

Your reference

Our reference TP:TL



t: 03 9269 0246 f: 03 9269 0348

E-mail: tonyel@vla.vic.gov.au

20 June 2006

Mr Graeme Innes AM
Same-sex Inquiry
Human Rights Unit
Human Rights and Equal Opportunity Commission
GPO Box 5218
SYDNEY NSW 2001

By e-mail to: samesex@humanrights.gov.au

Melbourne Office

350 Queen St
Melbourne VIC 3000
GPO Box 4380
Melbourne VIC 3001
DX 210646 Melbourne VIC
t: 03 9269 0234
1800 677 402
www.legalaid.vic.gov.au
ABN 42 335 622 126

Dear Mr Innes

National inquiry into discrimination against people in same-sex relationships

I refer to the *Discussion Paper* dated April 2006.

I attach Victoria Legal Aid's comments about the inquiry for your consideration.

If you would like to discuss any of our comments please contact me on 03 9269 0247 or Tonye Lee Segbedzi (Policy Officer) on 03 9269 0246.

Yours faithfully



TONY PARSONS
Managing Director

encl.

1. About Victoria Legal Aid

Victoria Legal Aid (VLA) is a leading force for social justice. Our mandate is to protect legal rights, with a particular emphasis on the rights of the marginalised and economically disadvantaged.

VLA employs 189 lawyers who provide legal services from our fourteen offices in metropolitan and rural Victoria. This makes us the largest and most accessible criminal law and family law practice in the state. We also practice in the area of human rights and civil law and provide specialist legal services to children and young people.

In 2004-05, VLA provided:

- 25,666 grants of assistance for legal representation by private lawyers (including 13,981 for criminal law matters)
- 12,202 court cases conducted by VLA lawyers (including 8,308 for criminal law matters)
- 57,187 duty lawyer services across a range of courts (including 40,585 services provided by in-house lawyers at the Magistrates' Court)
- 52,860 legal advice sessions
- 75,917 telephone information sessions, conducted in 14 languages
- 590,825 legal education publications or website downloads
- family law alternative dispute resolution service.

2. Executive summary

VLA endorses the Victorian Gay and Lesbian Right Lobby submission.

VLA also suggests that:

- the national inquiry should be broadened to cover criminal and family law
- relevant recommendations made by other law reform bodies about Victorian laws should be considered
- the term '*domestic partner*' should cover same-sex partnerships, regardless of the length of the relationship
- discriminatory terms in the listed Victorian Acts should be replaced.

3. Equality before the law

VLA strongly supports equality before the law for all Australians. Australia's international obligations require Australia to take all necessary measures to eliminate discrimination, including discrimination on the grounds of sexual orientation and transgender identity.

By ratifying the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights and the International Labour Organisation Discrimination (Employment and Occupation) Convention, Australia has undertaken to prohibit discrimination and to provide effective remedies against discrimination including on the basis of sexual orientation and trans-gender identity.

The general right of equality before the law and equal protection of the law requires that there be no discrimination in the administration of the law on any ground. See for example Article 2 (particularly Article 2.1) of the ICCPR.

4. VLA's experience

VLA has advised many clients who have complained of discrimination on the basis of sexual orientation in the area of financial and work related entitlements and benefits. For example:

- clients seeking to claim superannuation spouse benefit entitlements from their deceased same-sex partner
- clients in same-sex relationships seeking rebates on income tax for a dependent and invalid relatives or income splitting

Unfortunately, VLA lawyers regularly have to advise clients that they have no recourse to discrimination laws to enforce their fundamental right to equality before the law in the above examples.

5. The scope of the national inquiry

VLA welcomes the national inquiry into discrimination against same-sex couples regarding access to financial and work-related entitlements and benefits. However, we believe that inquiry should be broadened to cover the practical impact of discriminatory laws in all areas of daily life—including criminal and family laws.

6. Endorsement of the Victorian Gay and Lesbian Right Lobby (VGLRL) submission

VLA has had the opportunity to read the draft VGLRL submission, which includes detailed comments about discriminatory Commonwealth laws.

VLA endorses the VGLRL submission and encourages the Commissions to adopt its recommendations.

7. Victorian discrimination in the law inquiry

In September 2005, the Victorian Parliament Scrutiny of Acts and Regulations Committee (SARC) published its final report on *Discrimination in the Law: Inquiry under s.207 of the Equal Opportunity Act 1995*. SARC recommended changes to a number of Victorian Acts to remove discrimination against same-sex couples, for example:

- recommendation 2 *Anzac Day Act 1958*
- recommendations 3 - 5 *Crimes Act 1958*

In March 2006, the Victorian Government published its response to the report. The government only supported these recommendations in part or subject to further consideration.

The SARC report also recommended deferring consideration of a number of other Acts pending the outcome of inquiries by the Victorian Law Reform Commission (VLRC), for example:

- recommendation 14 *Adoption Act 1984*
- recommendation 15 *Births, Deaths and Marriages Registration Act 1996*
- recommendation 16 *Evidence Act 1958*
- recommendation 18 *Infertility Treatment Act 1995*.

VLA suggests that relevant SARC and VLRC recommendations should be considered.

8. Victorian Statute Law Amendment (Relationships) Act 2001

The *Statute Law Amendment (Relationships) Act 2001* was aimed at removing legislative provisions that discriminate against same-sex couples. Generally, it achieved this by repealing references to terms such as 'spouse', 'husband' or 'wife' and replacing them with the term 'domestic partner'. However, s.2 of the *Statute Law Further Amendment (Relationships) Act (Vic) 2001* defines the term differently in various Acts—to reflect the particular requirements of those Acts.

VLA suggests that the term 'domestic partner' should always cover a person who is part of a couple who lives together on a genuine domestic basis (regardless of gender or marital status) and, where relevant, their children. Further, we suggest that there should be no time constraint on the length of that relationship—so that recently formed domestic partnerships are treated the same as recently married couples.

9. Other Victorian Acts that discriminate against same-sex couples

VLA considers that the following Victorian Acts discriminate against same-sex couples. We suggest that discriminatory terms in these Acts should be replaced.

Mr Graeme Innes AM

- *Aboriginal Lands Act 1970* s.14
- *Credit Act 1984* see definition of guarantor
- *Settled Land Act 1958* s.24
- *Public Prosecutions Act 1994* ss.18, 35 & 52.

10. Further information

For further information please contact:

Tonye Lee Segbedzi (Policy Officer)
Phone: 9269 0246
E-mail: tonyel@vla.vic.gov.au