****

# Out Law to Just Law

SA’s Path to Gay Law Reform,

By Simon Royal, May 2025

With a roar of Dykes on Bikes, plus a shower of sequins and feathers, the first Mardi Gras march kickstarted gay rights in Australia. In this rendition of the past, the streets of Sydney in 1978 are the key moment for change. A contrary view insists homosexual law reform - the foundation of gay rights - was single-handedly achieved in 1975 by charismatic South Australian Premier, Don Dunstan. These commonly held understandings of history share at least one truth - both are more myth than fact. Together, they disguise the darker, more complicated story of how this country became a fairer place.

Less than a life time ago, the law in every Australian state and territory criminalised homosexual acts between men. Being caught didn’t necessarily guarantee gay men a prison sentence, but the inevitable public shaming that came with an arrest assured them of a life sentence. The law of the land was destroying innocent people by punishing them for a victimless crime - punishing them for who they were. No one event caused those laws to be reformed. But no event was more important to the cause of reform than the killing of Dr George Duncan.

### 11.00pm, May 10th, 1972. A “high-spirited frolic” goes wrong.

George Duncan died without making a sound. Around 11pm, two men grabbed the slightly built law lecturer by each arm, dragging him towards the River Torrens. Their grip was so unforgiving a post mortem found bruise marks on Duncan’s body. Standing nearby, Roger James first thought it was simply a group of people out walking. He’d just been distracted by another man who’d come up silently behind him. The man asked, ‘do you give it, or take it’?

Mr James didn’t realise he was about to witness George Duncan’s last moments alive.

“The next thing they just threw this person into the river. Before I knew it, the man behind me started pushing me …I collided with the others, I grabbed someone’s tie, I know that, then I went in…my foot caught in the pylons on the riverbank and I felt it crack…I felt it break.”

Roger James surfaced, catching sight of Duncan in the middle of the river.

“All I saw was just his hands outstretched, grasping, opening and closing, and just the top of his head. No struggle, nothing. Then he just slipped away and the water rippled back again. It was surreal, it was like it never happened…it was if the river swallowed him.”

“He didn’t say a word, nothing. That’s why I thought it was just people walking on the path.”

The calm was temporary. Next morning Duncan’s body was pulled from the water. The arms were still outstretched, though now in rigour mortis. The place George Duncan died was next to the University of Adelaide, where he taught law. It was also a well known gay beat, familiar to both homosexual men and members of the South Australian police vice squad. Though never proven in court, an investigation by Scotland Yard squarely laid the blame for Duncan’s death on 3 vice squad officers. The English detectives’ report also revealed attitudes common to much of their profession, as well as the wider community.

“…there was no real intention of causing anyone’s death - *this was merely a high-spirited frolic which went wrong*, but unless this matter is resolved, justice will not be seen to be done.”

If only Dr Duncan had floated. The whole messy affair might have been avoided.

There were two distinct ‘offenders’ behind George Duncan’s death - the people who threw him into the river, and the law which enabled a belief they’d get away with it. Prior to the lecturer’s death, there’d been some efforts towards law reform. In the mid-1960s, then Attorney General, Don Dunstan, had gone so far as to prepare a reform bill. He soon shelved it, citing a lack of public support.

Advocates believed progress would be slow. In Sydney gay rights activist, Lex Watson, recognised the national significance of Duncan’s death. He swiftly wrote to a friend in Adelaide.

“You could force Dunstan’s hand and guarantee HLR [homosexual law reform] very soon and get even more than that - low age limits, work discrimination laws, the lot. I tell you, none of us are likely to have an issue quite like this offered us for many years. Today SA has it sitting there. What will it do?”

[6] Many were asking just that question - religious leaders, psychologists, journalists, editors, gay rights activists, reformers.

Parliament itself provided the answer.

### 1972. The Murray Hill Bill.

“For me that was the beginning of thinking this is not the society that we want, where people get killed because they are different” Diana Hill

Things moved quickly after Duncan’s death, and in the most unlikely of places. The first legislative steps towards gay law reform came from South Australia’s ultra conservative Upper House. In 1972, only property owners were eligible to stand for, and vote in, election to the Legislative Council. As a direct result, the LCP (Liberal Country party) enjoyed a 16 to 4 majority over Labor. Long time member, Ren DeGaris, argued it served a greater good.

