



ADVOCATING JUSTICE FOR ALL

SUPPORTING ACCESS TO JUSTICE
PROTECTING RIGHTS
ADVANCING GOVERNMENT TRANSPARENCY
FOCUSING ON THE FUTURE

We will ensure that the voice of the Law Institute of Victoria, whose overriding role is to champion law reform and access to justice for all on behalf of our members, will be heard. Loud and clear.



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FOREWORD

As the peak body for the legal profession in Victoria, the Law Institute of Victoria (LIV) has been advocating for justice for over 150 years and we welcome the opportunity for change in the law that the elections bring.

We urge our political leaders to adopt our four key themes – Supporting Access to Justice; Protecting Rights; Advancing Government Transparency, Access and Accountability; and Focusing on the Future.

We call on our state and federal governments to do the right thing – not just the popular thing – for our legal system.

The need for action is most acute with legal aid funding.

The LIV believes the shift towards a less accessible legal system needs to be reversed. We must avoid ending up with one law for the rich and another for everyone else.

Access to justice for all is a central tenet of democracy. We will ensure that the voice of the LIV, whose overriding role is to champion law reform and access to justice for all on behalf of our members, will be heard. Loud and clear.

Beyond legal aid, we seek:

- a more streamlined judicial process and support the move towards a uniform national legal profession;
- to ensure that courts are properly resourced. When changes are made in criminal justice policy, due thought must be given to the funding and resourcing of all components of the justice system, including courts infrastructure;
- governments to protect judicial discretion. Judges should have maximum flexibility when it comes to sentencing;
- access to interpreters in civil matters;
- to ensure public confidence in Victoria's agencies with responsibility for integrity and anti-corruption systems;
- restorative justice programs and Appropriate Dispute Resolution; and
- governments to address recruitment and retention of lawyers in rural, regional and remote areas.

The LIV has put forward a long, worthy list which has been developed together with many advocacy partners such as: Victorian Bar; LCA; VLAF; PILCH; Federation of Community Legal Centres; Smart Justice; Liberty Victoria; NACLCL and many more. It is one we are committed to tackling, line by line. Our professional lives depend upon it.



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Supporting Access to Justice

The LIV believes in access to justice for all and that everyone has the right to legal advice and representation in the justice system, regardless of means.

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Reforming Civil Justice

The LIV is calling for

A continuing commitment by the Victorian government to deliver access to civil justice in Victoria and an efficient dispute resolution process

Background to the issue

The Victorian government's 2004 *Justice Statement* outlined directions for reform of Victoria's justice system aimed at streamlining litigation processes and reducing costs and court delays, and in 2007-08 the VLRC undertook the Civil Justice Review. The *Civil Justice Review Report* made 177 recommendations for reform. The *Civil Procedure Bill 2010 (Vic)* was announced by the Attorney-General on 22 June 2010.

What the LIV has done to date

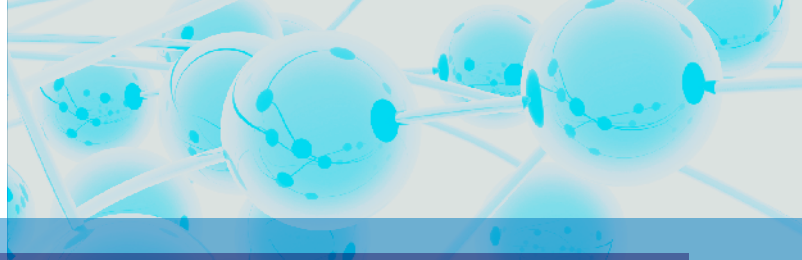
- Made three submissions to the VLRC Civil Justice Review
- Through its representation on the Civil Procedure Advisory Group, the LIV is assisting the Department of Justice and other stakeholders to develop and deliver the reforms contained in the *Civil Justice Review Report*.

Advocacy partners

Department of Justice; Victorian Bar

More information

- VLRC, *Civil Justice Review Report* at www.lawreform.vic.gov.au
- LIV submissions to the VLRC:
 - *Civil Justice Review Consultation Paper*, 30 November 2006
 - *Civil Justice Review Exposure Draft*, 20 August 2007
 - *Civil Justice Review Second Exposure Draft*, 19 October 2007
- LIV Media Release, *LIV urges government to get on with civil reform*, 21 June 2009



Funding Legal Aid

Legal Aid Matters

The LIV is calling for

The federal government to:

- **Short term:** restore per capita funding for legal aid commissions to 1997 levels – a \$20 million increase to the amount provided in the 2010-11 federal Budget
- **Longer term:** restore the federal government share of legal aid commission funding to 50 per cent (up from 32 per cent) – this would require an extra \$220 million per year
- make the federal government increase conditional on states/territories maintaining their current funding levels
- increase funding to community legal centres and Aboriginal and Torres Strait Islander legal services to ensure parity in services and conditions with legal aid commissions

State governments to:

- agree to involve the legal profession in the negotiation of the new national partnership agreements
- provide a guaranteed minimum level of state funding, which is maintained regardless of variations in public purpose funds
- maintain current funding levels regardless of any increase in Commonwealth funds

Background to the issue

Chronic underfunding over the past 10 years means that it is increasingly difficult to qualify for legal aid, so many Victorians are unable to get legal advice or be represented by a lawyer in court.

In the same period, legal aid fees for private lawyers have fallen well below what should be fair payment for the work that is done, and many lawyers report that they can no longer afford to take on legally aided criminal and family law matters.

The federal government's 2010-11 Budget increase of \$23 million per annum for four years for legal aid commissions falls short of the \$43 million per annum which is required to restore per capita funding to 1997 levels.

What the LIV has done to date

The LIV has campaigned for the past two years for an increase in legal aid funding at both a state and federal level, including:

- making submissions and meeting with key government ministers and MPs
- commissioning a report from PricewaterhouseCoopers, with the LCA and Victorian Bar, to analyse the extent of the legal aid shortfall
- in 2010, launching the Legal Aid Matters campaign, including the Legal Aid Matters rally on 28 April, and the Legal Aid Matters website, hosted by the LCA
- Encouraging members to write to their local MP

The LIV is participating in the VLA Criminal Fee Structure Review Steering Committee, to ensure a fair deal for criminal lawyers.

Advocacy partners

Victorian Bar; LCA; VLAF; PILCH; Federation of Community Legal Centres

More information

- LCA: www.lawcouncil.asn.au
- *LJ Online*: CEO pages, "Legal aid matters", May 2010 and "Legal aid crisis not over", June 2010

Advocating Restorative Justice

The LIV is calling for

The Victorian government to commit to providing increased access to restorative justice programs, by introducing more centres like the Neighbourhood Justice Centre in the City of Yarra and providing more resourcing to the CISP program

Background to the issue

Restorative justice is a form of conflict resolution that emphasises repairing the harm caused by criminal (or harmful) behaviour by involving all stakeholders. Restorative justice programs provide a unique opportunity to address the underlying causes of offending behaviour. They give victims an active role in the criminal justice process and enable offenders to gain an understanding of the impact of their offending.

What the LIV has done to date

The LIV has made submissions in support of restorative justice initiatives, including the 2008 Inquiry into Alternative Dispute Resolution by the VPLRC.

More information

- *Evaluating the Neighbourhood Justice Centre in Yarra 2007-2009* at www.neighbourhoodjustice.vic.gov.au
- Department of Justice, *Restorative Justice – Background and Discussion Paper* at www.justice.vic.gov.au
- LIV submission to the VPLRC, *Alternative Dispute Resolution – Restorative Justice*, 1 February 2008

Promoting Appropriate Dispute Resolution

The LIV is calling for

- Courts to encourage and assist in organising Appropriate Dispute Resolution (ADR), but not to be actively involved in providing ADR themselves
- A system that, before court proceedings begin, allows the opposing parties to choose to use ADR, rather than being forced to take part in an ADR process

Background to the issue

ADR means resolving a dispute with the assistance of an impartial person, without having the matter decided in court. ADR produces fair outcomes where both parties understand their legal rights.

