

The Hon. Michael D. Kirby AC CMG

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UNEQUAL LAWS AFFECTING HOMOSEXUAL CITIZENS IN QUEENSLAND

In July 2009, an important decision was delivered by the High Court of Delhi, India, declaring that provisions of the *Indian Penal Code* as they affected homosexual citizens in India were unconstitutional. The basis of the decision was the principle of the Indian Constitution which was held to require equal treatment of all citizens, including gays.

The *Queensland Criminal Code*, like the *Indian Code*, was drafted in the 19th century. Originally, it too contained laws of the kind struck down in India. Most of these laws have already been reformed and repealed in Australia by parliamentary action.

However, Section 208 of the *Queensland Code* remains. It imposes a penalty of up to 14 years imprisonment for anal intercourse ("sodomy"), even where occurring by consent and in private. Elsewhere in Australia, the discriminatory age of consent for homosexual and heterosexual offences of this kind has now been repealed, and a common age of consent of 16 years accepted. But this is not the case in Queensland. There, a different minimum age of 18 years for gays remains in force.

We have no Bill of Rights or constitutional principles to invoke to remove this vestige of outmoded discrimination. In Australia, we must look to elected parliaments to do so. There is no apparent reason why the Parliament of Queensland should adopt a different standard from that accepted by legislators elsewhere in Australia. No special needs of Queenslanders apply.

It is time that this last relic of criminal legal discrimination was removed in Queensland. It is a hangover from earlier, ignorant and prejudiced days. It exposes homosexual youth in Queensland to grave differential criminal penalties; potential harassment; and impedes effective strategies to respond in Queensland to the risks of HIV and AIDS in young people. All of the reasons given for the noteworthy decision of the Indian judges apply here. What India and the rest of Australia have already done, Queenslanders should now do by parliamentary action. It is a basic matter of equality of citizenship.