“ ..if the franchise here is the same as for the House of Assembly, if the method of voting is the same as for the House of Assembly, if voting is compulsory and if enrolment is compulsory, [what] we produce …would not be in the best interests of Parliamentary democracy in this State.

Murray Hill won his Legislative Council seat in the 1965 election, the same one which ended Tom Playford’s 26 year run as Premier. Superficially, Hill’s background resembled many of his Upper House colleagues: a WW2 veteran who’d built a successful real estate business, served on Adelaide City Council, and was active in his local Anglican church. Of course this shaped his view of the world. His differences, though, shaped it more.

“He came from quite humble circumstances and I think pretty quickly in politics he faced resistance from more conservative side of the party to any form of reform ..land reform and voting reform. I guess from his background he believed that there needed to be change… that it was time to move on.”

There’s no evidence Murray Hill considered homosexual law reform before May 10th. Within 3 months of Duncan’s death he had a bill ready to go. No-one knew at the time but it was the first of what turned out to be 2 separate bills, with 3 distinct attempts, to change the law. For reform minded parliamentarians, such as Hill, the Wolfenden report was arguably the most influential document they consulted. [10]

In 1954, Winston Churchill’s government set up a committee examining “the homosexual question”. The U.K. had seen a period of extraordinary police persecution and entrapment of gay men. By the end of 1953, more than 1000 men were imprisoned for homosexual acts.

A number of famous people had been publicly humiliated, including actor Sir John Gielgud, and Enigma code breaking scientist, Alan Turing. In 1954, police netted their biggest (and longest) name yet - Edward John Barrington Douglas-Scott-Montagu. Lord Montagu of Beaulieu, for short. Unlike Dr Duncan, Lord Montagu survived his encounter. But like Duncan, a scandal erupted over police methods and the criminalisation of homosexuality. After 3 years deliberating the 15 member committee, headed by an educator named John Wolfenden, recommended homosexuality be decriminalised. 21 was the suggested age of consent. Essentially, this is what Murray Hill took to parliament.

Hill’s family were central to his efforts. His son, Robert Hill, who’d later become a Senator, did much of the bill’s drafting.

“I was a baby lawyer with the Crown Solicitors Office in 1972… and you need somebody who knows how to put together the ‘hardware’ of legislation, so I helped dad with that”. Murray Hill’s daughter in-law, Diana, had just finished training as a psychologist. She spoke of the absurdity and cruelty of ‘curing’ homosexuality, which many opponents of reform cited as an alternative to changing the law.

“I remember sitting with Murray, Robert, and Peter Delin in Murray’s study. That’s where the discussion started about what to do and how to do it…I was employed by the then Department of Community Welfare as a psychologist. I was 22, it was my first job, my boss said, ‘there’s a young man who needs to be cured of homosexuality … I thought how ridiculous!

“The young man, boy I suppose, would have been about 17… I saw him twice, and then never again.”

On August 2nd, 1972, Murray Hill got to his feet in the Upper House and detailed why the law must change. He spoke of its intrinsic injustice, adding British society hadn’t collapsed since decriminalising homosexuality 5 years earlier. The ‘floodgates’ didn’t open, and ‘the slippery slopes’ weren’t as treacherous as opponents predicted. Hill also challenged his colleagues to reflect deeply on *why* they sat in parliament.

“The last reason is simply that I represent the interests of people. I have stood up in this Chamber from time to time and made that claim. People come before all other “interests”. In this issue, I am confronted with a minority of people whose cause to change the law here, as it was changed in England, is just and right. Irrespective of the severe personal criticism that I know will come from some members of the public, I cannot justify my claim to represent “people” if I turn my back on this minority.”

A crucial ally had already signed on - The Advertiser. The influential morning paper set the tone for its coverage in an editorial on Saturday, July 1st, 1972.

“The present law on homosexuality cannot be justified …it is one of the reasons why many homosexuals in Australia are forced to lead unhappy, sometimes tragic lives…Put simply, such acts harm no one and offend no one, and the law has no right to intervene in such a situation…The state has no business in its citizens’ bedrooms and the sooner it is completely removed from them, the better.”

The Advertiser did not waiver from that position for the next 3 years. Seeing this over the breakfast table in 1972 would have been remarkable - for a gay man, even more so. It’s likely the first time he’d have read such a clear public affirmation of his right to exist unmolested by the law.

