

To: **The Research Director**
Legal Affairs and Community Safety Committee
Parliament House
BRISBANE QLD 4000
Email: lacsc@parliament.qld.gov.au

From: **John Frame**
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Website: www.queerradio.org/AgeOfConsent.htm

Date: 12th July 2016

Re: **Submission in support of the Health and Other Legislation Amendment Bill 2016**

[Attachments: 7 \(view attachments list\)](#)

[References: 8 \(view list\)](#)

I fully support the Queensland Palaszczuk Government in regard to amending the Criminal Code to bring our laws into line with every other Australian State and Territory by ensuring true equity in the age at which a person can consent to sexual activity. It is also vital to remove the deliberately offensive term "sodomy".

I agree with the Health Minister that this is vital for the safety, health and equitable treatment of all youth.

Since early 2000 I have been in constant communication with a broad range of community organisations and health and legal services in coordinating lobbying of the Queensland Government and Opposition Leaders on this reform. For these past 16 years I have owned and maintained a website which acts as a public resource of information, legislation history and references, media coverage, opinions and as a database for all correspondence regarding this campaign:

<http://www.queerradio.org/AgeOfConsent.htm>

[In this submission I offer 13 key points](#) which are supported by online references and 7 attachments (as jpg images - each with hyperlinks to their online source documents). Among these are written statements of support of this reform made by former [High Court Justice Michael Kirby AC CMG](#), [Qld Anti-Discrimination Commissioner Susan Booth](#) and experienced [Psychologist Paul Martin](#), as well as by [Qld AIDS Council Manager Paul Martin](#).

I also provide some history of our Sodomy Law – including that it should never have been enacted in the first place, as the Government’s own October 1990 PCJC Report had recommended a truly equal age of consent at 16. It has taken 26 years for this harmful and discriminatory law to finally be in the process of being removed from the Criminal Code.

It is important to note that the Queensland Courts Bench Book instructs that “consent” is not allowed as a defense in Court when charged under Section 208 (the “Sodomy Law”). Youth are at risk of legal prosecution no matter how free or informed their choice, or how safely they have engaged in anal intercourse.

An equal age of consent at 16 is vital for allowing all youth to experience equal protection and benefit of the law without discrimination, regardless of their gender or their sexual orientation.

It is also vital for empowering all youth to have the self-esteem to fully value themselves and others, by protecting their own sexual health, and also protecting their mental health to reduce the risk of suicide or self-harm.

I will be happy to provide any further information you may require, and I look forward to the passing of this Bill which will enable a safe and progressive future for Queensland youth.

Yours sincerely,

John Frame.

Reasons for Equal Age Of Consent Reform at 16 and Sodomy Law Reform in Queensland:

- **(1) Since 2003 Queensland has been the only Australian State or Territory which does not have a truly equal age of consent.** The current law sets a minimum age of 16 for vaginal intercourse, but also sets an unjustified higher age of 18 for "sodomy" - which is defined by the Courts as carnal knowledge through anal intercourse. There is no supportable reason for anal intercourse to be listed as a separate offence to carnal knowledge.
- **2) The current law stands in spite of the recommendation for true equality at 16 made in the October 1990 "Parliamentary Criminal Justice Commission Report on Reforms In Laws Related To Homosexuality".** The all-party Committee was Chaired by Peter Beattie, who included his personal written support for the majority Recommendation #7, that **"THE AGE OF CONSENT FOR HOMOSEXUAL ACTS IN ACCORDANCE WITH THE PRINCIPLES OF SEXUAL EQUALITY AND ANTI-DISCRIMINATION BE THE SAME FOR MALES AS IT IS FOR FEMALES, IRRESPECTIVE OF WHETHER THE SEXUAL ACT IS HETEROSEXUAL OR HOMOSEXUAL."** (see page 49 of that Report – [Attachment #1](#))