What the LIV has done to date

- Made submissions to NADRAC and the VPLRC.
- Promote ADR services via: the LIV Legal Referral Service, which offers members of the public access to 30 minutes of free legal advice; the LIV Mediator Directory; and the LIV Accredited Specialisation scheme, which offers specialist accreditation in mediation. The LIV is a Recognised Mediator Accreditation Body under the NADRAC National Mediator Accreditation Scheme.

More information

- NADRAC: www.nadrac.gov.au
- LIV submissions to:
 - NADRAC Secretariat, *NADRAC Enquiry into Alternative Dispute Resolution in the Civil Justice System*, 29 May 2009
 - VPLRC, *Inquiry into Alternative Dispute Resolution*, 22 November 2007
- *LJ Online*: CEO's page, "The ADR Evolution", May 2009

Reforming Tort Law

The LIV is calling for

Amendment of the *Wrongs Act 1958* (Vic), so that:

- the threshold of 5 per cent whole person impairment (WPI) applies to all injuries, other than psychiatric, and is not limited to musculoskeletal injuries under Chapter 3 of the *American Medical Association Guides to the Evaluation of Permanent Impairment* (4th Edition)
- if the threshold for injuries, other than psychiatric, is lowered to 5 per cent (WPI), the effect of the decision in *Mountain Pine Furniture v Taylor* [2007] VSCA 146 is overturned
- the impairment threshold for a primary psychiatric injury is 10 per cent WPI
- in addition to prescribed injuries under s28LF, a narrative test of "significant injury" is included as an alternative means of assessing common law damages for pain and suffering

Background to the issue

Unlike the WorkCover and TAC schemes, there is no narrative test in the *Wrongs Act 1958* (Vic) to allow for common law rights for pain and suffering damages. Nor is there a no-fault scheme to act as a safety net for injured persons claiming under the Act.

What the LIV has done to date

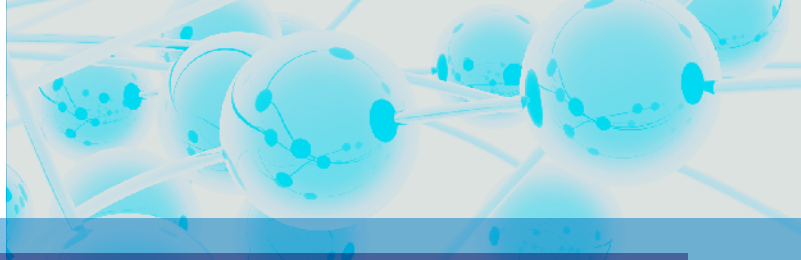
Made **confidential** written submissions to the Victorian Department of Justice.

Advocacy partners

Victorian plaintiff law firms

More information

- LCA, *Reforming tort law* at www.lawcouncil.asn.au



Accessing Interpreters in Civil Matters

The LIV is calling for

- **Stage One:** A 12-month pilot program to provide interpreters at the legal advice stage of civil proceedings targeting CLCs and practitioners who provide pro bono services
- **Stage Two:** A 12-month pilot program to provide interpreters at the court stage of civil proceedings, particularly in the Magistrates' Court - Stages One and Two could occur in parallel
- **Stage Three:** Building on Stages One and Two, establishment of a grants program to provide civil justice interpreting services in a more specific way

Background to the issue

In March 2008, the VLRC's Civil Justice Review examined the use of interpreters in Victorian civil litigation. The VLRC found that a language barrier or hearing impairment could cause difficulty in the basic communication required between a litigant and the court, affect access to court services and discourage people from taking their case to court even where they had a good chance of success. The VLRC proposed the establishment of an Interpreting Fund to pay for interpreters in civil proceedings in Victorian courts in appropriate cases.

What the LIV has done to date

- Following the VLRC's recommendations, the LIV was granted funding by the VLF to undertake the Interpreting Fund Scoping Project.
- The project found that non-English speakers, Indigenous people and those with a speech or hearing difficulty are missing out in the Victorian civil justice system because they are unable to access interpreters.

Advocacy partners

PILCH; VLA; CLCs, including: Consumer Action Legal Centre; Darebin Community Legal Centre; Fitzroy Legal Service; North Melbourne Community Legal Service; Springvale Monash Legal Service; St Kilda Community Legal Service

More information

- *LIV Interpreting Fund Scoping Project Final Report*, 14 April 2010

Reducing Risk of Adverse Cost Orders

The LIV is calling for

Amendments to s24 of the *Supreme Court Act 1986 (Vic)*, and similar amendments to the *County Court Act 1958 (Vic)* and the *Magistrates' Court Act 1989 (Vic)*, to allow for protective costs orders

Background to the issue

In 2007, the VLRC *Civil Justice Review Report* recommended that "there should be express provision for courts to make orders protecting public interest litigants from adverse costs in appropriate cases, including orders made at the outset of the litigation" (rec 153).

In 2009, the federal Attorney-General's Department Access to Justice Taskforce recommended that the federal government should consider "amending federal court legislation to provide a discretion for the court to make a public interest [protective] costs order, at any stage of the proceeding, where the court is satisfied that the proceedings concerned will be of benefit to the public because the proceedings will determine, enforce or clarify an important right or obligation affecting the community or a significant section of the community, or affect the development of the law generally and reduce the need for further litigation".

What the LIV has done to date

- Made a submission to the Victorian Attorney-General in support of protective costs orders (February 2010). A copy of the submission was provided to the NSW Law Reform Commission inquiry into security for costs and associated costs orders.

Advocacy partners

PILCH

More information

- Access to Justice Taskforce report at www.ag.gov.au
- VLRC *Civil Justice Review Report* at www.lawreform.vic.gov.au
- NSW Law Reform Commission, *Security for Costs and Associated Costs Orders* at www.lawlink.nsw.gov.au
- LIV submission to the Victorian Attorney-General, *Protective Costs Orders*, 19 February 2010

Improving Disbursement Assistance in Pro Bono Matters

The LIV is calling for

Additional funding for Law Aid and amendment to Law Aid scheme guidelines so that funding can be allocated according to access to justice needs

Background to the issue

Expert witness fees for reports (medical or other) and court appearance expenses are not covered under pro bono agreements. They can be costly and beyond the means both of clients and of lawyers acting in many pro bono matters, and are recognised as a barrier to pro bono services by the National Pro Bono Resource Centre.

What the LIV has done to date

- Considered the issue of expert witness fees and disbursements in pro bono matters and has reviewed the Victorian disbursement assistance scheme, Law Aid.
- Proposed amendments to the Law Aid scheme guidelines, to improve access to the scheme and its usefulness in the pro bono sector.

Advocacy partners

PILCH

More information

- National Pro Bono Resource Centre at www.nationalprobono.org.au

Streamlining & Simplification of Court Fee Waiver Forms

The LIV is calling for

A single fee waiver form for all Victorian courts and tribunals, based on the federal courts' model of exemption categories (including where the applicant has a certificate from a pro bono provider) and discretionary waiver in cases of financial hardship

Background to the issue

Each Victorian court and tribunal has a different fee waiver application form. LIV members report that applications are time-consuming and an inefficient use of resources.

What the LIV has done to date

- Made a submission to Chief Justice Marilyn Warren on streamlining processes for waiver of court fees in pro bono matters and other similar contexts.
- Lobbied on this issue in its submission to the President's Review of VCAT in June 2009.