Behind the scenes, another ally set to work. Dr David Hilliard, a historian and founding member of the SA branch of CAMP,\*\* wasn’t expecting Murray Hill’s bill - “it took us by surprise,” he says. So was a visit one wintery Sunday afternoon, from Don Dunstan’s chief press secretary, Peter Ward. He was there to brief CAMP - the Campaign Against Moral Persecution - on what they might do next.

“Peter Ward was telling us, ‘don’t worry about the Lower House, we’ll keep the pressure on that. You concentrate your efforts on the Legislative Council.’ That’s where the real battle was…that was the government’s strategy … Ward acting as the personal emissary, as the press secretary for Dunstan. That was as close as Dunstan came to the lobbying.” [16]

That strategy characterised Don Dunstan’s involvement at each step of the reform process. The Premier kept the mechanics at arms length, while at the same time throwing his moral, intellectual, and emotional weight behind the cause.

Another historian, Dr Roger Knight, wrote to parliamentarians on behalf of CAMP, noting “…the major South Australian churches have all supported homosexual law reform in principle.” Helpfully for the MPs, Knight also cited a poll in The Australian, showing a majority of people in Sydney and Melbourne were favourably disposed to change.

A clear majority in the House of Assembly wanted the law changed. They agreed with the arguments of fairness, justice, and compassion. They accepted the state had no business in citizens’ bedrooms. There was, however, no way Murray Hill’s conservative Upper House colleagues were about to let him decriminalise homosexuality. An amendment proposed by Ren DeGaris hobbled the legislation’s purpose, spirit, and intent. Homosexuality stayed on the criminal law books, but a defence was now allowed. An accused had to prove in court that the act was in private and consensual.

“Any unfortunate person …is now put in the position of being deemed guilty and then having to prove his innocence.” Peter Duncan

Rather than fight and lose everything, reform supporters in each house accepted the amendments, passing the bill into law in October, 1972. Murray Hill wrote to CAMP a few days later.

“I was unable to breach the wall…but at least we have some legislation on the Statute books now.”

Both ‘sides’ claimed victory. For advocates, even in its neutered state, this was the nation’s first piece of homosexual law reform. For opponents, well, they’d performed the neutering. But they’d also lost the fight.

**“To my way of thinking, the debates of 1972 were critical in ultimately getting homosexual law reform through. At that point it was clear a majority in the House of Assembly was in favour of reform … it was just a matter of time…the Upper House couldn’t hang on and resist it forever.” Former Attorney General, Chris Sumner.**

### 1972, 1973, 1975 - The past’s strange and foreign language.

To modern eyes and ears, few things are stranger than the language and attitudes that underpinned South Australia’s homosexual law reform debates. Soon after Murray Hill announced his intentions, he was interviewed by the ABC’s This Day Tonight programme. On the banks of the Torrens, near where George Duncan was dragged from the water, the journalist asked Hill, “you are not homosexual yourself?” Unfazed, the MP replied simply, “no, no”.

Whether the encounter had a cautionary effect upon other parliamentarians is unclear. Still, if nothing else, Hill could put his heterosexuality on the record. Male parliamentarians almost invariably couched their support of reform with proclamations of either not condoning or promoting homosexuality, or finding it personally repugnant. Or both.

Opposition Leader, David Tonkin, who’d voted for decriminalisation at every step, observed the “stigma” attached to homosexuality was so strong supporters felt compelled “to disassociate ourselves from any rub-off that might come from speaking in favour of this legislation.”

No one was immune - not even the one MP who’d been convinced of the necessity of homosexual law reform years before George Duncan died. In parliament, Don Dunstan recalled his union days with Actors and Announcers Equity.

“I naturally enough came in contact with cases of people who were obviously homosexual; and those people who were obviously so caused my hackles to rise …The vulgarity and unpleasantness of behaviour in which they indulged was something that obviously offends most people. The Premier continued, revealing his astonishment upon learning apparently “normal” and “masculine” men were homosexual.

Over a dinner Dunstan and his wife had shared with another couple, the Premier said his eyes were opened.

