Peel's exemption from equal opportunity law. You regret that a law designed to "protect women is now used against women", and by mentioning the yellow star of David as an identifying mark offer an unsubtle allusion to intolerance at its worst. I would like to see you expand on these ideas, because I see the principles involved here quite differently.

Yours,

Andrew Norton



Andrew,

You think a Philadelphia resident, 16,553km away, cannot ascertain whether Melbourne lesbians pose a threat to gays at The Peel. Sure, the only GLBT communities I know are in Philadelphia, New Orleans, San Francisco, Buffalo, Chicago, and Minneapolis. (Unlike sedentary Kant, I moved around plenty.) My mistake was assuming that the sophisticated Melbourne GBLT community is similar to its American counterparts. OK, Andrew, have it your way: Melbourne GBLTs are weird: unique in that lesbians *there* significantly threaten gay men. Yet Melbourne sponsors a Jazz Festival (like New Orleans), and Melbournians also speak a type of English (as do Buffalonians).

Mentioning my residence is an *ad hominem* red herring. The issue is whether it's *true* that lesbians and het women and men pose a sufficient threat to The Peel's gays to warrant a judicial exception to the Equal Opportunity Act. On this matter you grasp at straws. You suggest that The Peel's owner, Mr. McFeely, can expertly and honestly demonstrate that lesbians and hets threaten his

clientele. You defend McFeely's epistemic superiority by arguing that he "went to the expense and trouble" to seek a judicial exception exactly to protect his patrons. I would not (as you do) speculate about McFeely's motives. Maybe he did it for publicity, to go down in legal history, because he hates het women, or his lover demanded that he do so – else no nookie. I haven't a clue, and neither have you. Further, an interested party (McFeely) in a legal case cannot be trusted to provide unbiased reports; we'd expect them to be exaggerated. That's why other sources are consulted to discover whether anyone (lesbians, het women, gay clientele of The Peel itself) is dangerous to The Peel's customers. You let us

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down. The tribunal "doesn't give details". *One* police officer was called to testify. *One* lesbian armed with a cue stick (regulation length or a shorty? chalked or clean?) did *something*. (You admit you could not confirm this incident. Why bother mentioning it?) Weak "proof", at least too weak to justify a weighty judicial decision and precedent. You vaguely observe that a brawl occurred outside a lesbian bar, and chide lesbians for fighting among themselves. How is this relevant? Let's also warn McFeely to be circumspect about the three gays in his tavern who are vying for the favours of a cute blond in tight jeans (upstairs or downstairs) and have already had several pints. Failure to defuse that situation could incite a brawl at The Peel.

You concede that The Peel's door policy may be "daft", and ask "what would it matter?" It does matter. It implies that the tribunal made an exception to the EOA to achieve a "daft" result. Wonderful. You remind us that people excluded by The Peel's door policy can go elsewhere to drink, flirt, and feel each other up. Exactly: let the free market do its good work. But, I think,

free market considerations tell against judicial exceptions to the FOA, if not the FOA itself.

You suspect that "symbolism" matters to me. Yes and no. "No", because my objection to the tribunal's decision was that the heavy artillery of a judicial exception was unnecessary to solve The Peel's purported problem. I beseech McFeely to hire beefier bouncers, even beefy lesbian bouncers packing cue sticks (FO). "Yes", because The Peel's policy nastily insults everyone but gay men. Why not reduce the symbolic annoyances of laws and policies? After all, GBLTs who want anti-same-sex marriage laws repealed argue symbolically: these laws insultingly announce that GBLTs are second-class citizens.

Alan

Dear Alan,

A seemingly trivial matter like a Melbourne pub's door policy attracted international interest partly, I think, because it highlights a tension in anti-discrimination law and the thinking behind it. On the one hand, the law is designed to protect members of groups that have, historically at least, suffered less favourable treatment for reasons we now regard as arbitrary or unfair. Usually, the law applies to institutional settings –to workplaces, shops, universities, and so on.

Yet the same groups that anti-discrimination laws are designed to protect also often have institutions for their members to meet and participate

in shared activities. Places where they don't have to ask (or answer) questions like "What is your religion?", "What are your political beliefs?" or "Are you gay?". Places where nobody will think it weird to start praying in the direction of Mecca, begin praising George W Bush as the greatest US President, or to kiss someone of your own sex.

For people who feel discriminated against, having places where they are genuinely and completely accepted can be very important, just as tolerance, whether enforced by law or not, is important in other contexts. Yet if such places use formal rules to create a sympathetic atmosphere they can breach anti-discrimination law, as The Peel would have if it simply started excluding women or straight men.

So there is a tension in anti-discrimination thinking. The underlying intention of protecting groups can require keeping people out as well as letting them in. For this reason, anti-discrimination law in Australian jurisdictions has always contained exemptions. Some are written directly into the legislation, with tribunals given the discretion to create others. The Peel's case fell into the latter category.

You don't think The Peel's problems could be sufficiently serious to warrant an exemption, and dismiss its owner as a credible witness on the subject. Yet, at least informally, gay bars rely on exclusion, since bars drawing their clientele from

the general population will not be gay bars. Even the relatively gay area in which The Peel is located, according to the recently released Australian census, has an adult population that is nearly half female, whose husbands further reduce the potentially gay male local population. Without encouraging gay men and discouraging other people, The Peel will cease to be a gay bar.



It was perhaps easier in the past for gay bars to emerge without formal rules or door policies; knowledge of them attracted gay people and deterred straights worried that people would think they that were homosexual. A decline in prejudice against gays makes these informal methods of exclusion less effective. Whether The Peel had reached the tipping point at which it was ceasing to be a gay bar is something on which people disagree. But if we accept that people should be allowed to run gay bars, we need to also allow them to impose policies that exclude non-gay customers.

