



LIV Policy Statement

Removal of Discrimination against People on the Basis of Gender Identity or Sexual Orientation

A policy statement developed by the Administrative Law & Human Rights Section of the Law Institute of Victoria in conjunction with the Young Lawyers' Section

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Queries regarding this policy statement should be directed to:

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1 Background

- a) Laws prohibiting all forms of discrimination, including discrimination on the basis of gender identity and sexual orientation, have been enacted worldwide.¹
- b) Despite positive developments in the enactment of laws prohibiting discrimination, some Australian laws continue to discriminate against gay, lesbian, bisexual, transgender and intersex (GLBTI or LGBTI) people.²
- c) The Law Institute of Victoria (LIV) has consistently opposed discrimination in all its forms, including against GLBTI people on the basis of their gender identity or sexual orientation, in Australian legislation at the federal, state and territory level.³ Examples include the LIV's calls for a relationship registration scheme at the federal and Victorian levels open to both same-sex and mixed-sex couples.

2 Objective

- a) This policy statement:
 - outlines the LIV's support for laws that do not discriminate against LGBTI people on the basis of their gender identity or sexual orientation; and
 - provides a framework for the LIV to lobby Australian governments for the removal of laws that discriminate on the basis of gender identity or sexual orientation.
- b) The LIV aims to see the removal of all discrimination on the basis of gender identity or sexual orientation from laws at the state, territory and federal level and to encourage the adoption of non-discriminatory laws worldwide.

3 Policy

- a) The LIV is fundamentally opposed to discrimination and inequality before the law in any circumstances, including discrimination on the basis of gender identity or sexual orientation.
- b) Equality before the law is a fundamental principle which means that the legal profession has a particular responsibility to redress discrimination and inequality experienced by all people, including GLBTI people.
- c) The LIV will continue to work with other law reform and relevant community bodies to identify and remove discrimination on the basis of gender identity or sexual orientation in laws at the local, state, territory and federal level.
- d) The LIV will continue to lobby the state, territory and federal Parliaments of Australia to ensure that laws do not discriminate on the basis of gender identity or sexual orientation.
- e) The LIV does not, for the purposes of this policy statement, subscribe to any particular terminology. In referring to "LGBTI" or "GLBTI" people, the LIV is referring generally to people who are gay, lesbian, bisexual, transgender (e.g. where gender identity does not match assigned identity) or intersex (e.g. where chromosomal sex does not match phenotypic sex). In referring to "gender identity or sexual orientation", it is referring generally to the concepts defined in s4 of the *Equal Opportunity Act 1995* (Vic).

¹ The 1966 *International Covenant on Civil and Political Rights* is one of several international instruments that prohibit discrimination. In Australia, laws prohibit various forms of discrimination at the federal, state and territory level. Victoria's enactment of the *Charter of Human Rights and Responsibilities* signals a parliamentary commitment to stamping out discriminatory laws and discriminatory public decision-making in Victoria.

² At the federal level, examples of laws that discriminate against GLBTI people on the basis of their gender or sexual orientation include laws that deny workplace and financial entitlements to GLBTI spouses (see further HREOC Inquiry <http://www.hreoc.gov.au/samesex/>). In Victoria, laws such as Part IX of the *Property Law Act 1958 (Vic)* and the *Administration and Probate Act 1958 (Vic)* were valuably reformed in 2001 to recognise same sex couples, but still fail to implement in full the entitlements that are available to heterosexual spouses.

³ Examples include the LIV's work in respect of: proposed federal legislation on sexuality discrimination (*Sexuality Discrimination Bill 2006*); same sex entitlements in respect of federal financial and work-related benefits (HREOC, 2006); lobbying for formal recognition of same sex relationships in Victoria (Hulls, 2005); lobbying for federal legislation to allow same sex couples access to the rights and responsibilities enjoyed by married couples (Ruddock, 2005); proposed changes to Victorian legislation related to assisted reproductive technology and adoption (VLRC, 2004); opposing changes to the federal definition of "marriage" that restricted it to a union between a man and a woman (Senate Legal and Constitutional Committee, 2004); and proposed Victorian legislation on same sex relationships (Media Release, 2001).