



Victorian Equal Opportunity
& Human Rights Commission

Sexual Orientation, Gender Identity and Intersex Rights

Submission to the Australian Human Rights
Commission Consultation

19 February 2015

Introduction

1. The Victorian Equal Opportunity and Human Rights Commission (the Victorian Commission) welcomes the Australian Human Rights Commission's consultation on key issues affecting sexual orientation, gender identity and intersex (SOGII) rights in Australia.
2. This is an important piece of work to undertake federally. Although there has been progress in recent years, lesbian, gay, bisexual, trans and intersex (LGBTI) people still face significant discrimination and barriers to equality in Australia.
3. We want to recognise that this is primarily a community consultation. Given the 1,000 word limit on submissions, we have not sought to fully reproduce issues raised with us by the community or the extensive work of the Commission in this area. We would be happy to elaborate on this.

How well SOGII rights are respected and protected in Australia?

4. The Victorian Commission has provided information about its enquiries and complaints data in this area at **Attachment A**. We acknowledge that this data does not reflect the full experiences of people in the Victorian community, but only those issues raised with the Commission.

Examples of legislation, policies and practices by government that unduly restrict SOGII rights

5. Legal protections from discrimination on the basis of sexual orientation, gender identity and intersex variations have developed progressively under Victorian state law and there is more work to be done.
6. We welcome the Victorian Government's commitment to:
 - narrow the religious exceptions in the Equal Opportunity Act by reintroducing an 'inherent requirements' test: this would balance religious freedoms with the right to equality by limiting exceptions in employment to the inherent requirements of the job, for example, allowing discrimination for a pastoral care worker of the same faith, but not allowing discrimination for a math teacher
 - remove discrimination from the *Adoption Act 1984* (Vic) to support Adoption equality for families
 - amend the *Relationships Act 2008* (Vic) to provide that only one person in a domestic partnership needs a connection with Victoria and to provide that people with relationships registered under equivalent laws in other states, territories and overseas are considered to have their relationship registered in Victoria
 - remove barriers to new birth certificates for trans and gender diverse and intersex Victorians and work to address the discriminatory automatic divorce consequences for trans and gender diverse Victorians (and we note the need for community consultation on this and concerns raised with the Commission about the ACT model of using an 'X' category for people with intersex variations, including infants), and

- implement the expunged homosexual conviction regime.

We also support the State Government's commitment to end the criminalisation of the intentional transmission of HIV as a stand alone offence that is directed only at this infection. We recognise that HIV and the stigma attached to it is not just an issue for the LGBTI community. However, it is a welcome step towards addressing the stigma associated with HIV which has had a particular impact on people in the gay community.

We also recommend a number of additional changes to state law to address barriers to equality for LGBTI people:

- a. redefining the gender identity attribute in the Equal Opportunity Act to not just recognise binary gender identification
- b. including intersex as a protected attribute covered by the Equal Opportunity Act
- c. reviewing the policy on participation of transgender people and people with intersex variations in sport under the Equal Opportunity Act
- d. including vilification on the basis of LGBTI status in laws on hate conduct.

Other issues raised by the community about policies and practices include:

- the need to review decision-making principles for surgery on people with intersex variations so that these respect and promote human rights
- beyond legislative changes, remove process and policy barriers in birth and death registrations – one example given was a woman who was unable to be registered as a parent because she had not attended the first counselling session with the birth mother
- unnecessary or limited categories for sex and gender on forms and recognition of changes to sex by employers and service providers
- access to change rooms and toilets in a safe and respectful way for transgender people and people with intersex variations
- capacity of service providers and the courts to deal sensitively with LGBTI people
- access to suitable health and aged care, and
- access to tailored services to address intimate partner violence and its consequences.

What is being done, and what more should be done, to promote a culture of respect for SOGII rights?

7. At the Victorian Commission we focus on promoting and protecting the rights of LGBTI members of the community by working to inform people about their rights and working in specific sectors that have the most impact in shaping culture and creating safer and more inclusive environments for LGBTI people: these focus areas for the Commission are sport, schools, and employment.

