

26 April 2020



**VICTORIAN  
GAY & LESBIAN  
RIGHTS LOBBY**

Committee Secretary  
Joint Standing Committee on Foreign Affairs, Defence and Trade  
PO Box 6021  
Parliament House  
Canberra, Australian Capital Territory 2600

CC: Dr Lachlan Strahan, High Commissioner to Solomon Islands  
Mr Jon Philip, High Commissioner to Papua New Guinea

To whom it may concern,

The Victorian Gay & Lesbian Rights Lobby (**VGLRL**) writes to provide the following submission in response to the inquiry into the human rights of women and girls in the Pacific.

The VGLRL is a community based advocacy group that works towards equality, social justice and advancing human rights for lesbian, gay, queer, bisexual and same sex attracted Victorians. We work constructively, cooperatively and respectfully with transgender, bisexual, intersex and other organisations that support our organisation's mission and vision. The VGLRL is also a member of the Commonwealth Equality Network, a network of Commonwealth civil society organisations challenging inequality in the Commonwealth based on sexual orientation and gender identity, and the International Gay and Lesbian Association, a federation of worldwide organisations campaigning for LGBTI rights. A fellow member, Kaleidoscope Human Rights Foundation, joins us in this submission.

Our submission addresses the need to develop a strategy for globally decriminalising homosexuality, similar to Australia's Strategy for Abolition of the Death Penalty, drawing on opportunities for civil society engagement, multi-lateral advocacy, and bilateral advocacy.

In this regard, we particularly welcome Dr Strahan's recent appointment as High Commissioner to Solomon Islands. We note Dr Strahan's experience in dealing with LGBTI persecution in Chechnya as First Assistant Secretary of the Multilateral Policy Division of the Department of Defence and Trade, and his role as a Senior Straight Ally supporting LGBTI colleagues in the Department. We look forward to working with Dr Strahan to promote LGBTI rights in Solomon Islands.

We also welcome Natasha Stott Despoja's recent nomination as Australia's candidate for the Committee on the Elimination of Discrimination Against Women and, given her long advocacy for LGBTI rights, offer our support for her campaign for election to the Committee.

We thank you for taking the time to review this submission. This submission can be made public and we would value the opportunity to address any questions you may have at public hearings or through correspondence.

Yours sincerely,

Ms Nevena Spirovska  
Co-Convener, VGLRL

[Redacted signature]

Mr Maxim Thomas  
Co-Convener, VGLRL

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**The human rights of  
women and girls in the  
Pacific:  
Decriminalising  
lesbianism in Solomon  
Islands and Papua New  
Guinea**

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## Summary of recommendations

**Recommendation 1:** *The Government, through its Department of Foreign Affairs and Trade, should develop a strategy with a goal of globally decriminalising homosexuality, with specific goals to:*

- *increase the number of countries that decriminalise homosexuality, and increase the number of countries with a moratorium on the criminalisation of homosexuality;*
- *reduce the number of convictions under laws that criminalise homosexuality;*
- *ensure that people facing prosecution under laws that criminalise homosexuality can access adequate legal representation, and that their rights to a fair trial and due process are realised, particularly for defendants held on remand;*
- *increase transparency in the application of laws that criminalise homosexuality, including by encouraging countries to report the numbers of people charged and sentenced under these laws;*
- *prevent the reintroduction of laws criminalising homosexuality where they have been abolished; and*
- *prevent the resumption of policing where a moratorium has been in place on the criminalisation of homosexuality.*

**Recommendation 2:** *The Government should appoint an Ambassador for the Human Rights of LGBTI Persons.*

**Recommendation 3:** *The High Commissions in Solomon Islands and Papua New Guinea should develop and implement tailored strategies for engaging parliamentarians and policy-makers on the issue of decriminalisation of homosexuality, in coordination with one another and with United Nations offices in those countries.*