“…he bitterly attacked me, as did his wife, and said that I was utterly lacking in understanding, I was hopelessly prejudiced and did not know what I was talking about…I think that was a salutary lesson for me…”

Don Dunstan was married twice, with children from the first. His biographer says by the early 70s, he’d also had a number of male partners

Dunstan’s sexuality is not one for easy labels, especially those applied in retrospect. It’s also about as relevant to his stance on gay law reform as anyone else’s. Arguably, the reasons behind Dunstan speaking in such a way have as much to do with us, as they do him. Or at least ‘us’ as we were in 1972.

The letters to the editor pages were chock full of correspondence on homosexual law reform. Words such as sin and unnatural, appear frequently. Homosexuality itself was contrary to God’s order. If scripture wasn’t being invoked, then science was - homosexuality was a curable mental illness. Passed off as empathy, advocates of this view said changing the law would deprive anguished homosexuals of the chance to change themselves. This argument appeared in parliament more than once.

Many people simply didn’t understand who or what a homosexual might be. Why would they? Invisibility walked alongside illegality. In 1972, most people had likely never knowingly met ‘one of them’. Few, though, had quite the same struggle as Mary Jonats of Plympton South. She wrote homosexual law reform “will deprive a woman of the first important natural fundamental right - sex with the male.”

A few months later, Ms Jonats was back at her desk, pen in hand, writing she was “sick and disgusted” at the breakfast table. She “wouldn’t vote for any politician who supported such legislation”.

Ms Jonats was never going to alter her view, but away from the extremes of any issue there are hearts and minds that might be swayed. The reformer who can’t get those peoples’ votes won’t change a thing.

### 1973. Peter Duncan’s Bill. The Upper House’s last stand.

“The equal age of consent was more than any of us have ever thought about or hoped for. None of us urged it, it seems to have come from Peter Duncan himself”. Dr David Hilliard, CAMP

“It’s a victimless crime…it appalled me that a class of otherwise law abiding citizens should be subjected to the criminal law…” Peter Duncan

Peter Duncan’s first months in parliament often came with a disclaimer - he was no relation to George Duncan. The 28 year old lawyer won the Labor stronghold of Elizabeth in March, 1973. Barely 6 months later, the young backbencher introduced a new private members bill, seeking the decriminalisation of homosexuality.

“I would observe today that a young straight member of parliament, with a legal background and a safe seat to protect him from any electoral consequences, was exactly what was needed at the time.”

Aside from that raw political calculus, Peter Duncan brought substantial experience tackling unjust laws and “maverick magistrates”. He’d gained this through the 1970’s other great social upheaval - the war in Vietnam.

“I had acted for several people who were charged under the National Service Act…there was still a bunch of magistrates, hangovers from the Playford days, and you could not get justice out of them for a conscientious objector at all. I’d been threatened with contempt on a couple of occasions.”

Before entering parliament, Peter Duncan was an official with the ALP Elizabeth branch. In that capacity, he sought an inquiry into a local magistrate who’d become notorious for meting out harsher than usual punishments.

Coincidentally, the same magistrate jailed 2 men for gross indecency just months before George Duncan’s death, giving lie to claims police weren’t actively enforcing laws against homosexuality.

On September 19th, 1973, Peter Duncan spoke to the House of Assembly about his Criminal Law (Sexual Offences) Amendment Bill. There was a nod to Murray Hill, noting the gutting in spirit of his bill. The obligatory nod to the era’s sexual sensibilities was offered as well.

“This Bill in no way seeks to assist or approve of homosexual practices or to condone any acts of indecency against young persons or any public display of homosexuality conduct.”

Interestingly, Peter Duncan embraced a theme common to both supporters and opponents of reform - a distaste for haste. The killing of George Duncan was clearly the catalyst for change. People actively sought to harness the power of the emotion it generated. But they had no wish to appear *emotional,* as Peter Duncan explained.

“It is clear that the debate took place in a rather emotional atmosphere, owing to the then recent death of Dr. Duncan, and it is my view that that may have coloured the debate and attitudes of members at that time.”

Amongst this deliberately cautious language it’s quite easy to miss an unexpected innovation in Peter Duncan’s bill.

“It provides for various amendments to the criminal law to remove specific reference to homosexual acts and to provide a code of sexual behaviour in society regardless of the sex or sexual orientation of the person committing the prescribed behaviour.”