Advocacy partners

PILCH; Federation of Community Legal Centres

More information

- LIV submissions to:
 - Chief Justice Warren, *Streamlining of processes for waiver of court fees in pro bono matters and other similar contexts*, 18 December 2008, and 1 June 2010 in relation to the inability of corporations to seek fee waiver
 - Justice Bell, *President's Review of VCAT*, 22 June 2009

Improving Access to Justice in RRR Areas



The LIV is calling for

The federal government to provide urgent financial support to encourage recruitment and retention of lawyers in RRR areas, such as:

- FBT exemptions, HECS-HELP relief, monetary allowances for relocation and clinical placements

The state government to support initiatives in RRR areas, such as:

- monetary allowances or bonuses for relocation
- increased opportunities for clinical placements for law students and graduates
- further collaboration with VLA on traineeships
- a scholarship scheme for law students
- cash incentive payments upon completion of a specific time period in RRR areas

Background to the issue

The July 2009 LCA–LIV *Report into the Rural, Regional and Remote Areas Lawyers Survey* revealed that there is a significant access to justice issue in RRR areas of Australia, with one key issue being recruitment and retention of lawyers in these areas.

What the LIV has done to date

- At the request of the LIV and Northern Territory Law Society the LCA established a Recruitment and Retention of Lawyers Working Group.
- The *Recruitment and Retention of Legal Practitioners to Rural, Regional and Remote Areas: Discussion Paper*, prepared by the LIV on behalf of the working group, identified a range of possible actions by government, the legal profession and employing firms to recruit and retain new and experienced practitioners in RRR areas.
- Submissions have been made to the federal Attorney-General and Treasury. In response, the Attorney-General's Department recently approved \$250,000 for the development of a national website, information packages and DVD to promote job vacancies in the regions.

Advocacy partners

LCA RRR Working Group; NACLC

More information

- LCA Report into the Rural, Regional and Remote Areas Lawyers Survey, July 2009, www.lawcouncil.asn.au
- LCA Recruitment and Retention of Lawyers Working Group, www.lawcouncil.asn.au
- *LJ Online*: President's page, "RRR rated problem", August 2009

Resourcing Courts and Tribunals

The LIV is calling for

- Better access to justice for those with impaired capacity or a disability through reforming and better resourcing the operation of the VCAT Guardianship List
- Resourcing for training and education of staff to improve VCAT's procedures and procedural fairness across all lists

Background to the issue

In March 2008 the Victorian Attorney-General asked the President of VCAT, Justice Bell, to undertake a review of VCAT (the President's review of VCAT), involving consultation with stakeholders and the broader community to gauge how successfully VCAT is serving the public.

In May 2010, the incoming President of VCAT, Justice Iain Ross, released a discussion paper towards a three-year strategic plan called *Transforming VCAT*.

What the LIV has done to date

- Met with Justice Bell in May 2009 to discuss the President's Review of VCAT.
- Made a substantial submission in June 2009 about the issues raised in the consultation paper prepared by Justice Bell, as well as other issues of concern to LIV section committees.
- Opposed the suggested removal of the role of lawyers from the civil and domestic building lists in VCAT for matters valued under \$50,000. After discussions with Justice Bell and the powerful arguments put forth in the LIV submission, it was agreed that the role of lawyers would not be limited.

More information

- President's review of VCAT, at www.vcatreview.com.au
- *Transforming VCAT* discussion paper at www.vcat.vic.gov.au
- LIV submissions to:
 - Justice Bell, *President's Review of VCAT*, 22 June 2009
 - Justice Ross, *Transforming VCAT*, 23 June 2010

The LIV aims to promote human rights and freedoms and to secure their universal and effective recognition and observance.

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Reviewing the Charter of Human Rights & Responsibilities

The LIV is calling for

An independent panel to be appointed to conduct the Charter review, with a broad mandate and sufficient resources

The Charter to be amended to include:

- improved access to remedies
- an independent cause of action
- inclusion of economic, social and cultural rights

Background to the issue

The Charter came into full operation on 1 January 2008. Under s44, the Attorney-General must undertake a review of the operation of the first four years of the Charter by 1 October 2011.

What the LIV has done to date

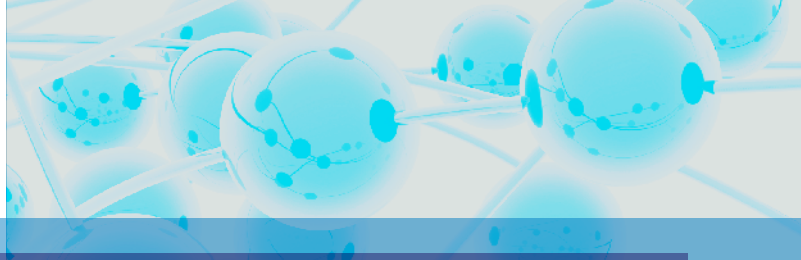
- Published a report assessing the impact of the Charter on legal practice. The report outlines results of a pilot questionnaire, including observations about how the Charter has begun to influence the practice of law within Victoria. The pilot questionnaire will assist the LIV to develop future initiatives and will contribute to the development of the LIV's submission to the 2011 review.

Advocacy partners

Federation of Community Legal Centres Human Rights Working Group; VEOHRC

More information

- LIV report on the LIV's Pilot Questionnaire: *Assessing the Impact of the Charter of Human Rights and Responsibilities on Legal Practice* (2010)
- VEOHRC at www.humanrightscommission.vic.gov.au



Implementing Australia's Human Rights Framework

The LIV is calling for

- The federal government to implement Australia's Human Rights Framework in an effective and timely manner
- In the longer term, introduction of a National Human Rights Act to provide the legal and policy framework necessary to implement other changes in policy or law recommended by the NHRC report

Background to the issue

The NHRC report was released on 9 October 2009 following the most extensive and innovative consultation in Australia's history. The NHRC report made 31 recommendations for greater human rights protection.

On 21 April 2010, the Attorney-General announced that the federal government would not introduce a National Human Rights Act. Rather, Australia's Human Rights Framework has been announced. The Framework will be reviewed in 2014.

What the LIV has done to date

- Supported the establishment of a National Human Rights Act, based on the Victorian Charter but with further protections. The LIV provided input to the LCA submission to the NHRC, but advocated for stronger protections.
- Expressed disappointment that the federal government has shied away from a National Human Rights Act for Australia. The LIV believes that a Human Rights Act would better protect marginalised and disadvantaged people, improve the quality and accountability of government policy and service delivery, and bolster the government's Social Inclusion Agenda.
- Welcomed the proposed establishment of a Joint Parliamentary Committee on Human Rights to review new legislation for human rights compatibility and the decision to require statements of compatibility to be tabled with all new Bills.

Advocacy partners

LCA

More information

- LIV submissions:
 - National Human Rights Consultation, 15 June 2009
 - Key cabinet decision-makers on the government's response to the National Human Rights Consultation, 13 November 2009
- LIV Media Release, *LIV disappointed that government failed on National Human Rights Act*, 21 April 2010
- Australia's Human Rights Framework at www.ag.gov.au

Promoting the Rights of Indigenous Australians

The LIV is calling for

Federal and state governments to:

- undertake real and meaningful consultation and partnerships with Aboriginal and Torres Strait Islander communities in measures to "Close the Gap" and reduce disadvantage
- address the high levels of involvement of Indigenous juveniles and young adults in the criminal justice system

The federal government to undertake a national review of implementation of the Royal Commission into Aboriginal Deaths in Custody

Background to the issue

In 2008, the federal government affirmed its commitment to the Declaration on the Rights of Indigenous Peoples. The rights articulated are consistent with the rights of Aboriginal persons recognised in s19 of the Charter.