I don't see that this, as you put it, "nastily insults everyone but gay men". It just recognises that gay men have some needs that can't be met by women or straight men.

*Yours,
Andrew Norton*

Andrew,

You didn't reply to the points I made in my installment. Instead, you started a new thread of argument.

Let's consider your assertion, "A decline in prejudice against gays makes ... informal methods of exclusion less effective" (and must be supplemented by formal, legally-endorsed exclusionary policies). Huh? Prejudice against

gays is the source of the mistreatment of gay men by straights that the judicial exemption to the Equal Opportunity Act and its exclusionary policy were designed to prevent. You agreed with the tribunal and The Peel that its gay male clientele deserved the protection afforded by an exclusionary policy: protection from malicious laughter, stares, verbal abuse, and physical vio-

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lence. Now you propose that this prejudice has declined and with it, presumably, its bad effects. So the rationale for the exclusionary policy is gone. You now argue, about-face, that it is not prejudice and its fruit that justify the exclusionary policy; instead, the *decline* of prejudice and its fruit – women and straight men feel comfortable drinking next to gay men – justify the exclusionary policy. This is beyond irony.

You argue that gay men don't feel comfortable sharing a bar with women and straight men, and this prejudice should be enshrined in the law. "Gay men have some needs that can't be met by women or straight men," you write. The particular need that gay men have, on your view, a need that of course cannot be satisfied by women and straight men, is the need to exclude women and straight men. If you grant that gay men no longer have to fear derisive laughter, whence their need to drink in a space devoid of the rest of humanity? No matter. Arguing *from* the need of gay men to drink in sterile surroundings *to* the justifiability of an exemption to the Equal Opportunity Act forgets that needs, prejudicial or not, do not translate automatically into legal satisfaction.

You also assert that "If we accept that people should be allowed to run gay bars, we need to also allow them to impose policies that exclude

non-gay customers.” I thought the question we were disputing was exactly this, whether exclusionary policies are justifiable. That The Peel’s owner has the right to try to maintain a bar that appeals only to gay men does not entail that he has a right, or should have legal permission, to impose exclusionary policies in pursuing his goal. The only reason you give now is that without exclusionary policies, gay bars have no guarantee that they will persist.

This won’t work. First, it proves too much. It declares that exclusionary policies are permissible not only for The Peel but for any bar that wishes to remain “pure gay”. The tribunal will be busy issuing exemptions, unless the legislature grants *carte blanche* to bar owners. Second, the threat to The Peel’s gay existence, according to you, is demographic. But since when are legal remedies for demographic pressures on business justifiable? How does The Peel’s owner have a right to legal help in keeping his bar sexual-orientationally pure? A black entrepreneur who opens an African cuisine restaurant in a lily-white Republican neighborhood cannot appeal to the government to bail him out. It would be nice were that restaurant to succeed, but it has no right to succeed. Gay bars, too.

Andrew, you mention that gays didn’t like worrying about the question “Are you gay?” and its implied exclusion. Now they have The Peel, where they unabashedly exclude people with that very question. Here comes the new small-minded boss, same as the old small-minded boss.

Alan

Dear Alan

What you think is a contradiction – that gay men need both an “exclusionary policy” to protect them from abuse and violence *and* reduced discrimination makes it harder to informally maintain the gayness of gay bars – actually reflects the fact that prejudice remains against homosexuals from some people and in some places, despite increasing acceptance from many others. Gay bashings and gay bars both exist, but require very different legal responses.

The opinion trends can be clearly seen in Australian survey research. As recently as 1989, the proposition that sex between two men is “absolutely wrong” received two-thirds agreement in a national survey. By 2005, just over a quarter of women and a little more than 40% of men agreed that “sex between two adult men”

is “always wrong”. Over the same time period, support for gay marriage more than doubled; the latest opinion poll suggests that it may have majority support.

So while attitudes have moved a lot, many people still view homosexuality as wrong. On average, straight men and older people are less accepting than women and younger people. Unsurprisingly, these varying views are reflected in the diversity of gay men’s experience. In the Private Lives survey, a large study of the GBLT community, as you would call them, one in five gay men reported that they modified their daily activities out of fear of prejudice or discrimination. Just under half sometimes did so. The need to change behaviour was more common in public than at work, and more necessary with family members than at home. Despite these on-going troubles for many, a third of gay men felt no need to modify their behaviour out of fear of discrimination.

Given this wide spectrum of attitudes and perceptions, it is consistent to argue that some gay men still need protection from discrimination and would benefit from the power to create their own space. For sure, not all gay men necessarily need or want such space. But this is a reason for granting Tom McVeely, The Peel’s owner, the “epistemic superiority” you thought he should be denied. He is best placed to know whether or not his regular customers prefer a restrictive door policy, and he will soon see negative feedback in his reduced profits if he makes the wrong judgment.

Rather than every gay bar owner having to apply for an exemption, perhaps the solution is, as you suggest, that the legislature grants them *carte blanche* exemptions. After all, heterosexuals don’t need statutes or tribunals to defend their interests, since they have complete social acceptance and enormous market power, to which even The Peel responds most nights of the week.

Such exemptions would cause no harm a policymaker should worry about. Even in the worst-case scenario, from your perspective, women and straight men will suffer a tiny drop in the number of bars from which they can choose. But on the worst-case scenario from my pro-diversity perspective, gay men could lose most of their bars, because gay communities are too small to dominate local bar markets except in a handful of small areas.

Andrew

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