In short, the proposed law not only decriminalised homosexuality, it drew no distinction between how men, women, heterosexual, or homosexual, citizens would be treated. The same age of consent - 17 - was set for all. As a piece of legislation it had moved on from Wolfenden.

The House of Assembly passed Peter Duncan’s bill remarkably quickly, and with very little debate. Four speeches were made in total: 2 for, 2 against. On Wednesday afternoon, October 3rd, it went through on voices alone, without dissent, as Duncan himself noted. For a moment, South Australia appeared poised to decriminalise homosexuality.

### The Upper House, November 1973 - A comedy of errors… in 2 parts.

‘Unusual’ doesn’t do justice in describing events in the Legislative Council during November,1973. Perhaps bizarre is better. The Council’s complexion was unchanged since its dissection of Murray Hill’s bill the previous year. While the House of Assembly wanted reform, around half of the Upper House did not. Accordingly, Legislative Council members made almost 3 times as many speeches in their deliberations of Peter Duncan’s bill - 11 in total.

Once everyone had had their say, and the matter set for decision on Wednesday, November 21st, The Advertiser believed “a majority of one in its favour seemed assured.”

That was until Labor MLC, Cec Creedon, missed the vote. Creedon was in his office. He blamed traffic noise seeping in from North Terrace traffic for drowning out the bells, recalling him to the Chamber.

“We came downstairs from the gallery, and saw Cec Creedon come out of his office, red faced, and head back into the chamber”

Rather than passing by one, the bill was defeated. Normally this would mean starting the whole process again, but through a little used piece of parliamentary procedure, the Upper House took a second vote the following week. This time Mr Creedon heard the bells but as Former Attorney General, Chris Sumner, explains, it didn’t matter. The President of the Upper House, Sir Lyell McEwin, had gained a new power days just beforehand. It proved decisive.

“McEwin then used a freshly introduced measure whereby the President could indicate concurrence or not with a Bill … he indicated his non concurrence producing an equality of votes and hence the Bill lapsed. Later, in the context of another Bill, the Solicitor General said this was an improper use of this power.”

The Advertiser’s editorial in response was scathing, blaming McEwin personally for having thwarted a “desirable and inevitable legal reform.” It as good as accused him of bringing the Legislative Council into disrepute.

“Attention once more may be focussed on the Council as a reactionary body. Even Labor propaganda could not be as damaging in this respect as last week’s episode.”

The South Australian Parliament spent 1972 and 1973 actively considering bills decriminalising homosexuality. Now, it faced a year without one - the first time since George Duncan drowned.

### 1975 - Change.

“Why then? Well it was about bloody time, that’s why!” Anne Levy.

“On the one hand I’m going to say I felt elated, but relieved I think is a better word. Honestly, I was running out of steam, pushing, pushing, and pushing this bloody thing that had been going on for three years of my life.” Peter Duncan.

At a fundamental level, the successful passage of gay law reform in 1975 was a numbers game. That year’s election evened up the score in the Legislative Council. There were now 10 Labor to 11 LCP/Liberal Movement members. Additionally, the average age in the Upper House dropped from around 60 to 47.

But other factors were at work, too. 1975 saw Labor win a third term in power - the first time ever in South Australian history. Was it the mood of the times, or the weight of events? Or perhaps that Australian classic, The Castle, expresses it best - “it’s the vibe!” Either way, it's impossible to quantify how change might result from such nebulous concepts, but clearly it does. In this sense the grand idea of ‘The Dunstan Government’ was essential.

“It was an atmosphere that was favourable. It was a reformist era, as well, so those who wanted change felt that the wind was behind them, you know, that this was the way of the future.”

Still, there were jitters. A controversy had broken out over the possibility of homosexual couples adopting children. When Peter Duncan stood during private members’ time on Wednesday afternoon August 27th, 1975, he addressed that first, rather than re-iterate the arguments for change. Members were already well acquainted with those, he said, adding it was essentially the same bill they’d debated in 1973.

“The first thing to which I want to refer is the question of homosexuals living together adopting children. I find that quite abhorrent, and I oppose it strongly. I believe every other member would do likewise.”

Peter Duncan paused to remind the House of the ongoing support of The Advertiser. Even after 3 years of careful, often passionate debate, bouncing back and forth between both houses of parliament, there were still claims of haste and hysteria.