**Recommendation 4:** *The High Commissioners to Solomon Islands and Papua New Guinea should report at least annually on the status of laws that criminalise homosexuality in their countries, with reporting to cover:*

- *legislation criminalising homosexuality and its practical application;*
- *statistics on charges under laws that criminalise homosexuality, and any representations that the High Commission has made regarding those charged, particularly Australians abroad;*
- *statistics on convictions under laws that criminalise homosexuality, including convictions where the judgments are not publicly available;*
- *public opinion on – and civil society organisations advocating against – the criminalisation of homosexuality; and*
- *progress or otherwise towards the decriminalisation of homosexuality.*

**Recommendation 5:** *The High Commissions in Solomon Islands and Papua New Guinea should undertake public diplomacy activities in association with the International Day Against Homophobia, Biphobia and Transphobia on May 17.*

**Recommendation 6:** *The Government should appoint a Minister for Equality with specific responsibility for LGBTI rights.*

**Recommendation 7:** *Ministers, parliamentarians and officials should raise decriminalisation of homosexuality as a priority human rights issue where appropriate, including at political-level meetings and during official visits, in political dialogues, human rights dialogues, in consultations with human rights with other countries and in written official correspondence.*

**Recommendation 8:** *The Department of Foreign Affairs and Trade should develop briefings containing information about laws criminalising homosexuality in any given country for ministers, parliamentarians and senior officials undertaking international visits, including talking points to enable effective representations on the decriminalisation of homosexuality.*

**Recommendation 9:** *The Prime Minister should continue to raise decriminalisation of homosexuality at Pacific Islands Forum Leaders Meetings and other Pacific forums.*

**Recommendation 10:** *The Prime Minister should push for decriminalisation of homosexuality at the Commonwealth Heads of Government Meetings.*

**Recommendation 11:** *The Attorney General should push for decriminalisation of homosexuality at the Commonwealth Law Ministers Meetings.*

**Recommendation 12:** *The Department of Foreign Affairs and Trade should establish an LGBTI consultative group, consisting of LGBTI community organisations to:*

- *share advocacy priorities;*
- *update community organisations on bilateral and multilateral advocacy;*
- *coordinate responses to individual cases, particularly cases of LGBTI Australians persecuted abroad;*
- *explore joint public diplomacy opportunities; and*
- *meet at the Department's annual Non-Government Organisations Human Rights Forum.*

**Recommendation 13:** *The Government should consider providing funding to the Human Dignity Trust.*

## Background

### Papua New Guinea

1. Since 1884, Papua New Guinea was ruled by Germany and Britain. As Enze Han and Joseph O'Mahoney describe:

*In 1888, under pressure from the colony of Queensland, the British annexed British New Guinea (later Papua) and adopted English common law and Queensland-based statutes. After the Griffith [criminal] code came [QCC] into force in Queensland in 1901, British New Guinea adopted the code in 1902 as the Criminal Ordinance of 1902. German New Guinea was occupied by Australian forces during World War I and was subsequently allocated by the League of Nations as a mandate to the British Crown administered by the Australian government. In 1921, the governor general adopted the Laws Repeal and Adopting Ordinance, repealing the German laws and adopting, among others, the Griffith code. The 1974 criminal code includes section 210, which is the same as the QCC's.<sup>1</sup>*

2. In 1975, the *Papua New Guinea Independence Act* granted independence to Papua New Guinea.
3. In 1995, Papua New Guinea acceded to the Convention on the Elimination of All Forms of Discrimination Against Women. However, the Committee on the Elimination of Discrimination

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<sup>1</sup> Enze Han and Joseph O'Mahoney, *British Colonialism and the Criminalisation of Homosexuality: Queens, Crime and Empire* (Routledge, 2018) 22.