What the LIV has done to date

- Recognised Indigenous Australians as the first owners of the land of Australia and custodians of the land.
- Supported initiatives that promote the rights of and dialogue with Indigenous Australians, providing input to government and parliamentary inquiries and calling for reforms in areas such as the Northern Territory Intervention, the high levels of involvement of Indigenous juveniles and young adults in the criminal justice system, and native title.
- Worked to redress the under-representation of Indigenous Australians in the legal profession through the introduction of Australia's first equal opportunity briefing policy for Indigenous barristers.
- Commenced initial consultations with traditional owners and other key Aboriginal stakeholder groups about how the LIV should develop a Reconciliation Action Plan to help "close the gap".

Advocacy partners

Tarwirri; VALS

More information

- LIV submissions:
 - Senate Standing Committee on Community Affairs, *Inquiry into Social Security and Other Legislation Amendment (Welfare Reform and Reinstatement of Racial Discrimination Act) Bill 2009* etc., 1 February 2010
 - House Standing Committee on Aboriginal and Torres Strait Islander Affairs, *Inquiry into the high level of involvement of Indigenous juveniles and young adults in the criminal justice system*, 22 January 2010
 - Department of Sustainability and Environment, *Proposed amendments to Victoria's Forestry Rights Act 1996*, 4 May 2010
- LIV Policy Statement, *Indigenous Australians in the Legal Profession and Justice System*, 2006
- *LIV/Victorian Bar Indigenous Barristers Equal Opportunity Briefing Policy*

Human Rights-Compliant Immigration Laws & Policies

The LIV is calling for

- Serious consideration of the human impact of constant change to immigration law and processes
- Adherence to the rule of law and ensuring that executive powers are not used at the expense of procedural fairness and fundamental human rights
- Review of the appropriateness of the highly prescriptive policy framework in the immigration area
- Minimum standards about what is probative country information in protection visa processing
- Introduction of a formal system of complementary protection, whereby people who do not meet the definition of “refugee” in the 1951 Refugee Convention, but who are still in need of protection under international law, can apply for a protection visa in the first instance to the Department of Immigration and Citizenship
- Reform of the health requirement to ensure that it does not operate to disproportionately impact visa applicants who have a disability or have a family member with a disability and so ensure that it is compatible with the Convention on the Rights of Persons with Disabilities
- Changes to the immigration detention regime, so that unauthorised arrivals are detained in government operated centres on mainland Australia for a maximum period of one month and only so long as necessary for management of health, identity and security checks and subject to review by the courts
- An end to dual regulation of immigration lawyers, so that they are not subject to regulation by the Office of the Migration Agents Registration Authority in addition to state-based legal profession regulation

Background to the issue

Immigration law is in a state of flux with major policy areas subject to overhaul. Currently there are over 3000 pages of legislation in the immigration area, overlaid with over 16,000 pages of policy guidelines, making it an exceedingly complex and challenging area and generating large scope for jurisdictional error. Immigration law is also criticised for excessive reliance on ministerial discretion, so that executive powers can be used at the expense of procedural fairness, the rule of law and fundamental human rights.

What the LIV has done to date

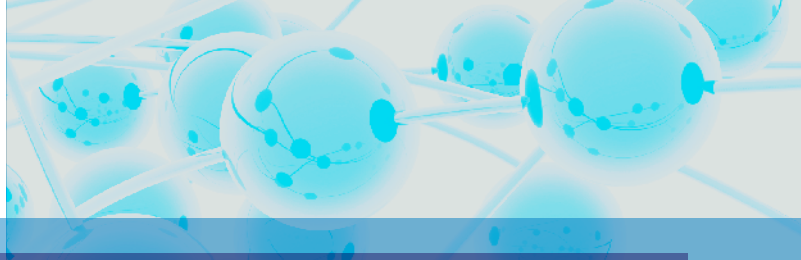
- Raised concerns about Australia’s treatment of asylum seekers and, specifically, with its system of mandatory indefinite detention.
- Monitored legislative change, government policy and actions in the migration and refugee law arena. It regularly meets with DIAC officials and provides submissions to DIAC and the Minister for Immigration and Citizenship on key aspects of reform, policy and procedure.
- Made comprehensive submissions to the Joint Standing Committee on Migration inquiries into immigration detention and migration treatment of disability and to the Senate Constitutional and Legal Affairs Committee on various migration related Bills.

Advocacy partners

LCA; Liberty Victoria; The Justice Project; Refugee Council of Australia

More information

- LIV submissions:
 - Department of Immigration and Citizenship, *Review of the General Skilled Migration Points Test*, 15 March 2010; *Biometric Acquisition Pilot – Protection visa applicants*, 27 January 2010
 - The Hon Bruce Baird, *Review of the Education Services for Overseas Students (ESOS) Act 2000*, 6 November 2009
 - Joint Standing Committee on Migration, *Inquiry into the Migration Treatment of Disability*, 4 November 2010
 - Senate Legal and Constitutional Affairs Committee, *Migration Amendment (Complementary Protection) Bill 2009*, 28 September 2009
 - Minister for Immigration and Citizenship, *Suspension of Processing of Afghan and Sri Lankan Asylum Applications*, 4 June 2010 (jointly with LCA)
- LJJ Online: CEO’s page, “Advocating for asylum seekers”, June 2009
- LIV Policy Statement on Refugees and Asylum Seekers, 31 October 2005
- LIV Media Release, *LIV welcomes changes to immigration detention and debts*, 26 June 2009



Promoting Equality

The LIV is calling for

- Consolidation of federal anti-discrimination laws that addresses issues beyond regulatory inconsistencies & overlap and aims to modernise & strengthen Australia's anti-discrimination regime and promotes equality & fairness for all in a national Equality Act
- A further review of the Paid Parental Leave scheme over, in particular, review of employer-funded aspects such as superannuation contributions, accrued leave entitlements and the introduction of a mandatory "partner leave entitlement" to include a partner of a same-sex couple

Background to the issue

The right to equality and freedom from discrimination is a fundamental human right that is protected in international, federal and state based human rights instruments and anti-discrimination legislation.

In August 2007, the Victorian Attorney-General announced a review of the *Equal Opportunity Act 1995 (Vic)* to investigate how to eliminate discrimination and promote equal opportunity. The *Equal Opportunity Act 2010 (Vic)* was passed on 15 April 2010 and will come into effect in August 2011.

At the federal level, since 2007 the government has introduced Paid Parental Leave, implemented same-sex relationship and disability discrimination reforms, proposed changes to the *Sex Discrimination Act 1984 (Cth)* and announced harmonisation of anti-discrimination laws in a single Act.

What the LIV has done to date

- Been extensively involved in the review of the *Equal Opportunity Act 1995 (Vic)* and the Exemptions and Exceptions Review.
- Supported the introduction of Paid Parental Leave and made multiple submissions to the Productivity Commission's review.
- Opposed discrimination and inequality before the law in any circumstance, including discrimination on the basis of gender identity or sexual orientation and made submissions on same-sex entitlements and to the inquiry into the *Marriage Equality Amendment Bill 2009 (Cth)*.

More information

- LIV submissions to:
 - Senate Standing Committee on Legal and Constitutional Affairs, *Inquiry into the Same-Sex Relationships (Equal Treatment in Commonwealth Laws – General Law Reform) Bill 2008* 19 September 2008; *Inquiry into the Marriage Equality Amendment Bill 2009*, 27 August 2009; and *Exposure Draft of the Paid Parental Leave Bill 2010*, 12 May 2010
 - Julian Gardner, *Equal Opportunity Act Review*, 25 January 2008; *Equal Opportunity Act Review Options Paper*, 13 May 2008
 - Department of Justice, *Exceptions Review*, 24 April 2008;
 - Scrutiny of Acts and Regulations Committee, *Inquiry into the Exceptions and Exemptions in the Equal Opportunity Act 1995*, 17 July 2009; *Equal Opportunity Bill 2010*, 18 March 2010;
 - LIV Policy Statement, "Removal of Discrimination against People on the Basis of Gender Identity or Sexual Orientation", 21 June 2007

Opposing Indefinite Post-Sentence Detention

The LIV is calling for

Less restrictive means for protecting the community from high-risk offenders, and transfer of resources from post-sentence detention to programs that aim to rehabilitate offenders rather than to further stigmatise them

Background to the issue

The purpose of indefinite, or post-sentence, detention is community safety and protection. However, unlike criminal sentences that are imposed on an offender for proven past offending, post-sentence schemes target the risk of reoffending based on predictions of future behaviour. This represents a radical departure from long-standing legal principles including the right to be presumed innocent until proved guilty and the right not to be tried or punished more than once. The Sentencing Advisory Council found in its 2007 final report on *High-Risk Offenders: Post-Sentence Supervision and Detention* that risk assessment is notoriously difficult.