- **(3) The current law acts to impede the most effective delivery of vital safe sex education to youth regarding anal intercourse** - an activity which, without education for proper protection, may be high risk for HIV infection. [On 25th May 2005 Melbourne's La Trobe University \(Dr Lynne Hillier et al\) published an important report "Writing Themselves In Again", a national survey of 1,749 "same sex attracted youth"](#). The researchers found that the clear majority of same sex attracted youth are aware of their sexual attraction by age 16 (if not by 13); that they are sexually active at an earlier age than their heterosexual peers; that 70% had engaged in penetrative sexual intercourse and that only 75% of 15-18 year olds had used condoms in their last encounter. They also found that same sex attracted youth were 5 times as likely to suffer a sexually transmitted infection as would the average high school student – proving their higher risk of exposure to HIV and the drastic need to maximise effective safe sex education.
- **(4) Expert evidence was accepted in the Public Hearings for the 1990 PCJC Report which debunks the argument that “males tend to mature later than females” as being irrelevant when (as also shown in the 2005 La Trobe study) males nevertheless tend to have sex at a younger age and with greater frequency than females.** (see page 49 of that Report – [Attachment #1](#))
- **(5) The current law negatively affects the mental health of same sex attracted youth.** As per the [18th November 2011 statement by Brisbane psychologist Paul Martin \(Attachment #4\)](#), he writes: *“I am a psychologist with over 25 years experience specialising in mental health in LGBTI populations. I run a practice which sees many young same sex attracted people and am actively involved in PFLAG where I spend much time with parents of same sex attracted young people. I have worked with parents who have lost their child to suicide as a result of their conflicts around being same sex attracted and young people who were close to dying as a result of suicide attempts. These are extremely vulnerable segments of Australia’s young population. Clinical and research evidence strongly suggests that the Queensland Sodomy Law which sets a higher minimum age of 18 for anal intercourse not only exposes many of them (any person who engages in anal intercourse) and any of their sexual partners to criminal prosecution, but also causes psychological harm and increases risks of negative outcomes including suicide.”*
- **(6) Paul Martin** (a different person to the psychologist quoted above), **as Manager of the Queensland AIDS Council** (then known as [Queensland Association for Healthy Communities](#)) **issued a [3rd February 2005 press release \(Attachment #5\)](#) declaring that** *“The current law causes confusion amongst many in the community who believe that all sex between men is illegal before the age of 18” said Paul R Martin of the Queensland AIDS Council. “We are concerned that young people who are sexually active are reluctant to come forward to access sexual health services and receive sex & relationships education for fear of being prosecuted”. Mr Martin went on to say “There is no legitimate reason why the age at which young men and women can have vaginal sex, which may result in child birth, should be any different from the age at which people can legally have anal sex. The current law does nothing to protect young people, on the contrary it criminalises young people who choose to have anal sex”.*

- **(7) Former High Court Justice the Hon. Michael Kirby AC CMG** has stated in his support for this reform ([3rd February 2010 - Attachment #2](#)) that: *“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.”*
- **(8) Queensland Anti-Discrimination Commissioner Susan Booth** has declared that the discriminatory unequal age of consent is in clear contravention of Article 26 of the International Covenant on Civil and Political Rights: [As per her 25th July 2005 letter to Hon Premier Beattie and Hon Attorney-General Rod Welford \(Attachment #3\)](#): *“In 1994 in the case of Toonen V Australia, the United Nations Human Rights Committee ruled that the International Covenant on Civil and Political Rights prohibits discrimination on the basis of sexual orientation. The older age limit for lawful sodomy in section 208 of the Criminal Code therefore constitutes a discriminatory provision which breaches Article 26 of the International Covenant on Civil and Political Rights. Other States and Territories have, since the decision in Toonen, repealed similar discriminatory and homophobic laws.”*
- **(9) A truly equal age of consent was recommended in the [2010 Australian Law Reform Commission Report “Family Violence - A National Legal Response \(ALRC Report 114\)”](#)** See the “Commissions’ Views” from 24.47 to 24.50 on pages 1141 and 1142 ([Attachment #7](#)) of which 24.49 is: *“The Commissions suggest that the age of consent for sexual offences should be set at 16 years of age. This is consistent with legislation in many jurisdictions and the approach taken by MCCOC, which considered the issue at length and received numerous submissions from a range of stakeholders. 100 The Commissions’ recommendation, however, is that the age of consent for sexual activity should be made uniform both within and across jurisdictions, and that no distinction be made based on gender, sexuality or any other factor.”*

