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RACS LGBTQIA+ REFUGEE INCLUSIVE
PRACTICE TOOLKIT

FOREWORD

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Past Justice of the High Court of Australia and Patron of RACS

Although the prosecution of Australians on the essential basis of sexual orientation, gender identity, gender expression and sexual characteristics has ceased, this only occurred throughout the nation in 1997 when the Tasmanian laws were repealed following enactment of the *Human Rights (Sexual Conduct) Act 1994* (Cth). Although the latter Act was based on a decision of the UN Human Rights Committee in *Toonen v Australia* (1994) *Int Human Rts Reports* 97 [No 3], and although it held that continuing criminal laws, punishments and other discriminations against queer people worldwide constituted a breach of international human rights law, such discriminatory laws still exist in more than 70 jurisdictions. They criminalise private, consensual, same-sex activity. The punishments are often extremely severe. In some jurisdictions, they even involve capital punishment, dire corporal punishment and lengthy imprisonment.

In these circumstances, it is not surprising that queer people in many countries dream of being accepted as refugees in Australia. They see this as the only way they can be their true selves in matters of sexuality, identity and relationships. If they arrive in Australia, it is unsurprising that they will claim refugee status on the basis that they have a “well-founded fear of persecution” if they were to be returned to their country of origin.

Although claims to refugee status on this basis and the consequent provision of protection, have been upheld in a number of cases, including in the High Court of Australia, the journey for acceptance has been far from easy. It requires people seeking asylum to convince officials, tribunal members and courts of law of the truth of the basis of their claims. Sadly, the cases often receive a response of scepticism and hostility. The scars inflicted on the claimants are often on their minds rather than their bodies. Commonly, the LGBTQI applicants find it impossible to put their experiences into words. Frequently, they have never done this, even with close family and friends. Unless they can find an environment, and helpers, whom they trust, over a corner of their lives that has always been deeply hidden, they will face great difficulties. They need specially sensitive people to help them to tell their stories and advance entitlements under the *Refugees Convention and Protocol*.

RACS is a wonderful organisation. It helps people who are going through the asylum process to make their claims as convincingly as truth and justice permit. In order to help avoid trauma to the vulnerable minorities concerned, RACS has assembled this toolkit to respond to the accumulated experience of lawyers, case workers and applicants for refugee status have experienced. This is a practical book for those who are themselves, or are helping, stigmatised and vulnerable minorities to find their voices, to hold their heads high, to know of their fundamental human and legal rights. And to fulfil their dreams, relevantly to become members of the Australian community.

As a country that punished and denied equality and human dignity to its own queer people until quite recently, this is a book to assist helpers and the queer refugees themselves: to advance cases and to establish their entitlements to protection, safety, fulfilment and human happiness.

A handwritten signature in black ink, appearing to read "Michael Kirby". The signature is fluid and cursive, with a prominent dot above the "i" in "Kirby".

Sydney,
10 April 2022

Michael Kirby