Against Women has failed to recommend the decriminalisation of homosexuality in the country.<sup>2</sup> This is despite a general recommendation from the Committee calling for states to repeal all legal provisions that criminalise being lesbian or bisexual.<sup>3</sup>

4. In 2002, then Minister for Community Development, Dame Carol Kidu, launched a multi-sectoral, semi-formal Decriminalisation Task Force. That same year, the *Criminal Code (Sexual Offences and Crimes Against Children Act* amended the section read that “a person who sexually penetrates any person against the order of nature... is guilty of a crime” carrying a penalty of “imprisonment for a term not exceeding seven years.”<sup>4</sup> This penalty is not mandatory.
5. In 2008, Papua New Guinea ratified the International Covenant on Civil and Political Rights without reservations. However, no court challenges have been brought against the law.
6. In 2009, Dame Kidu’s task force was refocussed as a Decriminalisation Reference Group.
7. In 2010, the Reference Group took a submission to the National Executive Council (Cabinet) requesting a review of laws on consensual male-to-male sex. Technical support for drafting the submission was provided through the Australian Federation of AIDS Organisations and through AusAID’s PNG-Australia HIV and AIDS Program. Cabinet declined to make a decision on the submission. However, it directed the Attorney General to refer the issues to the Constitutional Law Reform Commission.<sup>5</sup> The Attorney General also instructed the Secretary of the Department of Justice and Attorney General to prepare a test case before the Supreme Court to challenge the constitutional validity of laws criminalising homosexuality. Later that year, a new Attorney General was appointed and the initiative lapsed.<sup>6</sup>
8. In 2011, the Government stated that “there is ongoing national consultation on this issue.”<sup>7</sup>
9. In 2015, the National Court of Justice in *State v Sevese* sentenced the accused to a suspended sentence of two years imprisonment for gross indecency,<sup>8</sup> and held that “homosexual acts or this type of behaviour is quite prevalent in society” despite the lack of reported cases.<sup>9</sup>
10. In 2016, the Government stated that decriminalisation “is currently not a priority for the Government.”<sup>10</sup>

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<sup>2</sup> United Nations Committee on the Elimination of Discrimination Against Women, *Concluding Observations of the Committee on the Elimination of Discrimination Against Women: Papua New Guinea*, 46<sup>th</sup> sess, UN Doc CEDAW/C/PNG/CO/3 (20 July 2010).

<sup>3</sup> United Nations Committee on the Elimination of Discrimination Against Women, *General Recommendation No. 35 on Gender-Based Violence Against Women, Updating General Recommendation No. 19*, UN Doc CEDAW/C/GC/35 (26 July 2017) 12 [29(c)(i)].

<sup>4</sup> *Criminal Code 1974* (PNG) s 210(a).

<sup>5</sup> ‘Cabinet endorses review on country’s sex laws’, *The National* (22 October 2010).

<sup>6</sup> Christine Stewart, *Name, Shame and Blame: Criminalising Consensual Sex in Papua New Guinea* (Australian National University Press, 2014) 292-293.

<sup>7</sup> United Nations Human Rights Council, *Report of the Working Group on the Universal Periodic Review: Papua New Guinea*, 18<sup>th</sup> sess, Agenda Item 6, UN Docs A/HRC/18/18 and Add.1 (30 September 2011) 6.

<sup>8</sup> *State v Sevese* [2015] PGNC 42 (5 March 2015) [18]-[19].

<sup>9</sup> *Ibid* [12].