- (10) Equal age of consent reform is supported by various eminent community organisations** including [Brisbane Parents and Friends of Lesbians and Gays \(PFLAG\)](#), the [Queensland AIDS Council \(QuAC\)](#) and the federally funded [Open Doors Youth Service](#) which specialises in the support of gay, lesbian, bisexual and transgender youth. [In Mid-October 2005](#) over twenty highly respected health and welfare community services groups and organisations co-signed a letter to the Beattie Government which had been initiated by PFLAG, QuAC and Open Doors ([Attachment #6](#)): *“We believe that an unequal age of consent creates confusion among professionals working with young people in relation to what information and support they can provide to young people about sexual activity. Many people also wrongly assume that all sexual activity between men is illegal until 18 years. An unequal age of consent does not protect young people, in fact it makes them more vulnerable to stigmatisation, low self worth, suicide and HIV transmission. Around 50% of young people have had sex before they turn 17 and national research shows that same-sex attracted young people are, on average, sexually active earlier than their heterosexual peers. In a survey of 15-17 year old same-sex attracted men who access Open Doors, 94% of these men report that they have had sex. We need laws that support young people to make informed choices about sex, not to criminalise them for those choices. This is about equalising the law for consenting sexual activity. It will in no way weaken the existing laws against sex with under age children (i.e. 16), sex with people with learning disabilities, or sex against a person's will.”*
- (11) Queensland Labor’s official Policy Platform (Section 7.9 of the Justice and Governance Chapter) has, since at least 2008, been:** *“7.9 Labor will ensure uniformity of age among laws relating to the age of consent for lawful sexual activity;”*
- (12) Since 1990 there has been one previous attempt by Government to equalise the age of consent at 16.** In 1995 Goss Labor passed the “1995 Revised Criminal Code” which included a truly equal age of consent at 16 – however that Bill was repealed by the Borbidge LNP Government when it gained control following the Mundingburra By-election. The LNP reinstated the 1899 Code, and rewrote it to reflect their own principles – including changing the terminology under Section 208 from “anal intercourse” to the more sordid sounding “sodomy”, and doubling the penalties.
- (13) As from 1st July 2009, Federal law amendments have defined that “couples are couples” regardless of their gender in all areas except marriage.** Federal agencies tell young same sex male couples that they are equal with other couples, however current Queensland law defines them as potential criminals for their sexual activity.

REFERENCES:

The **1990 PCJC Report on Reforms in laws Related to Homosexuality** is at:

http://www.queerradio.org/PCJC_law_reform_report_October_1990.pdf The section of the 1990 PCJC Report which deals with debunking the “males mature later” argument is on page 49. (*scanned and proofed text as Attachment #1*)

The **3rd October 2010 statement of opinion by former High Court Justice Hon Michael Kirby AC CMG** is stored on my site at:

http://www.queerradio.org/Hon_Michael_Kirby_3rdFebruary2010.pdf (*Attachment # 2 as a jpg file*)

The quote from the **Qld Anti-Discrimination Commissioner Susan Booth** is from her 15th July 2005 letter to Attorney-General Rod Welford, which is stored on my site at:

http://www.queerradio.org/AOC150705_ADCQ.htm (*Attachment #3 as jpg files*)

The **18th November 2011 statement by psychologist Paul Martin** is stored on my site at:

http://www.queerradio.org/Paul_Martin_CFHP_support_for_equal_age_of_consent_reform.pdf (*Attachment #4*)

The **3rd February 2005 Media Release by Queensland AIDS Council Manager Paul Martin** is stored on my site at:

http://www.queerradio.org/QuAC_Paul_Martin_3rd_Feb_2005_call_to_equalise_sex_laws.pdf (*Attachment #5 as a jpg file*)

The complete original text (supplied by QuAC's Troy Hakala) of the **Mid-October 2005 Community Services Groups letter to the Beattie Government** is stored on my site at:

http://www.queerradio.org/AOC_QuAC-Open_Doors-PFLAG_Mid_Oct_2005.htm (*Attachment #6 as jpg files*)

The **Australian Law Reform Commission Report “Family Violence - A National Legal Response (ALRC Report 114)”** (2010) is at:

https://www.alrc.gov.au/sites/default/files/pdfs/publications/ALRC114_WholeReport.pdf (*Pages 1141 and 1142 are Attachment #7 as jpg files*)

The **La Trobe University 2005 Research Report "Writing Themselves In Again: The 2nd national report on the sexual health & well-being of same sex attracted young people in Australia"** pdf file is at:

http://www.latrobe.edu.au/arcshs/downloads/arcshs-research-publications/writing_themselves_in_again.pdf

ATTACHMENTS:

- (1) [Text \(scanned and proofed\) from page 49 of the **October 1990 PCJC Report on Reforms In Laws Relating To Homosexuality**](#) debunking the “males mature later than females” argument.
- (2) [3rd Feb 2010 statement by **Hon Michael Kirby AC CMG**](#) (1 page as a jpg file)
- (3) [15th July 2005 letter from **ADCQ Commissioner Susan Booth** to Attorney-General Rod Welford](#) (2 pages as jpg files)
- (4) [18th November 2011 statement by **psychologist Paul Martin**](#) (1 page as a jpg file)
- (5) [3rd February 2005 media release by **Queensland AIDS Council Manager Paul Martin**](#) (NB: a different person to the psychologist) (2 pages as jpg files)
- (6) [**Mid-October 2005 Community Services group letter to the Beattie Government**](#) which was co-signed by 20 organisations, including PFLAG, QuAC and Open Doors Youth Service. (2 pages as jpg files)
- (7) [**Australian Law Reform Commission Report “Family Violence - A National Legal Response \(ALRC Report 114\)”**](#) (2010) pages 1141 and 1142 (2 pages as jpg files)

Attachment #1:- Text (scanned and proofed) from page 49 of the October 1990 PCJC Report on Reforms In Laws Relating To Homosexuality debunking the “males mature later than females” argument. From a complete copy of the original Report which is stored on my site at: [http://www.queerradio.org/PCJC law reform report October 1990.pdf](http://www.queerradio.org/PCJC%20law%20reform%20report%20October%201990.pdf)

(1 page as a jpg file)

The Criminal Justice Commission’s Information Paper points out that:-

“It would accord with principles of sexual equality and anti-discrimination that the age of consent for males and females be the same irrespective of whether the sexual act is heterosexual or homosexual. Western Australia is the only observed jurisdiction where the age of consent for homosexual acts is not the same as for heterosexual acts.” (Point one of the Criminal Justice Commission’s Information Paper on page 60.)

In oral evidence before the Committee Psychologist Dr Gallois was asked:-

“THE CHAIRMAN: We were talking before about sexual orientation taking place at an early age. It is also true that girls mature faster than boys. It we are talking about an age of consent - be it 16, 18 or whatever, but let us deal with 16 -what is your professional opinion? Is the age of consent at that stage - both have obviously determined their sexual orientation, based on what you have said. Therefore, you would argue, presumably, that there would be no difference then in terms of the age of consent?”

Dr Gallois: I think that is what we would argue, and fairly strongly, particularly between boys and girls mainly because the suggestion that we have heard at any rate is that boys mature more slowly physically, which of course they do through childhood, and they reach puberty a little later. We are talking about age 13 or 14 now.

Therefore, they may be emotionally less mature. The evidence coming from the survey data on adolescents and the vast majority of these people are heterosexual adolescents - is that boys start to have sexual activity earlier in their teenage years and are more sexually active than girls and they are no more emotionally involved in their sexual relationships than girls. They are more likely to have more sexual partners than girls at any given age through the teenage years and so forth. In the light of that to have a higher age of consent for boys on the grounds that they are less sexually mature does not reflect their behaviour. Their behaviour is that they have more experience than girls. (Hansard: 69)

RECOMMENDATION 7. THE COMMITTEE RECOMMENDS THAT THE AGE OF CONSENT FOR HOMOSEXUAL ACTS IN ACCORDANCE WITH THE PRINCIPLES OF SEXUAL EQUALITY AND ANTI-DISCRIMINATION BE THE SAME FOR MALES AS IT IS FOR FEMALES, IRRESPECTIVE OF WHETHER THE SEXUAL ACT IS HETEROSEXUAL OR HOMOSEXUAL. (THIS PRINCIPLE IS HIGHLIGHTED IN POINT ONE ON PAGE 60 OF THE COMMISSION’S REPORT.)

Attachment #2:- the 3rd Feb 2010 statement by **Hon Michael Kirby AC CMG**. Stored on my site at:

www.queerradio.org/Hon_Michael_Kirby_3rdFebruary2010.pdf

(1 page as a jpg file)

The Hon. Michael D. Kirby AC CMG

3 February 2010.

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.



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Attachment #3:- 15th July 2005 letter from **ADCQ Commissioner Susan Booth** to Attorney-General Rod Welford and Premier Peter Beattie (2 pages). Stored on my site at:
www.queerradio.org/AOC150705_ADCQ.htm

(2 pages as jpg files)



Our Ref: E/0009

15 July 2005

The Honourable Rod Welford MP
Attorney-General and Minister for Justice
GPO Box 149
BRISBANE QLD 4001

Dear Attorney-General

**DISCRIMINATION ON THE BASIS OF SEXUALITY – QUEENSLAND'S
SODOMY LAWS**

I write in support of various community organisations and individuals who are seeking the repeal of Queensland's Sodomy laws.