8. Key work in the last two years includes:

- addressing sport as a significant site of harassment and culture change through our *Fair go, sport!* program with sporting codes and schools to promote safe and inclusive sporting environments
- supporting *Play by the Rules* – providing free information, resources, online training, case studies and promotional campaigns aimed at ensuring everyone involved in sport can do so in an enjoyable and safe environment
- issuing transgender and sport guidelines setting out responsibilities under the Equal Opportunity Act and what can be done to support participation of transgender people in sport
- issuing transgender people at work guidelines under the Equal Opportunity Act
- training to help employers create a safe and inclusive environment for LGBTI employers, including intensive support when a staff member transitions to their affirmed gender
- training service providers who want to make their services more welcoming and inclusive for LGBTI people
- achieving changes to VicRoads' gender policy
- achieving changes to gender categories in Victorian Public Sector recruitment
- promoting Anti-Hate as a tool for the LGBTI community: providing a website for people to report their experiences of hate and provide tools for people to respond
- working with local councils to support LGBTI employees and realigning services to be safe for LGBTI members of the community, and
- supporting the No to Homophobia Campaign

9. More detailed information about our work is available on our website:

www.humanrightscommission.vic.gov.au/lgbti-rights

Contact us

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Attachment A: Complaints and enquiries received by the Commission

Statistics

The Victorian public can contact the Commission's enquiry service via telephone, instant chat, website, email and in person. Our enquiry team provides information about the laws administered by the Commission and people's rights in making a complaint.

Table 1. Enquiries made in person – by telephone or writing

Year	AIDS/HIV		Sexuality / Lawful Sexual Activity / Sexual Orientation		Gender Identity		Lawful Sexual Activity	Sexual Orientation
	#	%	#	%	#	%	#	#
1991/1992	65	0.7	70	0.8	-	-	-	-
1992/1993	108	0.8	76	0.6	-	-	-	-
1993/1994	90	0.6	123	0.8	-	-	-	-
1994/1995	115	0.6	130	0.7	-	-	-	-
1995/1996	63	0.3	199	0.9	-	-	-	-
1996/1997	52	0.3	264	1.5	-	-	-	-
1997/1998	35	0.2	275	1.7	-	-	-	-
1998/1999	26	0.2	212	1.6	-	-	-	-
1999/2000	12	0.1	323	2.3	-	-	-	-
2000/2001	15	0.1	334	2.4	*	*	-	-
2001/2002	18	0.1	346	2.5	13	0.1	-	-
2002/2003	-	-	269	2.4	40	0.4	-	-
2003/2004	-	-	180	3.07	35	0.4	-	-
2004/2005	-	-	150	1.73	32	0.37	-	-
2005/2006	-	-	-	-	36	-	21	117
2006/2007	-	-	-	-	35	-	22	93
2007/2008	-	-	-	-	44	-	43	109
2008/2009	-	-	-	-	36	-	49	98
2009/2010	-	-	-	-	31	-	39	95
2010/2011	-	-	-	-	29	-	36	112
2011/2012	-	-	-	-	40	-	31	227
2012/2013	-	-	-	-	61	-	49	129
2013/2014	-	-	-	-	59	-	57	134

* Recorded under Sexuality

The *Equal Opportunity Act 2010* provides a complaints mechanism for people who have been discriminated against to raise that issue with the Commission and seek redress through our free, informal, impartial dispute resolution service. This process enables people to have their matters resolved quickly and informally.

The number of complaints lodged at the Commission is counted by the number of attributes claimed by an individual complainant against each respondent and by the areas. For example:

- a complainant alleges sexual harassment and sex discrimination in the area of employment against their employer is counted as two complaints
- a complainant alleges race, industrial activity and employment activity discrimination in the area of employment against their employer and two work colleagues is counted as nine complaints.

Table 2. All Equal Opportunity Act Complaints

Year	Gender Identity			Lawful Sexual Activity		Sexual Orientation	
	Female	Male	Intersex	Female	Male	Female	Male
2005/2006	11	0	-	21	3	3	24
2006/2007	-	-	-	-	-	-	-
2007/2008	5	0	-	15	8	12	45
2008/2009	5	1	-	10	5	2	20
2009/2010	3	0	-	18	6	11	21
2010/2011	7	3	-	12	6	15	38
2011/2012	8	8	-	4	5	12	31
2012/2013	5	5	-	6	3	5	15
2013/2014	3	2	1	11	7	8	27