## Solomon Islands

11. In 1963, Solomon Islands, which was then a British Protectorate, adopted a *Penal Code* which was “virtually... identical” to the then Queensland *Criminal Code*,<sup>11</sup> and which stipulated that “any male person who, whether in public or in private, commits an act of gross indecency with another male person... shall be guilty of a felony, and shall be liable to imprisonment for five years.”
12. In 1978, the *Solomon Islands Act* granted independence to Solomon Islands.
13. In 1988, the High Court of Solomon Islands in *Director of Public Prosecutions v Bowie* found that this provision of the Code was inconsistent with the Constitution, which prohibits discriminatory laws. As a result, the Court ruled that “the section continues to have effect but is to be construed with such modifications as are necessary to bring it into conformity with the Constitution, i.e. in this case, by the deletion of the word ‘male’.”<sup>12</sup>
14. In 1990, the *Penal Code (Amendment) Act* altered the section to read that “any person who, whether in public or private commits an act of gross indecency with another of the same sex; procures another of the same sex to commit any act of gross indecency; or attempts to procure the commission of any act of gross indecency by persons of the same sex, shall be guilty of a felony and be liable to imprisonment for five years.”<sup>13</sup> In the period 2003-2010, sentences ranged from 6-12 months.<sup>14</sup>
15. In 2002, Solomon Islands acceded to the Convention on the Elimination of All Forms of Discrimination Against Women. However, the Committee on the Elimination of Discrimination Against Women has failed to recommend the decriminalisation of homosexuality in the country.<sup>15</sup> This is despite a general recommendation from the Committee calling for states to repeal all legal provisions that criminalise being lesbian or bisexual.<sup>16</sup>
16. In 2003, a woman was charged and held on remand for having sex with another woman.<sup>17</sup> However, there is no information available on this case. The Solomon Islands Law Reform Commission found

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<sup>10</sup> United Nations Human Rights Council, *Report of the Working Group on the Universal Periodic Review: Papua New Guinea*, 33<sup>rd</sup> sess, Agenda Item 6, UN Docs A/HRC/33/10 and Add.1 (22 September 2016) 7 n 53.

<sup>11</sup> Robin O'Regan, *New Essays on the Australian Criminal Codes* (Law Book Company, 1988) 113.

<sup>12</sup> *Director of Public Prosecutions v Bowie* [1988] SBHC 1 (13 October 1988).

<sup>13</sup> *Penal Code 1963* (SI) s 162.

<sup>14</sup> Solomon Islands Law Reform Commission, *Review of the Penal Code and Criminal Procedure Code: Sexual Offences – Sentencing*, Research Paper (2011) 16.

<sup>15</sup> United Nations Committee on the Elimination of Discrimination Against Women, *Concluding Observations of the Committee on the Combined Initial to Third Periodic Reports of Solomon Islands*, UN Doc CEDAW/C/SLB/CO/1-3 (14 November 2014).

<sup>16</sup> United Nations Committee on the Elimination of Discrimination Against Women, *General Recommendation No. 35 on Gender-Based Violence Against Women, Updating General Recommendation No. 19*, UN Doc CEDAW/C/GC/35 (26 July 2017) 12 [29(c)(i)].

<sup>17</sup> ‘Solomons woman charged with lesbian “offence”’, *ABC News* (8 December 2003); ‘Mother remanded on lesbian charge’, *Herald Sun* (8 December 2003).

that the provisions were instead primarily enforced against adult male perpetrators having sexual relations with male children.<sup>18</sup>

17. In 2008, the Law Reform Commission issued an issues paper inviting submissions on the question of whether “homosexual activity which is consensual and done in private [should] be prohibited.”<sup>19</sup> However, there was strong public opposition to decriminalisation.<sup>20</sup> As a result, there were no submissions made to the Law Reform Commission to repeal these provisions.<sup>21</sup>

18. In 2013, the Law Reform Commission issued a report that made no recommendations on this question.<sup>22</sup>

19. In 2016, the Government did not support recommendations to decriminalise sexual relations between consenting adults of the same sex.<sup>23</sup>

20. Solomon Islands is not a signatory to the International Covenant on Civil and Political Rights.

## Australia

21. In 1980, Australia ratified the International Covenant on Civil and Political Rights.

22. In 1983, Australia ratified the Convention on the Elimination of All Forms of Discrimination Against Women.

23. In 1994, the United Nations Human Rights Committee in *Toonen v Australia* found that sections of the Tasmanian *Criminal Code* criminalising sexual contact between consenting adults:

- violated the right to privacy under the International Covenant of Civil and Political Rights;<sup>24</sup> and
- ran counter to the implementation of effective strategies to control the spread of HIV/AIDS.<sup>25</sup>

24. In an appendix to the decision, one member also found that these sections were discriminatory.<sup>26</sup> The Committee ordered that those sections be repealed.<sup>27</sup> The *Toonen* decision has subsequently been referenced by the Committee and by other treaty bodies in making rulings.