The provisions of the Criminal Code which impose different minimum ages at which persons can lawfully participate in sexual intercourse are inconsistent with the objects of the *Anti-Discrimination Act 1991*.

The real effect of the Code that makes vaginal intercourse unlawful for a person aged under 16 years, and anal intercourse unlawful for a person aged under 18 years is to treat homosexual males differently to heterosexual males and females. It therefore discriminates on the basis of sexuality.

These provisions of the Criminal Code are inconsistent with the object of the *Anti-Discrimination Act 1991* to promote equality for everyone and protect them from unfair discrimination, and the premise upon which the legislation was enacted, namely, that *everyone should be equal before and under the law and have the right to equal protection and equal benefit of the law without discrimination*.

In 1994, in the case of *Toonen v Australia*, the United Nations Human Rights Committee ruled that the International Covenant on Civil and Political Rights prohibits discrimination on the basis of sexual orientation. The older age limit for lawful sodomy in section 208 of the Criminal Code therefore constitutes a discriminatory provision which breaches Article 26 of the International Covenant on Civil and Political Rights. Other States and Territories have, since the decision in *Toonen*, repealed similar discriminatory and homophobic laws.

As well, the statistics recently released by Queensland Health and the research of Melbourne's La Trobe University indicate that homosexual males under the age of 18 are sexually active, many are not practicing safe sex, with an increased incidence of HIV infection. Queensland's sodomy laws essentially criminalise the consenting sexual activity of 16 and 17 year old same sex attracted youth. With now clear evidence of increasing risk of infection in this age group, a law which criminalises their sexual activity (but not their straight friends) should be repealed. Any law that may contribute to an unwillingness to disclose that they are members of this high risk group should be repealed on health grounds alone.

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The research provides a clear message. It is now imperative that Queensland remove the age difference for lawful heterosexual and homosexual sex between consenting sexual partners.

These legislative changes will ensure that Queensland law is consistent with the International Covenant and local discrimination law, it will reflect contemporary realities of society, and assist in addressing the increase in HIV infections.

Yours sincerely



SUSAN BOOTH
Anti-Discrimination Commissioner Queensland

- cc The Honourable Peter Beattie MP
Premier and Minister for Trade
PO Box 15185
CITY EAST QLD 4002
- cc Mr John Frame
82 Main Avenue
WAVELL HEIGHTS QLD 4012
- c.c. Action Reform Change Queensland
PO Box 3142
South Brisbane Business Centre Qld 4101

Attachment #4:- 18th November 2011 statement by **psychologist Paul Martin**. As stored on my site at: [www.queerradio.org/Paul Martin CFHP support for equal age of consent reform.pdf](http://www.queerradio.org/Paul_Martin_CFHP_support_for_equal_age_of_consent_reform.pdf)

(1 page as a jpg file)

A [statement of support](#) for equal age of consent reform in Queensland

by **Paul Martin**, Principal Psychologist, Centre for Human Potential, Brisbane

18th November 2011



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[\(click here for a fullsize 3mb publicity photo\)](#)

I am a psychologist with over 25 years experience specializing in mental health in LGBTI populations. I run a practice which sees many young same sex attracted people and am actively involved in PFLAG where I spend much time with parents of same sex attracted young people. I have worked with parents who have lost their child to suicide as a result of their conflicts around being same sex attracted and young people who were close to dying as a result of suicide attempts. These are extremely vulnerable segments of Australia's young population. Clinical and research evidence strongly suggests that the Queensland Sodomy Law which sets a higher minimum age of 18 for anal intercourse not only exposes many of them (any person who engages in anal intercourse) and any of their sexual partners to criminal prosecution, but also causes psychological harm and increases risks of negative outcomes including suicide.

The mental health statistics for same sex attracted youth are alarming and they are at much higher risk of negative mental and physical health outcomes. This includes that 64% of young men and 23% of young women who are same sex attracted had harmed themselves or had mentioned thinking about or attempting suicide (Hillier, Turner, & Mitchell, 2005).

