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Q & A  
PRIDE &  
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EXHIBITION

State Library of Queensland  
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The Hon. Michael Kirby AC CMG

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## PRIDE AND PREJUDICE EXHIBITION

### Q & A FOR THE HON. MICHAEL KIRBY AC CMG

#### QUESTIONS

1. You have talked in the past about how lonely it was to be a young gay person. Do you think young GLBT still feel isolated or lonely in Australian society?
2. Queensland has often being criticised, especially by the southern states, for its conservative past; do we still have a long way to go in terms of GLBT rights?
3. Queensland is the only jurisdiction that enforces the sodomy law, is it likely this law will be repealed in the near future?
4. Are you surprised by the continued resistance to gay marriage?
5. Do you think there is still societal confusion between homosexuality and paedophilia? Is time the only antidote to this ignorance?
6. What are the key areas of gay law reform that still need to be addressed?
7. You say “science is a great weapon against irrational hatred”, but can we rely on it to stamp out discrimination?
8. Opposition leader Tony Abbott recently told *Sixty Minutes* he felt a “bit threatened” ... “as so many people (do)” by homosexuality. It still seems to illicit feelings of discomfort in some people, does that still surprise/frustrate you? Is he being irresponsible in airing such views or is he just an easy target given his religious stance?
9. What responsibility does the head of a major political party have when speaking about issues relating to GLBT?

10. Mr Abbott still says homosexuality challenges “orthodox notions of the right order of things” – do you think true understanding is ever possible? What effect will that have on young people struggling with their sexuality?
11. Now that you are no longer a High Court judge will you devote more time to social activism?
12. What are your views on gay surrogacy?
13. Acceptance of GLBT people goes beyond law reform, what is the key to acceptance and understanding?

## **ANSWERS**

### *1. Loneliness and isolation*

Young GLBT citizens in Australia still feel isolated or lonely. Particularly if they live in country towns or in families that lack understanding or are burdened with religious misinformation. But things are getting better. Certainly, initially no-one today in Australia would think that he or she was the ‘only gay on the block’. That was how I felt when I started out on this journey in 1950.

### *2. Queensland exceptionalism*

Queensland took longer than most Australian states to reform its criminal laws against gay men. Even then, it did so grudgingly. To this time, there are discriminatory provisions in Queensland law which do not exist elsewhere in Australia. The age of consent for sex is one example: it is different between heterosexual and gay sex. Still, progress has been made in more recent times and I expect that Queensland will catch up with the rest of Australia before long.

### *3. Sodomy law*

The Queensland *Criminal Code*, like the other penal codes of the British Empire, contain sodomy offences long after Napoleon’s codifiers had got rid of them in the civil law countries of Europe. These horrible offences, with their ugly names, linger on in the countries of the old British Empire to curse gay people to this very day. Apart from everything else, they are a serious impediment to fighting AIDS. Every now and then, an old ‘sodomy’ offence is dusted off and prosecuted in Australia. This is not only in Queensland. We should get rid of such offensive relics that constitute a patriarchal imposition on the private consensual activities of citizens. As Pierre Trudeau, Prime Minister of Canada, once said: ‘We

should get the government out of the bedrooms of the nation'. Certainly so far as consenting participants beyond an equal age of consent.

#### 4. *Gay marriage*

Repeated public opinion polls show that Australian attitudes to gay marriage are softening. A clear majority now favour some form of legal recognition of stable, long-term, same-sex relationships. Yet successive federal governments, Coalition and ALP, have not budged on this issue. They are now clearly behind Australian popular opinion. They have buckled to special interest groups. If Spain and Albania can give such recognition, it is hard to see how we in Australia can justify the stance we have taken. It can only be in the interests of a civilised society to support and recognise stable, loving, human relationships of a sexual kind. And not to discriminate by measuring the mechanics of how a loving couple express their sexual feelings for one another. What an intrusive affront to human dignity this patriarchal inquisition is.

#### 5. *Homosexuality and paedophilia*

Unfortunately, the media and some churches sometimes confuse homosexuality and paedophilia. A sexual interest in under-aged persons is legitimately offensive to society because children cannot give an informed consent to sexual activity. Sitting in the courts, one realises that the biggest problem with paedophilia exists in serial 'straight' relationships, where young children are exposed to close proximity with straight adults (usually 'stepfathers') who have no incest inhibition against engaging in sexual conduct with a child. Sadly, such relationships of proximity also exist in church environments as the worldwide child sex abuse scandals demonstrate.

#### 6. *Keys areas of gay law reform*

The key areas for ongoing law reform include (1) relationship recognition, (2) surrogate birth rights, and (3) the provision of anti-discrimination laws to give redress against sexual stereotyping and anti-GLBT discrimination in decisions that are not merely trivial.

#### 7. *Science and irrational hatred*

Science undermines the assumption that sexual variation in the human species is unnatural and deliberately chosen by wicked people to affront society and its moral teachings. Science shows that sexual variations, such as homosexuality, are as natural in nature as left-handedness. Once this is realised, it demands rethinking by churches, moralists and all citizens of their objections to the rights of same-sex attracted people. It may take time, but a lot of progress has been made in my lifetime.

Constructive actions by the media (including in dramas and documentaries) can influence popular culture.

#### 8. *Feeling threatened by homosexuality*

I do not think Tony Abbott was being irresponsible in expressing truthfully response to homosexuality. It is probably a product of his religious upbringing. Fortunately, that kind of religious attitude is on the wane in Australia today because of the growing knowledge in our community of the science of sexual variation. There may be special reasons in Tony Abbott's seminarian life, when he was training to be a priest, to explain why he felt "a bit threatened". Most younger people today do not feel "threatened" because many younger GLBT peers today are open about their sexuality. They do not waste their time on 'straights' who do not share their feelings.