What the LIV has done to date

- Made a detailed submission to the Sentencing Advisory Council in 2007 on continued detention for high risk offenders, opposing indefinite detention on the basis that it seriously restricts the human rights of those convicted of past offences without a convincing, evidence-based justification.
- Developed a lengthy submission in response to the *Serious Sex Offenders (Detention and Supervision) Bill 2009 (Vic)*.

More information

- LIV submissions:
 - Sentencing Advisory Council, *High-Risk Offenders: Post-Sentence Supervision and Detention*, 28 February 2007; and *High-Risk Offenders: Post-Sentence Supervision and Detention Final Report*, May 2007 at www.sentencingcouncil.vic.gov.au
 - Minister for Police and Emergency Services, Bob Cameron, *Serious Sex Offenders (Detention and Supervision) Bill 2009*, 7 December 2009

Retaining Suspended Sentencing

The LIV is calling for

The retention of suspended sentences and the protection of judicial discretion

Background to the issue

A suspended sentence is a prison sentence that is not put into immediate effect. If the offender breaches the sentence by committing another offence, they are liable to go to prison to serve the suspended sentence. The most frequent recipients of suspended sentences are people who drive while disqualified.

What the LIV has done to date

- Made detailed submissions to the Sentencing Advisory Council in 2003 and 2007 in support of retaining suspended sentences, arguing that judges or magistrates are best placed to impose an appropriate, fair and just sentence after hearing all the facts of the offence, the offender and the victim.
- Is a partner organisation to Smart Justice, which is providing an evidence-based approach to crime and justice issues in the lead up to the 2010 state election.
- Continues to campaign strongly in the media for retention of suspended sentences and protection of the principle of judicial discretion.

Advocacy partners

Smart Justice; Federation of Community Legal Centres

More information

- LIV submissions to Sentencing Advisory Council:
 - *Response to Sentencing Advisory Council's Interim Report on Suspended Sentences*, November 2003
 - *Suspended Sentences – Draft Proposals for Discussion*, 5 June 2007
 - *Response to Sentencing Advisory Council's Interim Report on Suspended Sentences*, 23 November 2005
- Smart Justice: *Suspended Sentence Factsheet* 2010 at www.smartjustice.org.au



Smart Justice seeks to enhance the safety of all Victorians by promoting understanding of criminal justice policies that are effective, evidence-based and human rights-compliant. Smart Justice is supported by a coalition of organisations led by the Federation of Community Legal Centres (Victoria) Inc. For more information go to www.smartjustice.org.au.

Limiting Police Powers

The LIV is calling for

Appropriate limitation and oversight of police powers, in accordance with human rights protected in the Charter

Background to the issue

The *Summary Offences and Control of Weapons Acts Amendment Bill* 2009 (Vic) was introduced as part of the government's "commitment to tackling the growing incidence of drunkenness, disorderly behaviour and violence" in the Victorian community. The Bill significantly extends coercive powers available to police to search and apprehend Victorians, in some instances without any need for suspicion on reasonable grounds about the commission of an offence.

The government acknowledged in the statement of compatibility tabled by the Minister for Police and Emergency Services that the Bill was partially incompatible with the Charter.

The *Control of Weapons Amendment Bill* 2010 further gives police new powers to issue \$1000 on-the-spot fines for those over 16 caught carrying a knife or other controlled weapon without excuse and allows police to designate a public area such as a train station or public place for a random weapons search without notice.

In the recent case of *Gillan and Quinton v The United Kingdom (Application no. 4158/05)*, the European Court of Human Rights ruled that police stop and search powers under *s44 Terrorism Act 2000* (UK) constituted a violation of the right to privacy.

What the LIV has done to date

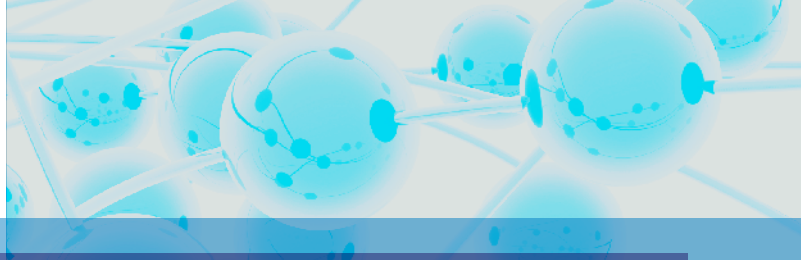
- Monitored legislation and made submissions to government and to the Scrutiny of Acts and Regulations Committee where human rights and civil liberties suffer incursions.
- Supported policies that deal with the causes of knife carrying through early intervention and education campaigns – not through harsh law enforcement and punishment that breaches human rights.
- Argued that policies should include greater information dissemination and education and more support services for young people at risk.

Advocacy partners

Federation of Community Legal Centres; Smart Justice

More information

- LIV submission to the Scrutiny of Acts and Regulations Committee, *Summary Offences and Control of Weapons Acts Amendment Bill*, 20 November 2009
- Smart Justice: *Reducing knife carrying and knife violence factsheet*, at www.smartjustice.org.au



Abolishing Mandatory Sentencing

The LIV is calling for

The protection of judicial discretion and the abolition of mandatory penalties

Background to the issue

In Victoria, a second conviction for driving whilst disqualified currently carries a mandatory penalty of one month's imprisonment. In 2008, the Sentencing Advisory Council conducted a review of the mandatory minimum sentence, and recommended that it be removed. The report found that the mandatory sentencing scheme:

- Is not effective in protecting the community
- Does not lead to sentences that rehabilitate offenders or prevent them from reoffending
- Can result in penalties that are disproportionately high
- Is causing strain on the criminal justice system
- Has led to a rise in prison numbers.

What the LIV has done to date

- Made a submission to the Sentencing Advisory Council in 2005 supporting the abolition of mandatory penalties.
- Is a partner organisation to Smart Justice, which is providing an evidence-based approach to community safety issues, in the lead up to the 2010 state election. Smart Justice supports the abolition of mandatory sentencing.
- Continues to campaign strongly in the media for the abolition of mandatory sentencing and the protection of the principle of judicial discretion.

Advocacy partners

Smart Justice, Federation of Community Legal Centres

More information

- LIV submission to Sentencing Advisory Council, *Response to Sentencing Advisory Council's Interim Report on Suspended Sentences*, 23 November 2005 and *Driving While Disqualified or Suspended: Report*, April 2009 at www.sentencingcouncil.vic.gov.au
- Smart Justice: *Mandatory Sentencing Factsheet 2010* at www.smartjustice.org.au

Reviewing Australia's Counter-Terrorism Laws

The LIV is calling for

The federal government to:

- undertake a comprehensive review of the necessity and proportionality of Australia's counter-terrorism laws, including an assessment of their human rights implications
- urgently adopt the recommendations of the United Nations Human Rights Committee in its Concluding Observations on Australia (April 2009)
- urgently review the classification of terrorist organisations, police search and seizure powers and provisions for controls orders and preventative detention
- confirm its commitment to the 2010 COAG review of the operation, effectiveness and implications of the relevant amendments in each jurisdiction, and clarify of how this review will interact with the role of the National Security Legislation Monitor

Background to the issue

Since 11 September 2001, over 40 pieces of counter-terror legislation have been introduced to Parliament. Many of those laws contain measures that run contrary to established notions of criminal justice. Many have never or rarely been used. They were enacted in haste, without sufficient analysis of whether they are necessary and proportionate to the threat posed to Australia.

