
amnesty international

AUSTRALIA

Tasmania to raise penalty in discriminatory law against homosexuals

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Amnesty International is concerned about the Tasmanian State Government's announcement on 24 January 1996 of plans to increase the maximum penalty for male homosexual acts between consenting adults in private from 21 to 25 years imprisonment. Homosexuals imprisoned under existing Tasmanian legislation governing this offence would be considered by Amnesty International to be prisoners of conscience.

In July 1992 and again in March 1993 the organization urged the Tasmanian State Government to repeal Sections 122 (a) and (c) and 123 of the Tasmanian Criminal Code Act 1924 (Amended 1987) and to ensure that future legislation governing sexual offences in Tasmania would not permit the imprisonment of people solely for consensual homosexual acts between adults in private. A year later the Human Rights Committee¹ found that the Tasmanian law directly contravenes Australia's obligations under the International Covenant on Civil and Political Rights.

TASMANIA'S FAILURE TO DECRIMINALIZE HOMOSEXUALITY

Section 122 (a) and (c) of the Tasmanian Criminal Code Act state that "Any person who (a) has sexual intercourse with any person against the order of nature; ... (c) consents to a male person having sexual intercourse with him or her against the order of nature, is guilty of a crime," and could be charged with "unnatural sexual intercourse." Section 123 of the same Act states that "Any male person who, whether in public or private, commits any indecent assault upon, or other act of gross indecency with, another male person, or

¹ The Human Rights Committee is the body created by the International Covenant on Civil and Political Rights (ICCPR) which oversees member states' adherence to their obligations under the ICCPR.

procures another male person to commit any act of gross indecency with himself or any other male person, is guilty of a crime," and could be charged with "indecent practice between male persons."

These particular sections of the law allow for the prosecution of consenting adults engaging in homosexual acts in private. Currently there are no persons imprisoned under these provisions, and, according to a Tasmanian Government submission to the Human Rights Committee, the most recent prosecution under the provisions dates back to 1984. A spokesperson for the Tasmanian Attorney-General stated in January 1996 that the State Government believes the law is still "useful" in dealing with offences such as sexual activities involving minors or sexual acts in public.

However, Sections 124 (sexual intercourse with another person who is under the age of 17 years) and 127 (indecent assault) of the Criminal Code Act already make unlawful sexual activity with minors a crime in Tasmania. In addition, public sex is prohibited by section 13, sub-section 1, paragraph (a) of the Police Offences Act 1935 (indecent activity in any place to which the public has access). Thus, the retention of the disputed provisions would not appear to be required for the protection of minors or the general public against unlawful sexual activities.

Under the Australian Constitution, power over the enactment and enforcement of criminal law resides primarily with the states comprising the federation. Male homosexual acts between consenting adults in private were decriminalized in the Australian Capital Territory in 1976; in the Northern Territory in 1983; in South Australia in 1972; in Victoria in 1980; in New South Wales in 1984; in Western Australia in 1989 and in Queensland in 1990. Today, Tasmania remains the only Australian state which has not yet decriminalized adult, consenting male homosexual activity in private.

HUMAN RIGHTS COMMITTEE RULING

On 31 March 1994 the Human Rights Committee found that sections 122 (a) and (c) and 123 of the Tasmanian Criminal Code are in breach of article 17, paragraph 1, of the International Covenant on Civil and Political Rights. This article states that

No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.

The Committee noted "that the policy of the [Tasmanian] Department of Public Prosecutions not to initiate criminal proceedings in respect of private homosexual conduct does not amount to a guarantee that no actions will be brought against homosexuals in the future [...]." It concluded by saying that "an effective remedy would be the repeal of Sections 122 (a), (c) and 123 of the Tasmanian Criminal Code."

With regard to its obligations under international law the Australian Federal Government in December 1994 passed the Human Rights (Sexual Conduct) Act 1994 which enshrines the right to sexual privacy in Australian law. However, the Tasmanian

Attorney-General was reported in February 1995 to have said that the Act was "[...] political window dressing. It doesn't make our law invalid and it doesn't affect the way it has applied for decades."

BACKGROUND ON AMNESTY INTERNATIONAL'S POSITION

Amnesty International's mandate on prisoners of conscience includes the call for a release of individuals who have been imprisoned solely because of their sexual orientation, including the practice of homosexual acts in private between freely consenting adults. The organization also calls for the repeal of laws that may lead to the imprisonment of prisoners of conscience, such as Sections 122 (a) and (c) and 123 of the Tasmanian Criminal Code Act 1924 (Amended 1987).

Amnesty International uses the term prisoners of conscience to describe those imprisoned for their political, religious or other conscientiously held beliefs, or by reason of their ethnic origin, sex, colour, language, national or social origin, economic status, birth or other status who have not used or advocated violence. The organization also works for fair and prompt trials for all political prisoners and opposes the death penalty, extrajudicial executions, "disappearances" and torture.

APPEAL TO THE GOVERNMENT

Amnesty International urges the Tasmanian State Government to exclude Sections 122 (a) and (c) and 123 of the Tasmanian Criminal Code Act 1924 (Amended 1987) from the proposed increase in prison sentences. The organization reiterates its appeal to the Tasmanian State Government to take immediate steps to repeal these provisions. Amnesty International also calls upon the Tasmanian Government to ensure that future legislation governing sexual offences in the state of Tasmania will not permit the imprisonment of people for consensual homosexual acts between adults in private, who would be considered by Amnesty International to be prisoners of conscience.

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KEYWORDS: HOMOSEXUALS1 /
LEGISLATION / UN HUMAN RIGHTS
COMMITTEE

INTERNATIONAL SECRETARIAT, 1 EASTON STREET,
LONDON WC1X 8DJ, UNITED KINGDOM

*WHAT YOU CAN DO: Please send
faxes/telegrams/express and airmail letters
either in English or your own language:*

*✍️ Urging the Tasmanian State
Government to exclude Sections 122 (a)
and (c) and 123 of the Tasmanian
Criminal Code Act 1924 (Amended
1987) from the proposed increase in
prison sentences and to take immediate
steps to finally repeal them.*

*✍️ Urging the Tasmanian State
Government to ensure that any future
legislation governing sexual offences in
the state of Tasmania will not permit the
imprisonment of people for consensual
homosexual acts between adults in
private.*

PLEASE SEND APPEALS TO:

*The Hon Raymond John Groom
Tasmanian State Premier*

*Premier
Executive Building, Level 11
15 Murray Street
Hobart, Tas 7000
AUSTRALIA*

*FAX: +61 02 34 1572 Salutation:
Dear Premier*

*The Hon Ronald Cornish
Tasmanian Attorney-General*

*Attorney-General
Executive Building, Level 9
15 Murray Street
Hobart, Tas 7000
AUSTRALIA*

*FAX: +61 02 237 610 Salutation:
Dear Attorney-General*

*PLEASE COPY YOUR LETTERS TO THE
FEDERAL ATTORNEY-GENERAL*

*The Hon Michael Lavarch
Attorney-General
Suite MF 21, Parliament House
Canberra, ACT 2600
AUSTRALIA*

FAX: +61 6 273 4102

*AND TO DIPLOMATIC REPRESENTATIVES
OF AUSTRALIA ACCREDITED TO YOUR
COUNTRY.*

*PLEASE START SENDING APPEALS
BEFORE 14 FEBRUARY 1996
AND UP TO MID-APRIL 1996*