The mental health issues of young same sex attracted people are primarily a result of negative beliefs that are absorbed from a young age regarding what it means to be gay or lesbian. This is reinforced in the school yard including the worst thing to be called is a 'faggot'. The negative psychological impact of bullying, and/or the adverse mental health outcomes of pretending to be heterosexual to prevent bullying and social exclusion has been widely documented. The negative outcomes of these beliefs can include substance abuse, suicidality, depression, anxiety, self harm and other self destructive behaviours.

When young same sex attracted people hear homophobic remarks from community leaders or are aware of inequities in the law that favours heterosexuals, this confirms and reinforces these negative beliefs. I had a young person in my practice recently who was very close to dying after a suicide attempt. He stated that when he heard the Prime Minister of our country say that marriage should only be between a man and a woman, he "realized that all of his negative beliefs about gay relationships were true", and that his future was bleak and he then concluded: "what's the point."

The evidence is therefore clear, that a law which specifically targets and discriminates against same sex attracted youth, such as the Sodomy law, sends a very clear message that they are not equal, are not valued, are at risk of a criminal offense, and are therefore defective. This confirms their internalized homophobia and this causes psychological damage.

Whilst the Premier's 'It Gets Better' video would have had a positive impact on the mental health of some same sex attracted youth, the impact may be largely negated by her refusal to change discrimination in the Sodomy Law. This law quite clearly causes psychological harm and it is imperative that our Premier acts urgently to change this for the sake of the most vulnerable youth in

Attachment #5:- 3rd February 2005 media release by **Queensland AIDS Council Manager Paul Martin** (NB: a different person to the psychologist). As stored on my site at:
[www.queerradio.org/QuAC Paul Martin 3rd Feb 2005 call to equalise sex laws.pdf](http://www.queerradio.org/QuAC_Paul_Martin_3rd_Feb_2005_call_to_equalise_sex_laws.pdf)

(1 page as a jpg file)

Date: 3rd February 2005
Contact: Paul R Martin
General Manager
Queensland AIDS Council
Mob. 0407 376 540
Tel. 3017 1791
Fax : 3844 4206

Media Release

Call to Equalise Sex Laws

The Queensland AIDS Council has lent its voice to the growing call for the laws on the age of consent for sexual activity in Queensland to be equalised.

The Queensland AIDS Council is one of several organisations who are supporting the “Love in for Love Equality” picnic taking place on Sunday 13th February, 1pm to 3pm near the Rose Garden in New Farm Park, Brisbane. The purpose of the picnic is to draw attention to and encourage community action on the current unequal treatment of sexual activity in the State’s laws.

Under current State legislation ‘sodomy’ or anal intercourse is illegal until age 18, while all other consenting sexual activity is legal from age 16. The maximum penalty is 14 years imprisonment.

“The current law causes confusion amongst many in the community who believe that all sex between men is illegal before the age of 18” said Paul R Martin of the Queensland AIDS Council. *“We are concerned that young people who are sexually active are reluctant to come forward to access sexual health services and receive sex & relationships education for fear of being prosecuted”*.

Mr Martin went on to say *“There is no legitimate reason why the age at which young men and women can have vaginal sex, which may result in child birth, should be any different from the age at which people can legally have anal sex. The current law does nothing to protect young people, on the contrary it criminalises young people who choose to have anal sex”*.

The Queensland AIDS Council supports measures to prevent underage (i.e. under 16) sex and the sexual exploitation of children and those with learning disabilities. The change in the law would only seek to equalise the age of consent for consenting sexual activity between those over 16.

Notes to the editor:

The Queensland AIDS Council (QuAC) is an independent community-based organisation responsible for providing education, advocacy and support for those affected by HIV/AIDS in Queensland.

Paul R Martin, General Manager of QuAC, will be available for comment prior to and at the picnic on the contact details above.

Attachment #6:- Mid-October 2005 **Community Services group letter to the Beattie Government** which was co-signed by 20 organisations, including PFLAG, QuAC and Open Doors Youth Service. As stored on my site at:
www.queerradio.org/AOC_QuAC-Open_Doors-PFLAG_Mid_Oct_2005.htm

(2 pages as jpg files)

As per http://www.queerradio.org/AOC_QuAC-Open_Doors-PFLAG_Mid_Oct_2005.htm

Mid October 2005 Community Services Group letter to the Beattie Government calling for urgent reform of the Queensland Sodomy Law.