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<sup>18</sup> Solomon Islands Law Reform Commission, *Review of the Penal Code and Criminal Procedure Code: Sexual Offences – Sentencing*, Research Paper (2011) 14 {3.20}. [3.22].

<sup>19</sup> Solomon Islands Law Reform Commission, *Review of the Penal Code and Criminal Procedure Code*, Issues Paper (2008) 92.

<sup>20</sup> ‘Strong public opposition to idea on legalising gay and lesbian status’, *Solomon Times* (23 December 2008).

<sup>21</sup> United Nations Human Rights Council, *Report of the Working Group on the Universal Periodic Review: Solomon Islands*, 18<sup>th</sup> sess, Agenda Item 6, UN Doc A/HRC/18/8 (11 July 2011) 6 [26].

<sup>22</sup> Solomon Islands Law Reform Commission, *Review of the Penal Code and Criminal Procedure Code: Sexual Offences*, Second Interim Report (2013).

<sup>23</sup> United Nations Human Rights Council, *Report of the Working Group on the Universal Periodic Review: Solomon Islands*, 32<sup>nd</sup> sess, Agenda Item 6, UN Doc A/HRC/32/14 (13 April 2016) 23-24 [101].

<sup>24</sup> United Nations Human Rights Committee, *Views: Communication No. 488/1992*, 15<sup>th</sup> sess, UN Doc CCPR/C/50/D/488/1992 (31 March 1994) (*Toonen v Australia*) [8.2].

<sup>25</sup> *Ibid* [8.5].



25. Following this, the *Human Rights (Sexual Conduct) Act* was passed which decriminalised homosexuality across all Australian jurisdictions.<sup>28</sup>
26. In 1997, the *Criminal Code Amendment Act* was passed which repealed those sections criminalising homosexuality in Tasmania,<sup>29</sup> the last remaining jurisdiction that criminalised homosexuality. Decriminalisation of homosexuality now has broad bipartisan support.

## Why is decriminalisation of homosexuality abroad important to Australia?

27. The criminalisation of homosexuality abroad affects Australians. As the Government's Smart Traveller advice for Solomon Islands notes, same-sex sexual activity is illegal and penalties include jail sentences.<sup>30</sup> These laws pose risks for Australian travellers.
28. The criminalisation of homosexuality in Papua New Guinea also affects refugees resettled in Papua New Guinea under the regional resettlement arrangement between Australian and Papua New Guinea. The International Covenant on Civil and Political Rights is not mentioned in that arrangement or the memorandum of understanding that followed. As a result, asylum seekers transferred to Papua New Guinea, and refugees resettled in Papua New Guinea, are vulnerable to prosecution under the law criminalising homosexuality.
29. Australia is also a signatory to the United Nations joint statement on ending acts of violence and related human rights violations based on sexual orientation and gender identity, which calls on states to end criminal sanctions against individuals because of their sexual orientation.<sup>31</sup> Papua New Guinea is not a signatory to this statement, and Solomon Islands is signatory to an opposing statement.<sup>32</sup> As a member of the United Nations Human Rights Council, Australia should ensure that all countries, including Solomon Islands and Papua New Guinea, uphold their obligations to protect the rights of LGBTI people, including under the International Covenant on Civil and Political Rights and the Convention on the Elimination of All Forms of Discrimination Against Women.
30. Finally, the law that exists in Papua New Guinea was put in place by Australia. The law that exists in Solomon Islands was modelled off Australian law. Australian law has since changed and, as such, Australia should support the reform of this outdated, discriminatory and dangerous legislation in Solomon Islands and Papua New Guinea.