What the LIV has done to date

- Made a number of submissions to the state and federal governments on security and counter-terrorism legislation.
- Participated in a national security legislation review forum hosted by the Australian Human Rights Commission and the Human Rights Law Resource Centre and attended by key legal stakeholders.

More information

- LIV submissions to:
 - Victorian Premier, *Anti-Terrorism Bill (No 2) 2005*, 11 November 2005
 - Parliamentary Joint Committee on Intelligence and Security, *Security Legislation Review*, 5 July 2006
 - Commonwealth Attorney-General, *UN Special Rapporteur Report on Australia's Human Rights Compliance while Countering Terrorism*, 3 May 2007; *Discussion Paper on Material that Advocates Terrorist Acts*, 5 June 2007; *National Security Legislation Discussion Paper*, 2 October 2009
 - Standing Committee on Legal and Constitutional Affairs, *Proposal for Review and Reform of Australia's Counter-Terror Laws*, 24 September 2008
- LIJ Online: CEO's page, "Civil rights v national security", October 2009
- Geoff Provis, "Terrorists win if we erode our laws", *The Age*, 16 November 2007. Unofficial version at www.commonlaws.com.au

Reforming Substitute Decision-Making

The LIV is calling for

The Victorian government to enact a single, comprehensive law to provide a principled framework for substitute decision-making and a single test for assessment of capacity

Background to the issue

The ability to determine a person's decision-making capacity is key under current laws which provide for the appointment of another person to "stand in the shoes" of a person who lacks capacity to make their own decisions.

Currently, substitute decision-making is dealt with differently in various pieces of legislation, including:

- *Mental Health Act 1986* (Vic);
- *Guardianship and Administration Act 1986* (Vic);
- *Instruments Act 1958* (Vic); and
- *Medical Treatment Act 1988* (Vic).

The *Mental Health Act 1986* (Vic) is under review by the Department of Health and a new Bill is expected this year. The *Guardianship and Administration Act 1986* (Vic) is currently under review by the VLRC and a final report must be provided to the Attorney-General in 2011. The VPLRC has undertaken a review of powers of attorney.

What the LIV has done to date

- Argued that the current approach to the issue of legal capacity in Victoria is fragmented and overly complex.
- Advocated reform of laws relating to substitute decision-making. Recent submissions have addressed issues arising in the Guardianship List at VCAT, reform of powers of attorney, mental health and guardianship laws.
- Hosted a roundtable discussion on capacity law reform (October 2009).

Advocacy partners

Office of the Public Advocate; Mental Health Legal Centre; Victoria Legal Aid

More information

- LIV submissions to:
 - Minister for Mental Health, *Review of Laws Relating to Substitute Decision-Making*, 24 April 2008
 - Victorian Attorney-General, *Enduring Powers of Attorney*, 3 July 2008
 - VCAT President, *President's Review of VCAT*, 22 January 2009
 - VLRC, *Review of Guardianship*, 20 May 2010
 - Community Consultation Panel, *Review of the Mental Health Act 1986*, 26 February 2009
- *LJ Online*: President's page, "A healthy review", May 2009
- VLRC, *Review of Guardianship Laws*, at www.lawreform.vic.gov.au
- Victorian Parliament Law Reform Committee, *Inquiry into powers of attorney*, www.parliament.vic.gov.au/lawreform
- Department of Health, *Review of the Mental Health Act 1986*, www.health.vic.gov.au

Advancing Government Transparency, Access and Accountability

The LIV monitors exercise of government power and champions initiatives that advance transparency, access and accountability.

ADVANCING GOVERNMENT TRANSPARENCY, ACCESS AND ACCOUNTABILITY

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Ensuring Better Integrity & Anti-Corruption Systems

The LIV is calling for

The following safeguards to be part of a new Victorian Integrity and Anti-Corruption Commission to ensure accountability, transparency and independence, consistent with the Charter:

- clear and transparent processes for investigations
- exercise of coercive investigatory powers only by warrant application to the Supreme Court
- special attention to safeguarding the rights of witnesses, including privileges and immunities, presumption of private hearings and a guaranteed right to legal representation

Background to the issue

In November 2009, the Premier requested that the Public Sector Standards Commissioner, Peter Allen, and Special Commissioner Elizabeth Proust review the efficiency and effectiveness of Victoria's integrity and anti-corruption system. The current system includes the Auditor-General, Local Government Investigations and Compliance Inspectorate, the Office of Police Integrity, the Ombudsman and Victoria Police. The government has announced that it will set up a body with sufficient expertise and powers for the investigation of serious corruption in the public service.

What the LIV has done to date

- Passed a resolution calling for a comprehensive, independent review of current crime and corruption bodies and legislation in Victoria (LIV Council, August 2009).
- Made a submission to the Integrity and Anti-Corruption System Review and met with Elizabeth Proust and Peter Allen to provide further information to the review.
- Supported the Proust Review proposals for a new Victorian Integrity and Anti-Corruption Commission and Integrity Coordination Board.

Advocacy partners

AMA through the Joint LIV/AMA Medico-Legal Committee

More information

- LIV submission to the State Services Authority, *Integrity and Anti-Corruption System Review*, 4 March 2010
- LIV Media Release, *Adoption of Anti-Corruption Report welcomed by LIV*, 2 June 2010
- *LIV Online*: CEO's page, "Progress on anti-corruption body", April 2010
- State Services Authority, *Integrity and Anti-Corruption System Review Final Report*, www.ssa.vic.gov.au

Improving Privacy Protections

The LIV is calling for

- Federal and state governments to consider privacy impacts when implementing any new policy initiative and to ensure that matters relating to privacy are easy to use and understand, inexpensive and flexible
- A statutory cause of action for invasions of privacy based on ALRC recommendations
- Reform of Victorian laws, such as the *Surveillance Devices Act 1999 (Vic)*, to provide more comprehensive regulation of surveillance practices
- An independent body to oversee and monitor the implementation of those laws

Background to the issue

Rapid advances in information, communication, storage, surveillance and other relevant technologies have significant implications for individual privacy. There are gaps in privacy protection and potential discrimination related to the lack of comprehensive regulation and independent review of surveillance practices and the use of material generated by surveillance. Persons have a right not to have their privacy unlawfully or arbitrarily interfered with (see for example, Article 17, International Covenant on Civil and Political Rights).

What the LIV has done to date

- Monitored government reforms affecting the right to privacy, including those relating to:
 - covert means of collecting data by law enforcement agencies and other agencies and organisations;
 - application of privacy principles by and regulation of public and private organisations;
 - use of privacy impact assessments or statements by government and private organisations; and
 - protection of health and biometric information.
- Lobbied to ensure additional privacy protections in coronial matters were included under the *Coroners Act 2008 (Vic)*.
- Made submissions to the VLRC on privacy (including workplace privacy and public surveillance), to the ALRC inquiry into privacy and to the federal Minister for Immigration and Citizenship and the Attorney-General on the DIAC biometrics acquisition pilot.