Nb: 2006/07 statistics not reported in annual report

Table 3. Equal Opportunity Act Complaints on the basis of Lawful Sexual Activity

Year	Employment		Education		Clubs		Accommodation		Goods & Services		Sport		No area		Total
	F	M	F	M	F	M	F	M	F	M	F	M	F	M	
1995/1996	4	19	0	0	0	1	0	2	8	10	0	0	-	-	44
1996/1997	7	19	0	0	0	0	0	6	5	5	0	0	-	-	42
1997/1998	11	25	1	0	0	0	2	3	7	12	0	0	-	-	61
1998/1999	22	43	0	0	1	1	0	0	5	3	0	0	-	-	75
1999/2000	23	58	0	3	0	3	1	0	5	16	0	3	-	-	112
2000/2001 and 2001/2002 – lawful sexual activity was conflated with Sexual Orientation – see below table															
2002/2003	21	8	0	1	0	0	0	2	4	2	0	0	0	0	38
2003/2004	19	5	0	0	0	0	0	0	0	0	0	0	0	0	24
2004/2005	13	8	0	0	0	0	0	0	0	0	0	0	0	0	21
2005/2006	13		0		0		0		2		0		0		15
2006/2007	5		0		0		0		0		0		0		5
2007/2008	11		0		1		3		9		0		0		24
2008/2009	9		0		0		1		5		0		0		15
2009/2010	22		0		0		0		2		0		0		24
2010/2011	13		0		0		0		5		0		0		18
2011/2012	13		0		0		0		1		0		0		14
2012/2013	23		0		0		0		1		0		0		24
2013/2014	14		0		0		3		1		0		0		18

Table 4. Victorian Equal Opportunity Act Complaints on the basis of Sexual Orientation and Lawful Sexual Activity

Year	Employment		Education		Clubs		Accommodation		Goods & Services		Sport		No area		Total
	F	M	F	M	F	M	F	M	F	M	F	M	F	M	
2000/2001	44	51	0	1	1	0	3	0	14	13	1	3	-	-	131
2001/2002	62	61	0	3	0	0	3	0	7	30	4	0	-	-	170

Table 5. Victorian Equal Opportunity Act Complaints on the basis of Sexual Orientation

Year	Employment		Education		Clubs		Accommodation		Goods & Services		Sport		No area		Total
	F	M	F	M	F	M	F	M	F	M	F	M	F	M	
2002/2003	11	37	2	0	0	1	0	5	0	4	0	0	0	0	77
2003/2004	16	44	0	0	0	0	0	8	1	19	0	0	0	0	88
2004/2005	19	34	0	0	0	6	1	0	9	9	0	0	0	0	78
2005/2006	19		0		2		1		5		0		0		27
2006/2007	22		0		14		1		9		0		0		46
2007/2008	10		0		12		2		26		10		0		60
2008/2009	12		0		0		2		8		0		0		22
2009/2010	24		1		0		1		6		0		0		32
2010/2011	37		0		0		2		11		2		1		53
2011/2012	51		2		0		3		21		0		0		77
2012/2013	24		0		0		1		10		0		0		35
2013/2014	16		1		0		7		11		0		0		35

Table 6. Victorian Equal Opportunity Act Complaints on the basis of Gender Identity

Year	Employment		Education			Clubs		Accommodation		Goods & Services		Sport		No area		Total
	F	M	F	M	G	F	M	F	M	F	M	F	M	F	M	
2000/2001	0	0	0	0	-	0	0	5	0	17	1	0	0	-	-	23
2001/2002	6	0	0	0	-	0	0	0	0	20	0	0	0	-	-	32
2002/2003	4	1	0	0	-	0	0	2	1	9	2	0	0	0	0	19
2003/2004	0	6	0	0	0	0	0	1	0	5	0	0	0	0	0	12
2004/2005	2	2	0	0	1	0	2	0	0	9	0	0	0	0	0	16
2005/2006	3		1			0		1		6		0		0		11
2006/2007	2		0			0		0		2		0		0		4
2007/2008	1		0			0		0		4		0		0		5
2008/2009	0		0			0		2		4		0		0		6
2009/2010	0		3			0		0		0		0		0		3
2010/2011	7		0			0		3		4		0		0		14
2011/2012	3		0			0		0		19		0		0		22
2012/2013	1		2			0		0		9		0		0		13
2013/2014	1		0			0		0		10		0		0		11

G = Groups