## A strategy for decriminalisation of homosexuality abroad

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<sup>26</sup> *Ibid* Appendix.

<sup>27</sup> *Ibid* [10].

<sup>28</sup> *Human Rights (Sexual Conduct) Act 1994* (Cth) s 4(1).

<sup>29</sup> *Criminal Code Amendment Act 1997* (Tas).

<sup>30</sup> Department of Foreign Affairs and Trade, *Solomon Islands Travel Advice and Safety* (16 April 2020) Smart Traveller <<https://www.smartraveller.gov.au/destinations/pacific/solomon-islands>>; Department of Foreign Affairs and Trade, *Papua New Guinea Travel Advice and Safety* (20 April 2020) Smart Traveller <<https://www.smartraveller.gov.au/destinations/pacific/papua-new-guinea>>.

<sup>31</sup> UN GAOR, 63<sup>rd</sup> sess, 70<sup>th</sup> plenary meeting, UN Doc A/63/PV.70 (18 December 2008) 30.

<sup>32</sup> *Ibid* 30-32.

31. The international trend is strongly in favour of decriminalisation of homosexuality, but progress towards decriminalisation has been gradual. Noting its history, Australia can be a leader in efforts to end the criminalisation of homosexuality worldwide. This would accord with Australia's focus on stepping up our engagement with our Pacific neighbours with whom we have close and friendly relations.

**Recommendation 1:** *The Government, through its Department of Foreign Affairs and Trade, should develop a strategy with a goal of globally decriminalising homosexuality, with specific goals to:*

- *increase the number of countries that decriminalise homosexuality, and increase the number of countries with a moratorium on the criminalisation of homosexuality;*
- *reduce the number of convictions under laws that criminalise homosexuality;*
- *ensure that people facing prosecution under laws that criminalise homosexuality can access adequate legal representation, and that their rights to a fair trial and due process are realised, particularly for defendants held on remand;*
- *increase transparency in the application of laws that criminalise homosexuality, including by encouraging countries to report the numbers of people charged and sentenced under these laws;*
- *prevent the reintroduction of laws criminalising homosexuality where they have been abolished; and*
- *prevent the resumption of policing where a moratorium has been in place on the criminalisation of homosexuality.*

## Bilateral advocacy

### Ambassadors and Envoys

32. In 2014, the United Kingdom Opposition appointed a special envoy on LGBT issues worldwide, though the position is now vacant and the United Kingdom Government has no current plans to appoint such a role.<sup>33</sup>

33. In 2015, the United States Government appointed a Special Envoy for the Human Rights of LGBTI Persons, though the office is now currently vacant.

**Recommendation 2:** *The Government should appoint an Ambassador for the Human Rights of LGBTI Persons.*

34. Australia has High Commissions in Solomon Islands and Papua New Guinea that could be activated to further decriminalisation of homosexuality in those countries. Disappointingly, neither Solomon Islands nor Papua New Guinea have a national human rights body with whom the High Commissions could work with, though this is an output of the Pacific Commonwealth Equality Project. Nor does there appear to be a significant presence from international organisations such as Outright Action International in these countries. However, there are opportunities to work with civil society organisations such as Rainbow Papua New Guinea.

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<sup>33</sup> Nick Duffy, 'UK government: "No plans" for global LGBT rights envoy', *Pink News* (10 July 2018).

**Recommendation 3:** *The High Commissions in Solomon Islands and Papua New Guinea should develop and implement tailored strategies for engaging parliamentarians and policy-makers on the issue of decriminalisation of homosexuality, in coordination with one another and with United Nations offices in those countries.*

35. In developing strategies to advance decriminalisation of homosexuality, such strategies must be nimble and flexible enough to respond to key shifts in circumstances (such as public opinion or changes in leadership) that might present a window for change. Given the sensitive nature of representations on the decriminalisation of homosexuality, we understand that such strategies may not be publicly available, but do believe public reporting is important to track progress towards decriminalisation.

