



18 October 2006

Mr Graeme Innes
Human Rights Commissioner
Same-Sex Inquiry
Human Rights Unit
Human Rights and Equal Opportunity Commission
GPO Box 5218
Sydney NSW 2001

Telephone (03) 9607 9311
Facsimile (03) 9602 5270
E-mail lawinst@liv.asn.au

ENQUIRIES

By email (samesex@humanrights.gov.au)

Dear Mr Innes

Questions on Notice – National inquiry into discrimination against people in same-sex relationships: financial and work-related entitlements and benefits

The Law Institute of Victoria (LIV) welcomes the opportunity to provide responses to two questions on notice raised at the Human Rights and Equal Opportunity Commission (HREOC) public hearing held in Melbourne on 26 September 2006. The questions relate to whether there was evidence of difficulties with the use of the term “domestic partner” under Victorian legislation and with Interdependency visas.

1. “Domestic partner” term

HREOC has queried whether there have been any problems arising from the use of the term “domestic partner” in Victorian legislation.

Following an invitation to our members to comment on this issue, no specific concerns were raised regarding the use of the term “domestic partner”. However, the LIV notes that some problems remain in the area of wills and intestacy, particularly with respect to a person proving their relationship with a deceased partner in the absence of formal documentation, registration or records.

Members also noted that although the term is used widely in Victorian legislation its effect is limited in certain circumstances involving federal legislation. For example, under Part IX of the *Property Law Act 1958* (Vic), couples may apply to the Victorian Supreme Court to get orders relating to any property division on the breakdown of a relationship. The cost of such legal action and the lack of confidentiality may deter same-sex (and heterosexual *de facto*) couples without children from applying to the Supreme Court to resolve property disputes. In contrast, heterosexual married couples may access the less costly and confidential process available in the Family Court of Australia.

The Victorian government recognised this problem and referred its powers relating to financial matters arising out of the breakdown of same sex and heterosexual *de facto* relationships to the federal government.¹ However, the federal government has indicated that it would only accept the referral in relation to non-married heterosexual couples. The LIV notes that the referral has not been accepted as yet and is concerned that in any event it would not extend to same-sex couples.

¹ See *Commonwealth Powers (De Facto Relationships) Act 2004* (Vic)

2. Interdependency visas

In its written submission to the HREOC inquiry, the LIV submitted that the Interdependency visa category under the *Migration Act 1958* (Cth) (Migration Act) should be abolished. Generally, this visa is available to partners in same-sex relationships. The LIV also suggested in its submission that same-sex couples should be able to apply for a Spouse visa rather than applying for a separate subclass of visa within the Partner visa category.

The LIV would like to make supplementary comments in relation to Interdependency visas and the use of grant quotas or targets which can be applied to Interdependency visas as a separate subclass of visa.

The Department of Immigration and Multicultural Affairs (DIMA) utilises grant quotas and targets in order to manage its worldwide annual migration program. The number of allocated visas for each visa category and subclass differs from country to country. While the LIV recognises that fewer Interdependency visa applications are lodged than applications for Spouse visas, we suggest that the use of quotas and targets could be used by the federal government as a mechanism to control the number of visas granted in a certain category or subclass of visa, such as Interdependency visas.

The LIV requested information from DIMA and responses received are set out in italics below:

1. Is there is a separate "target" or "quota" for Interdependency visas worldwide?

Interdependency visas grants are included as part of the Partner Migration Programme Planning levels. For current planning levels for this year please refer to: http://www.immi.gov.au/media/fact-sheets/20planning_a.htm

2. If not, is there an internal breakdown in the number of Interdependency visas granted worldwide each year?

Visa grant rates for Interdependency visas are impacted by global demand and vary from country to country, while numbers of grants for each locality are relatively small, the top three source countries for Interdependency visa holders is[are] the UK, the Philippines and USA.

3. What are the figures for the number of Interdependency visas granted and refused over the past 5 years?

<i>2000-2001</i>	<i>514</i>	<i>2001-2002</i>	<i>600</i>	<i>2002-2003</i>	<i>[Not provided]</i>
<i>2003-2004</i>	<i>639</i>	<i>2004-2005</i>	<i>498</i>		

Source: Population Flows: <http://www.immi.gov.au/media/publications/statistics/index.htm>

Global average refusal rates for Interdependency visa applications is[are] around 10 per cent.

It is difficult to determine the number of Interdependency visa applications lodged, and how many are granted or refused in comparison to Spouse visas, from the above information provided by DIMA. It also is unclear what number of visas under the Partner migration program are allocated for Interdependency visas and what impact grant quotas or targets have on this visa subclass.

Accordingly, the LIV recommends that HREOC make further inquiries with DIMA as to the use of quotas and targets with respect to Interdependency visas.

If you would like to discuss any of the matters raised in the submission, please contact me on 03 9607 9367 or Elizabeth Hayes, Solicitor, Workplace Relations Section on 03 9607 9389.

Yours sincerely



Geoffrey Provis
Acting President
Law Institute of Victoria