Over twenty highly respected health and welfare community groups and organizations co-signed this letter which had been initiated by the (1) [Open Doors Youth Service](#), (2) [Brisbane Parents and Friends of Lesbians And Gays](#), and (3) peak HIV health body the [Queensland AIDS Council](#). Troy Hakala of the Qld AIDS Council advises that the letter was posted to the five respective Ministers in mid-October.

To The Honourable Premier of Queensland
To The Honourable Minister for Health
To The Honourable Minister for Education
To The Honourable Minister for Child Safety
To The Honourable Minister for Justice and Attorney-General

We write to urge the Government to equalise the age of consent for lawful sexual activity for all young people 16 years and over.

At present sexual activity is lawful from the age of 16, except for anal intercourse which is illegal until the age of 18. While affecting all young people, this law is disproportional in its negative effect on gay and bisexual young men,

We believe that an unequal age of consent stigmatises young gay and bisexual men and prevents them coming forward for HIV and sexual health information and services. New HIV notifications have increased by 40% in the past 3 years including among younger gay/bisexual men.

We believe that an unequal age of consent creates confusion among professionals working with young people in relation to what information and support they can provide to young people about sexual activity. Many people also wrongly assume that all sexual activity between men is illegal until 18 years.

An unequal age of consent does not protect young people, in fact it makes them more vulnerable to stigmatisation, low self worth, suicide and HIV transmission. Around 50% of young people have had sex before they turn 17 and national research shows that same-sex attracted young people are, on average, sexually active earlier than their heterosexual peers. In a survey of 15-17 year old same-sex attracted men who access Open Doors, 94% of these men report that they have had sex. We need laws that support young people to make informed choices about sex, not to criminalise them for those choices.

This is about equalising the law for consenting sexual activity. It will in no way weaken the existing laws against sex with under age children (i.e. 16), sex with people with learning disabilities, or sex against a person's will.

Nor will equalising the age of consent 'promote' homosexuality. A person's sexual orientation is formed by a combination of biological and environmental factors at a young age. Sexual orientation is not a choice and is not something that can be altered by law.

It does not make sense that a heterosexual couple can legally have a baby at 17 years of age, but could be punished by up to 14 years gaol for having anal sex. The current law makes any young person under 18 who has anal sex a criminal.

There is no room in our State for laws that discriminate directly or indirectly against certain classes of people.

We call on you to equalise the age of consent for the benefit of all young people. Yours

Open Doors Youth Service Inc.
Queensland AIDS Council
Parents & Friends of Lesbians & Gays (PFLAG)

Attachment #7:- Australian Law Reform Commission Report “Family Violence - A National Legal Response (ALRC Report 114)” (2010) pages 1141 and 1142. From the original complete pdf file at the Australian Law Reform Commission site at:
www.alrc.gov.au/sites/default/files/pdfs/publications/ALRC114_WholeReport.pdf

(2 pages as jpg files)

where the age gap is two years or less,⁹⁴ or that similarity in age could be a relevant sentencing consideration.⁹⁵

25.46 Stakeholders held differing views about the defence of honest and reasonable belief that a person was over a certain age. For example, the Law Society of NSW, Legal Aid NSW and NTLAC suggested that such a defence should be available at any age. The Canberra Rape Crisis Centre and NASASV expressed the opposite view, arguing that it should not be available at any age.⁹⁶ The Canberra Rape Crisis Centre observed that ‘the impact on the young victim is the same regardless of the belief of the perpetrator and this should be the primary consideration’.⁹⁷ NASASV stated that ‘an honest and reasonable belief that a person was over a certain age is at best irrelevant and at worst likely to be used as a difficult-to-challenge defence of the heinous crime of engaging sexually with children’.⁹⁸

Commissions’ views

25.47 In considering offences involving children and young people there is a need to strike an ‘appropriate balance between the need to protect vulnerable persons from sexual exploitation, and the need to allow for sexual autonomy’,⁹⁹ and to recognise the realities of sexual behaviour.

25.48 Issues of age of consent, similarity in age, or honest or reasonable belief that a person was over a certain age are much less likely to arise where sexual assault occurs in a family violence context and are, therefore, somewhat peripheral to this Inquiry. Accordingly, these issues were not matters on which the Commissions consulted widely.

25.49 The Commissions suggest that the age of consent for sexual offences should be set at 16 years of age. This is consistent with legislation in many jurisdictions and the approach taken by MCCOC, which considered the issue at length and received numerous submissions from a range of stakeholders.¹⁰⁰ The Commissions’ recommendation, however, is that the age of consent for sexual activity should be made uniform both within and across jurisdictions, and that no distinction be made based on gender, sexuality or any other factor.