“I believe that the member for Elizabeth has jumped on the emotional band waggon without properly considering the measure or the long-term effects …”

One apparently weary parliamentarian observed, “there’s nothing new under the sun”. But then Allan Rodda, the member for Victoria in the state’s south east, rose to speak.

“As a young man in the Army, I served my country in the Middle East and the United Kingdom. Out of sheer curiosity, because I was a young man and because I could be killed at any time, I visited homosexual colonies and saw lesbians and the male of the species performing certain acts. I can see the Minister for the Environment smiling, but it would have taken the smile off his face had he seen some of the commercialised acts that were perpetrated there. No country should be proud of that sort of activity.”

Notwithstanding Mr Rodda’s concerns, Peter Duncan’s bill passed, 31 to 12. It did so, as it had done in 1973, with surprisingly little debate. As the bill headed off to the Legislative Council, other prominent figures spoke up. To the annoyance of many, the new Anglican Archbishop of Adelaide, Keith Rayner, had come out supporting the principle of reform.

Anne Levy was one of the freshly minted Labor MP’s coming into Legislative Council in 1975. She was familiar with the place and its workings. 6 years earlier, in 1969, Levy had watched from the gallery as abortion rights passed into law.

“I remember it went through at about 4.00 o’clock in the morning…it was just so wonderful. We all poured out the house and shouted with joy and wanted to celebrate. It was that in a way that gave me the idea… that rather than be on the outside lobbying, why not going into parliament where one could do more.

The opportunity came quickly. With 1973’s needless defeats still rankling, Levy was picked to introduce the bill into the Upper House. “I suspect that Peter [Duncan] asked me to do it because I was female, because I was a widow, and I had children. I couldn’t possibly in any way be personally interested. That’s been denied, but I still think that was probably the reason why he asked me to do it.”

There was good reason for caution. Despite the numbers being more favourable on paper, they’d not been tested in practise. And the Legislative Council still had the greatest concentration of reform opponents sitting on its distinctive red benches. The Council very nearly passed amendments that would have weakened Peter Duncan’s bill, guaranteeing a return ticket to the House of Assembly. No one had the stomach for another round of legislative table tennis.

### Quietly, September 17th, 1975.

Strangely, for such a hard fought and emotional thing, when reform finally became reality it did so quietly. The bill passed on the afternoon of September 17th, 1975. There were none of the whoops of joy Anne Levy remembers from 1969. Watching from the gallery, David Hilliard noted in his diary,

“without a break, the Legislative Council went on to the next item of business…those of us who’d been observing trooped down stairs and met a relieved Peter Duncan”

50 years on, Duncan has an explanation for the silence. “The galleries weren’t full of supporters because I think, if they were gay people, they were terrified of the coppers. They didn’t want to be identified.”

Illegality and invisibility, again.

### Neither paradise, nor perfect, but a world better.

“I felt a weight lifted.” Ian Hunter

For an awkward 15 year old boy, life at home in suburban Paradise was anything but. Suddenly, it changed. He knew homosexual law reform was about him. He’d watched the TV news bulletins at night. He’d read about it in the morning paper. The boy tried not to be too obvious, though. He didn’t want his parents or the other kids at school finding out.

“From 1972 I knew I had to hide who I really was, from my friends, my classmates, and most especially from my family, lest I be arrested and gaoled, or worse, bashed and killed.

This was my everyday life until 1975… I can remember the huge feeling of relief…the weight of living a hidden life, with the possibility of criminal conviction and very limited career opportunities…it was all lifted. The law change felt like bursting up to the surface and gasping air - finally able to breathe again.”

Shortly afterwards, the boy’s grandmother told him she’d “kill herself if she discovered he was ‘one of them.’ The boy felt the closet door slam shut again.

The law criminalising gay men *was* a malignant thing. Like all malignant things it had metastasised. Equality of opportunity, marriage, and even the respect of the wider community itself, were battles for another time. Gay law reform was a beginning, not an end. Yet it was also absolutely everything, because until that law changed, nothing else could.

The boy from Paradise is no longer 15. He’s not in the closet either, worrying about the future, or what his grandmother might think. His name is Ian Hunter. Half a century after the decriminalisation of homosexuality, Ian sits in the place that made it happen - the firstly openly gay man elected to state parliament.