**Recommendation 4:** *The High Commissioners to Solomon Islands and Papua New Guinea should report at least annually on the status of laws that criminalise homosexuality in their countries, with reporting to cover:*

- *legislation criminalising homosexuality and its practical application;*
- *statistics on charges under laws that criminalise homosexuality, and any representations that the High Commission has made regarding those charged, particularly Australians abroad;*
- *statistics on convictions under laws that criminalise homosexuality, including convictions where the judgments are not publicly available;*
- *public opinion on – and civil society organisations advocating against – the criminalisation of homosexuality; and*
- *progress or otherwise towards the decriminalisation of homosexuality.*

**Recommendation 5:** *The High Commissions in Solomon Islands and Papua New Guinea should undertake public diplomacy activities in association with the International Day Against Homophobia, Biphobia and Transphobia on May 17.*

## Ministers and Parliamentarians

36. In 2014, the Victorian Government appointed a Minister for Equality.<sup>34</sup>

**Recommendation 6:** *The Government should appoint a Minister for Equality with specific responsibility for LGBTI rights.*

37. Ministers and parliamentarians should look for opportunities to raise decriminalisation of homosexuality on a regular basis with representatives of those countries that criminalise homosexuality.

**Recommendation 7:** *Ministers, parliamentarians and officials should raise decriminalisation of homosexuality as a priority human rights issue where appropriate, including at political-level meetings*

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<sup>34</sup> Richard Willingham and Tom Cowie, 'Premier Daniel Andrews finalises ministers' portfolios', *The Age* (4 December 2014).

*and during official visits, in political dialogues, human rights dialogues, in consultations with human rights with other countries and in written official correspondence.*

38. Representations should outline Australia's position on the decriminalisation of homosexuality (as reflected in the *Human Rights (Sexual Conduct) Act*), including the reasons we support decriminalisation, and urge countries that criminalise homosexuality to move towards a moratorium on the policing of such laws and eventual decriminalisation.

**Recommendation 8:** *The Department of Foreign Affairs and Trade should develop briefings containing information about laws criminalising homosexuality in any given country for ministers, parliamentarians and senior officials undertaking international visits, including talking points to enable effective representations on the decriminalisation of homosexuality.*

39. We understand that in the majority of cases, such representations will be private. Where possible, however, such representations should be made known to the public, particularly where public representations would be more effective than private conversations.

## Multilateral advocacy

40. Australia is a member of a number of multilateral organisations that promote LGBTI rights, including the:

- Equal Rights Coalition; and
- United Nations LGBTI Core Group.

41. Neither Solomon Islands nor Papua New Guinea are members of these organisations.

42. Australia is also a member of the United Nations Human Rights Council for the 2018-20 term. Ensuring equal human rights for LGBTI people is one of its core objectives during this term on the Council.<sup>35</sup> Unfortunately, during Australia's term on the Council neither Solomon Islands nor Papua New Guinea will undergo a Universal Periodic Review.

## Pacific Islands Forum

43. The Civil Society Dialogue with Pacific Islands Forum Leaders in 2019 identified the need for respect for LGBTI communities.

44. In 2016, Australia supported the LGBTI Pacific Youth Forum organised by Kaleidoscope Human Rights Foundation.

**Recommendation 9:** *The Prime Minister should continue to raise decriminalisation of homosexuality at Pacific Islands Forum Leaders Meetings and other Pacific forums.*

<sup>35</sup> Department of Foreign Affairs and Trade, *Pillars and Priorities*, Australia on the United Nations Human Rights Council 2018-2020 <<https://www.dfat.gov.au/international-relations/international-organisations/un/unhrc-2018-2020/pillars-and-priorities/Pages/pillars-and-priorities>>.