More information

- LIV submissions:
 - Minister for Immigration and Citizenship and the Attorney-General, *Department of Immigration and Citizenship biometrics acquisition pilot*, 27 January 2010
 - VLRC, *Inquiry into Surveillance in Public Places*, 6 July 2009
 - Victorian Attorney-General's Department, *Coroners Act Amendment Bill*, 25 July 2007; *Magistrates' Court and Coroners Acts Amendment Bill 2007*, 20 June 2007
 - ALRC, *Issues Paper 31 Review of Privacy*, 21 February 2007
 - Senate Legal and Constitutional Committee, *Inquiry into the Privacy Act 1988 (Cth)*, 25 February 2005

Reforming Stamp Duties

The LIV is calling for

Amendment to the *Duties Act 2000 (Vic)* to ensure that leases other than long term leases are not dutiable under the Act

Background to the issue

In late 2008, the state government announced that duty would be payable on long term leases which confer rights on the lessee akin to freehold ownership. Unfortunately, the wording of the *Duties Amendment Act 2009 (Vic)* has resulted in most leases potentially attracting duty where there is "consideration" other than "rent reserved".

What the LIV has done to date

- Made numerous submissions stating that leases other than long-term leases should not be dutiable under the *Duties Act 2000 (Vic)*.
- Liaised with the State Revenue Office to ensure that the administration of all duties legislation is fair, transparent, and accountable.

More information

- LIV submissions to:
 - Victorian Commissioner for Taxation, *Lease Provisions – Meaning of "Rent Reserved"*, 16 February 2010
 - Victorian Treasurer, *Duties Amendment Act 2009 (Vic) Supplementary Submission*, 10 December 2009; *Public Rulings*, 1 December 2009; *Fire Services Funding (Feasibility) Study Bill 2009 (Vic)*, 10 December 2009
 - State Revenue Office, *Property Passing to Beneficiaries of Discretionary Trusts*, 5 May 2008



Reviewing Freedom of Information

The LIV is calling for

Regular review of the federal and state freedom of information laws to ensure open and accountable government

Background to the issue

The right to freedom of expression is enshrined in the Charter under s15 and other human rights instruments and is not limited to the freedom to impart information. It also includes the freedom to seek and receive information.

What the LIV has done to date

- Monitored developments concerning federal and state freedom of information laws, with particular attention to conclusive certificates issued by Ministers to exempt documents from public disclosure, and other issues raised by the Australia's Right to Know coalition.
- Supported the structural reforms in the *Commonwealth Information Commissioner Act 2009* (Cth) and *Freedom of Information Amendment (Reform) Act 2009* (Cth) and provided input to the *Exposure Draft Bills* and supported reforms in the Victorian context.

More information

- LIV submissions to:
 - Victorian Attorney-General, *Freedom of Information Amendment Bill 2007* (Vic), 20 February 2008
 - Cabinet Secretary and Special Minister of State, *Draft Freedom of Information Reform*, 15 May 2009
 - Australia's Right to Know coalition www.australiasrighttoknow.com.au

Implementing Anti-Money Laundering Reforms



The LIV is calling for

The legal profession not to be burdened with further unnecessary regulation requiring lawyers to report on their clients' likelihood of money laundering through trust accounts

Background to the issue

The federal government is proposing further anti-money laundering legislation, which will specifically deal with lawyers and require them to report on their own clients where they suspect there is a risk of laundering money and funding terrorism activities.

What the LIV has done to date

- Worked with the LCA and the state and territory law societies to ensure that any draft Bill is based on a realistic assessment of the threat of money laundering.
- Met with each of the senior risk compliance executives at NAB, ANZ, Combank, Westpac, and Suncorp to consider drafting a voluntary collaborative code of conduct involving Australian banks and LIV members.

Advocacy partners

LCA; major banks

More information

- LCA at www.lawcouncil.asn.au

The LIV recognises the importance of the law in shaping the future and supports review and modernisation to ensure that legislation is clear and accessible.

FOCUSING ON THE FUTURE

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Moving to a Unified National Legal Profession

The LIV is calling for

- Continued representation for the legal profession and the ability to contribute to the legislative consultation process
- Implementation of reforms during 2011

Background to the issue

On 5 February 2009, the Council of Australian Governments (COAG) agreed that further work needed to be done to nationalise regulation of the legal profession in Australia. Regulation of the legal profession remains overly complex and inconsistent, with each state and territory applying different sets of rules.

The specialist National Legal Profession Reform Taskforce was created to make recommendations and prepare draft uniform legislation to form a single national profession regulatory scheme.

A consultative group representing the courts, regulators, consumers and the legal profession, including the LIV, was created to advise and assist the Taskforce.

What the LIV has done to date

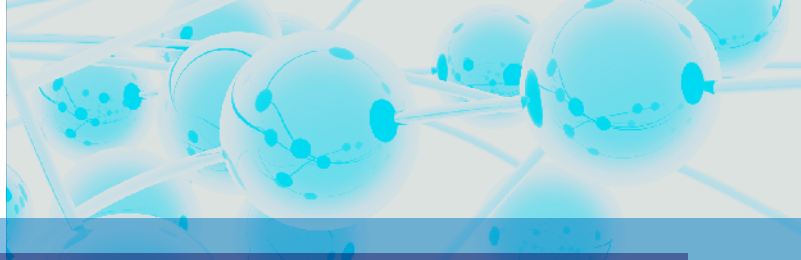
- Continued to help shape a uniform, consistent and sensible system to regulate the practice of law in Australia. The LIV supports the idea that national legal profession reform should create a single national market for legal services, which will simplify and increase the effectiveness of regulation of the legal profession.
- Together with the LCA and Council of Law Societies (COLS), developed a comprehensive and workable co-regulatory model which was submitted to the Taskforce in November 2009.
- Regularly met with the Department of Justice executive director. The LIV is considering the proposed draft legislation and is consulting further with the Taskforce on various issues.

Advocacy partners

National Legal Profession Reform Taskforce; LCA; Department of Justice

More information

- COAG National Legal Profession Reform Taskforce, *Consultation Package*, www.ag.gov.au
- LCA, *National Profession Project*, www.lawcouncil.asn.au
- *LJ Online*: CEO's page, "Reforms welcomed", March 2009; "National regulation of benefit to all", November 2009



Supporting International Market Access

The LIV is calling for

The federal government to work collaboratively with the legal profession to:

- promote the skills and expertise of Australian lawyers in overseas markets
- lobby to open up overseas markets to be receptive to Australian legal services
- encourage regulation that makes it easier for Australian lawyers to practise in overseas jurisdictions (as the draft *National Legal Profession Reform Bill* proposes to introduce a new option of “conditional admission” to allow foreign lawyers to more easily practise in all Australian jurisdictions)

Background to the issue

Overseas-registered foreign lawyers can practise foreign law in any Australian state or territory. A foreign lawyer may practise foreign law on a “fly-in, fly-out” basis without registration if the periods in Australia do not exceed a total of 90 days in any period of 12 months. An overseas-registered foreign lawyer cannot maintain a legal office in Australia or become a partner or director of an Australian law practice. However, this flexibility is afforded to Australian lawyers in only a minority of overseas jurisdictions.

What the LIV has done to date

- Committed to opening up access to overseas legal services markets for Victorian lawyers, and believes that its members, as Australian lawyers, are highly skilled and well respected in the international arena, and can offer their legal services as a lucrative export commodity.
- Made submissions to government negotiations on FTAs to encourage schemes that open up overseas markets and make it easier for Australian lawyers to practise in those regions.
- Educated members on opportunities under FTAs.
- Provided feedback to government on how our members and their clients are using the FTAs, and issues they face.

Advocacy partners

LCA; Australian Services Roundtable; DFAT, Austrade; DIIRD

More information

- LIV submissions to:
 - DFAT, *Australia-India Free Trade Agreement Feasibility Study*, 17 April 2008;
 - Malaysia-Australia Free Trade Agreement negotiations, 15 December 2009
 - Joint Standing Committee on Foreign Affairs and Trade, *Inquiry into Australia's Trade and Investment Relations with Asia, the Pacific and Latin America*, 6 February 2009
- LCA submission (with substantial LIV input) to Productivity Commission, *Issues Paper on Bilateral and Regional Trade Agreements*, 29 March 2010, www.lawcouncil.asn.au

Modernising Succession Laws

The LIV is calling for

The state government to consult with relevant bodies about the adoption of the model provisions prepared by the National Committee for Uniform Succession Laws. This may need to be undertaken in stages as there are a range of issues to consider

Background to the issue

The Uniform Succession Laws Project was undertaken by a national committee that included representatives of all Australian jurisdictions except South Australia. The project was divided into four stages: wills; family provision; intestacy; and administration of estates (including the resealing and recognition of interstate and foreign grants). All four stages of the project have been completed.