On the whole, it is better that people should explain their feelings about sexuality honestly and candidly than that they should bottle them up. At least then, the fears can be confronted and examined rationally and calmly so that, where they are irrational, they can go away. Like most spooks in the dark, this is the way to overcome personal demons. I do not say it is so in Mr. Abbott's case, but my own experience in life has been that the most homophobic people are often those who are trying to suppress sexual feelings that they prefer not to have. Dr. Kinsey's research in the 1940s showed, as much experience and research since then has confirmed, that sexual orientation is not binary. It exists in differing degrees in all people. Including Mr. Abbott and me. We just have different mixtures. He's at one end of the spectrum. I'm at the other.

#### 9. *Responsibility in speaking about sexuality*

Of course, national leaders carry a larger responsibility to inform themselves of basic science and also social science before launching into expressing opinions that could reinforce stigma against a particular group in society. How would we feel if our leaders went around saying they felt 'a bit threatened' by black people? Or by Islamic citizens. Or by Aboriginals. Of course, I did not take Mr. Abbott to be giving a scientific lecture on GLBT issues. He was only explaining his own personal response to homosexuality. It is up to the voters to decide whether that response is out of date, misinformed, unscientific, ignorant or such as could be likely to occasion prejudice to a vulnerable minority in society. If citizens do not like this, they have the privilege of voting against it.

#### 10. *Orthodox notions of the 'right order of things'*

In speaking in this way, suggesting that homosexual feelings are against the 'right order of things', Mr. Abbott is doubtless trying to express the natural law understandings of the Roman Catholic Church taught at least at the time he was in a seminary training to be a Catholic priest. Since then, progress has been made, even if not enough. For example, the Pope's representative at the United Nations in 2009 called for an end to criminal laws against gays. And the Roman Catholic *Catechism* discourages prejudice by the faithful against GLBT people. True, it then appears to forbid GLBT people doing anything about their sexuality except to suppress it. We all know what that does to people. Mr. Abbott should be aware of this. And the Roman Catholic Church should know that better than most institutions in this world. Freud was right when he said that the 'one unnatural sexual conduct' was celibacy. If celibacy cannot operate in the case of a significant number of priests today, how can we expect it of ordinary folks? Especially of young people living in a world which today bombards them with sexual images, fantasies and temptations? We have all just got to get real about these things and measure 'the right order of things' against what is 'right' for a minority who, by nature, have a different range of sexual feelings than the majority. Do as you would be done by is the Golden Rule of Christianity and all the world's great religions.

#### 11. *Social activism*

Despite my retirement from the judiciary, I still accept some limitations on what I can and should properly do and say. However, frankly, I think it was a good thing that, whilst I was still a Justice of the High Court, I was open about my sexuality. If every GLBT person in Australia stood up and "came out", the pathetic, sad and contemptible charade over homosexuality would collapse and disappear. To this extent, GLBT people conspire in their own oppression by continuing the personal secrecy. Yet they do so because of fear of stigma and disadvantage. Sadly, this course of conduct is often thrust on them by religious institutions. Astonishingly, by institutions of the loving religion of Jesus Christ.

#### 12. *Gay surrogacy*

I do not believe in any legal discrimination against GLBTIQ citizens on the basis of their sexuality. Whether a particular couple, straight or gay, is mature enough and sufficiently responsible to bring children into the world, or adopt them and look after them (with the long-term and intimate, trusting commitment that that entails) is a decision that should be made by them and by the law on a case by case basis. There should

be no preconceptions derived only from sexuality. I have known good and bad parents who are 'straight'. And the law books contain examples of good and bad parents who are gay. Down with stereotypes!

### 13. *Acceptance and understanding*

Education plays a big part in community acceptance of human sexual variation. This includes school education. And that presents difficulties in some religious schools whose pupils also have rights to information of the normality of sexual variation which they have been denied with talk of reflecting 'lifestyles' and inculcating the Church's 'moral ethos'. One day there will be a big apology for the continuation of this oppression and unkindness. It is like a form of sexual apartheid.

In some ways, education in the media is an even greater force for changed attitudes than education in schools. I have always thought that the soap opera *Number 96* in the 1970s did more to increase acceptance of the actuality of the lives of gay people based on the humdrum characters portrayed there, than a thousand university lectures by people like me. The internet and social networking are new ways by which the younger generation leap over the ignorance and prejudice and unscientific feelings of 'threat' and 'discomfort' that have for too long fuelled prejudice, criminal law and societal stigma in the past. Time and technology are on the side of a realistic acknowledgement of the reality of GLBT people's lives in the world. This is why, in Western countries, the edifice of prejudice and discrimination is gradually collapsing. However, in much of Africa, the Caribbean, parts of Asia and the Middle East, prejudice still reigns. Australians, gay and 'straight', must be more engaged with the predicament of sexual minorities in developing countries. They are our brothers and sisters. They feel pain and fear. There is an awful alchemy of religious ignorance that presents a stubborn obstacle to progress which is all the more urgent in the face of the AIDS epidemic. All rational people have a duty to rid their own minds, social attitudes, conduct and laws from the relics of this outmoded and ignorant teaching from the past. If some religious people respond: 'But the Bible tells me so', the answer must be given: 'Science teaches the contrary. Go back and read your texts again. And take a candle whose flame burns bright with love which is, or should be, the great force of all spiritual inclinations'.

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