## Commonwealth Heads of Government Meetings

45. Both Solomon Islands and Papua New Guinea are members of the Commonwealth of Nations.
46. In a speech to the Commonwealth Joint Forum Plenary prior to the Heads of Government Meeting in the United Kingdom in 2018, the host country's Prime Minister, Theresa May, stated:
- Nobody should face persecution of discrimination because of who they are or who they love. And the UK stands ready to support any Commonwealth member wanting to reform outdated legislation that makes such discrimination possible.*<sup>36</sup>
47. However, the LGBT rights discussed at Joint Forum Plenary did not feed into the Meeting. Whilst nothing may have happened at the Meeting itself, the United Kingdom funded the Equality and Justice Alliance to support Commonwealth governments to reform unjust laws.
48. The United Kingdom has indicated that it will explore opportunities to raise this issue at the next Meeting in Rwanda.

**Recommendation 10:** *The Prime Minister should push for decriminalisation of homosexuality at the Commonwealth Heads of Government Meetings.*

## Commonwealth Law Ministers Meeting

49. The Commonwealth Senior Officials of the Law Ministries Meeting in the United Kingdom in 2010, which served as a forerunner to the Commonwealth Law Ministers Meeting, included "the first-ever discussion about LGBT rights at an official Commonwealth forum."<sup>37</sup> At the Meeting, the Commonwealth Lawyers Association presented a paper on the decriminalisation of homosexuality with particular attention to Uganda's Anti-Homosexuality Bill<sup>38</sup> (since stuck down in 2014 by the Constitutional Court of Uganda in *Oloka-Onyango v Attorney General*<sup>39</sup>). The communiqué following the meeting reports that delegates took note of the paper but the issue was not referred to the Law Ministers Meeting. There has, to our knowledge, been no discussion of these issues at the Law Ministers Meeting.

**Recommendation 11:** *The Attorney General should push for decriminalisation of homosexuality at the Commonwealth Law Ministers Meetings.*

## Civil society engagement

50. The Department of Foreign Affairs and Trade holds an annual Non-Government Organisations Human Rights Forum in Canberra, which regularly includes discussion of LGBTI issues. However, it

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<sup>36</sup> Pippa Crerar, 'Theresa May says she deeply regrets Britain's legacy of anti-gay laws', *The Guardian* (17 April 2018).

<sup>37</sup> Frederick Cowell, 'LGBT Rights in Commonwealth Forums: Politics, Pitfalls and Progress?' in Corinne Lennox and Matthew Waites (eds.) *Human Rights, Sexual Orientation and Gender Identity in the Commonwealth* (University of London Press, 2013) 135.

<sup>38</sup> Later the *Anti-Homosexuality Act 2014* (Uganda).

<sup>39</sup> [2014] UGCC (1 August 2014).

is important that the Department stay in contact with LGBTI community organisations at other times.

**Recommendation 12:** *The Department of Foreign Affairs and Trade should establish an LGBTI consultative group, consisting of LGBTI community organisations to:*

- *share advocacy priorities;*
- *update community organisations on bilateral and multilateral advocacy;*
- *coordinate responses to individual cases, particularly cases of LGBTI Australians persecuted abroad;*
- *explore joint public diplomacy opportunities; and*
- *meet at the Department's annual Non-Government Organisations Human Rights Forum.*

51. The Government, through its Department of Foreign Affairs and Trade, also provides funding for a number of organisations and initiatives that support LGBTI rights, including:

- The Global Equality Fund;
- The Commonwealth Equality Network; and
- Being Gay in Asia.

52. The Human Dignity Trust is the only organisation working globally to use strategic litigation to defend the human rights of LGBTI people and is funded, in part, by the British and Canadian Governments.

**Recommendation 13:** *The Government should consider providing funding to the Human Dignity Trust.*