What the LIV has done to date

- Supported a national approach to the laws relating to wills, intestacy and the administration of deceased estates, and the national reform of these laws to establish uniform succession laws. However, the LIV strongly believes that there must be stakeholder consultation regarding the extent to which Victoria should adopt the model provisions prepared by the National Committee for Uniform Succession Laws.
- Over the past four years, the LIV has made multiple submissions on issues relevant to a national model code, including:
 - powers of personal representatives;
 - commission payable to executors & trustees of deceased estates; and
 - procedures regarding appointment and removal of personal representatives; and administration of small estates.

More information

- Queensland Law Reform Commission, Uniform Succession Laws Project, www.qirc.qld.gov.au
- LIV submissions to the Uniform Succession Laws Project:
 - *Powers of personal representatives – Uniform Succession Laws – Administration of Estates of Deceased Persons & Wills: The Anti-Lapse Rule*, 15 November 2006
 - *Commission payable to executors and trustees of deceased estates - Uniform Succession Laws – Administration of Estates of Deceased Persons – Submission #2*, 14 February 2007
 - *Administration of small estates – Uniform Succession Laws – Administration of Estates of Deceased Persons – Submission #3*, 7 August 2007
 - *Procedures regarding appointment and removal of personal representatives – Administration of Estates of Deceased Persons – Submission #4*, 20 August 2007

Modernising Victorian Property Law

The LIV is calling for

The state government to extend the scope of the current VLRC review to include the *Transfer of Land Act 1958 (Vic)*, in order to simplify and modernise Victorian property law

Background to the issue

In 2010, the VLRC has been asked to review the *Property Law Act 1958 (Vic)* and the laws relating to easements and covenants.

What the LIV has done to date

- Supported the review of property law in order to achieve the Victorian government's aims to simplify and modernise the law, reduce costs and achieve a national approach to property law.
- Played an active role in the slowly changing landscape of Victorian property law. The LIV has lobbied the Victorian government regarding a broad range of property law issues and legislation including the owners corporations and conveyancers regimes introduced in 2006.
- Liaised with the VLRC regarding the scope for reform of the *Property Law Act 1958 (Vic)*, and also property law generally.

More information

- VLRC, *Review of the Property Law Act 1958*, at www.lawreform.vic.gov.au
- LIV submission to VLRC, *Review of the Property Law Act 1958 Consultation Paper*, 7 July 2010

Increasing Awareness of Climate Change Legal Issues

The LIV is calling for

Development of an appropriate legislative framework to tackle climate change, with comprehensive consultation

Background to the issue

The Carbon Pollution Reduction Scheme (CPRS) was a legislative attempt by the federal government to reduce Australia's carbon emissions. The CPRS intended to achieve this by setting a limit on the total amount of carbon that could be emitted under the scheme throughout Australia. The permitted limit was intended to decrease over time, thereby steadily reducing Australia's carbon emissions. The CPRS intended to establish a system whereby carbon-emitting businesses would be required to purchase permits that gave them the right to emit a certain amount of carbon. The number of permits issued by the government would not be allowed to exceed the limit set.

In 2008 the Department of Climate Change produced a CPRS Green Paper. Following several previous attempts to pass the CPRS through Parliament, the CPRS legislative package, which comprised 11 Bills, was most recently introduced into the House of Representatives in February 2010. Having failed again to pass the legislation through Parliament, the Prime Minister on 27 April 2010 announced that the government had decided to delay implementation of the CPRS until 2012.

What the LIV has done to date

- Closely followed the progress of the CPRS over the past two years.
- In September 2008 made a detailed submission commenting on the Green Paper and outlining LIV's views on how the intended CPRS Bill should be framed. The submission emphasised the importance of careful consideration of the drafting of any legislation, given the significant financial implications of the Scheme.

More information

- LIV submission to the Department of Climate Change, *Carbon Pollution Reduction Scheme Green Paper*, 8 September 2008
- www.climatechange.gov.au

Improving Disability Care & Support

The LIV is calling for

A scheme that will improve the quality of life for people with disabilities that profoundly or severely impact on their ability to undertake core activities

Background to the issue

The federal government has requested the Productivity Commission to conduct a public inquiry into a long-term disability care and support scheme. The Commission will examine and report on the costs, cost-effectiveness, benefits, and feasibility of providing long-term essential care and support for eligible people with a severe or profound disability, on an entitlement basis and taking into account the desired outcomes for each person over a lifetime.

What the LIV has done to date

The LIV has provided input to the inquiry in conjunction with the LCA.

Advocacy partners

LCA; other state and territory law societies

More information

- *Disability Care and Support Public Inquiry Issues Paper*, www.pc.gov.au

LIV'S LEGAL POLICY & PRACTICE (LPP) DEPARTMENT

The LIV, through its Practice Section Committees, actively seeks to influence policy and legislation by making submissions to government, the courts, parliamentary committees and other bodies.

Practice Section Committees and Committees of Council are supported by LPP, which dedicates resources to research and legal policy development and co-ordinates the LIV's lobbying, law reform initiatives and practice support services to members.

Community Rights:

Administrative Law and Human Rights Section
Criminal Law Section
Elder Law Section

Commercial/ Property:

Commercial Law Section
Property and Environmental Law Section
Succession Law Section
International Law Section

Dispute Resolution:

Collaborative Law Section
Family Law Section
Litigation Lawyers Section
Workplace Relations Section

Constituent Liaison:

Young Lawyers' Section
Government Lawyers' Section
Practice Support Section

The LIV values the time and support provided by its committee members.

More information on the Practice Sections and how to get involved is available at www.liv.asn.au

GLOSSARY OF TERMS

ADR	Appropriate (or Alternative) Dispute Resolution
ALRC	Australian Law Reform Commission
AMA	Australian Medical Association
Austrade	Australian Trade Commission
CLC	Community Legal Centre
COAG	Council of Australian Governments
CISP	Court Integrated Services Program (Magistrates' Court Victoria)
The Charter	Charter of Human Rights and Responsibilities 2006 (Vic)
CPRS	Carbon Pollution Reduction Scheme
DFAT	Department of Foreign Affairs and Trade (Cth)
DIAC	Department of Immigration and Citizenship (Cth)
DIIRD	Victorian Department of Innovation, Industry and Regional Development.
FBT	Fringe Benefits Tax
FTA	Free Trade Agreement
HECS-HELP	Loan available to eligible students enrolled in Commonwealth-supported places
LJ	Law Institute Journal
LIV	Law Institute of Victoria
LCA	Law Council of Australia
NACLCL	Natural Association of Community Legal Centres
NADRAC	National Alternative Dispute Resolution Advisory Council
NHRC	National Human Rights Consultation
PILCH	Public Interest Law Clearing House
RRR	Rural, Regional and Remote [areas]
TAC	Transport Accident Commission
Tarwirri	Indigenous Lawyers and Law Students Association of Victoria
VALS	Victorian Aboriginal Legal Services Incorporated
VCAT	Victorian Civil and Administrative Tribunal
VEOHRC	Victorian Equal Opportunity and Human Rights Commission
VLA	Victoria Legal Aid
VLAFF	Victorian Legal Assistance Forum
VLFF	Victorian Law Foundation
VLRC	Victorian Law Reform Commission
VPLRC	Victorian Parliament Law Reform Committee



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