94 Legal Aid NSW, *Submission FV 219*, 1 July 2010; Law Society of New South Wales, *Submission FV 205*, 30 June 2010.

95 Women’s Legal Service Queensland, *Submission FV 185*, 25 June 2010; Family Voice Australia, *Submission FV 75*, 2 June 2010.

96 Legal Aid NSW, *Submission FV 219*, 1 July 2010; Law Society of New South Wales, *Submission FV 205*, 30 June 2010; National Association of Services Against Sexual Violence, *Submission FV 195*, 25 June 2010; Canberra Rape Crisis Centre, *Submission FV 172*, 25 June 2010.

97 Canberra Rape Crisis Centre, *Submission FV 172*, 25 June 2010.

98 National Association of Services Against Sexual Violence, *Submission FV 195*, 25 June 2010.

99 Explanatory Memorandum, Crimes Legislation Amendment (Sexual Offences Against Children) Bill 2010 (Cth).

100 Model Criminal Code Officers Committee–Standing Committee of Attorneys–General, *Model Criminal Code—Chapter 5: Sexual Offences Against the Person* (1999), 119–123.

25.50 Similarly, the Commissions do not make any recommendation with respect to how similarity in age should be dealt with or the age at which a defendant should be able to raise an honest and reasonable belief that a person was over a certain age. The Commissions emphasise, however, that any review of the relevant legislative provisions or the exercise of prosecutorial discretion should recognise contemporary realities of consensual and non-exploitative sexual activity between young people.

Recommendation 25–2 Federal, state and territory sexual offence provisions should provide a uniform age of consent for all sexual offences.

Persistent sexual abuse of a child

25.51 All jurisdictions have introduced offences in relation to the ‘persistent sexual abuse of a child’,¹⁰¹ ‘maintaining a sexual relationship with a young person’,¹⁰² or the ‘persistent sexual exploitation of a child’.¹⁰³

25.52 The impetus for the enactment of these offences was recognition of the practical difficulties encountered in successfully prosecuting child sexual offences. The requirement of particularity in child sexual offences—that is, precise details of single incidents—fails to capture the multiple, repetitive experiences of many children, particularly in the context of sexual abuse by family members.¹⁰⁴

25.53 As then NSW Attorney General Jeff Shaw QC explained in the second reading speech for the Crimes Legislation (Child Sexual Offences) Bill 1998:

children are often unable to give precise details of offences, particularly where the alleged sexual assaults took place over many years, involved numerous occasions of abuse, and the accused was in a position of trust or authority. ... [I]f the prosecution is unable to prove particulars of the time, date and place of an allegation of child sexual abuse, then the accused cannot be prosecuted. ... The Government is of the firm view that the time has come to introduce legislation to better protect children. This bill accomplishes that purpose. By creating the offence of persistent sexual abuse of a child, we recognise the reality of continuing or prolonged child sexual abuse.¹⁰⁵

25.54 Generally these offences capture a number of unlawful sexual acts¹⁰⁶—not necessarily of the same kind—against a child within the one indictment. The provisions stipulate that ‘it is not necessary to specify or to prove the dates and exact

101 *Crimes Act 1900* (NSW) s 66EA; *Crimes Act 1958* (Vic) s 47A; *Criminal Code* (WA) s 321A. See also Standing Committee of Attorneys-General, *Model Criminal Code* (1st edn, 2009) cl 5.2.14.

102 *Criminal Code* (Qld) s 229B; *Criminal Code* (Tas) s 125A; *Crimes Act 1900* (ACT) s 56; *Criminal Code* (NT) s 131A, maintaining a relationship of a sexual nature.

103 *Criminal Law Consolidation Act 1935* (SA) s 50.

104 See, eg, Model Criminal Code Officers Committee–Standing Committee of Attorneys-General, *Model Criminal Code—Chapter 5: Sexual Offences Against the Person* (1999), 133–137. See also, *S v The Queen* (1989) 168 CLR 266.

105 New South Wales, *Parliamentary Debates*, Legislative Council, 20 October 1998, 8541 (J Shaw QC—Attorney General).

106 Generally three or more, although in Queensland and South Australia it is simply more than one unlawful act: *Criminal Code* (Qld) s 229B(2); *Criminal Law Consolidation Act 1935* (SA) s 50(1).