

Launch of the Victorian Chapter of Pride in Law, Supreme Court Library
Address of the Hon. Chief Justice Ferguson
Thursday, 18 May 2023

I would like to acknowledge Peoples of the Kulin Nation who are the traditional custodians of the land on which we stand. I celebrate their connection to this land, to Country, to culture, knowledge and stories.

I pay my respects to their Elders, knowledge holders and leaders past and present and extend that respect to all First Nations people present today.

I also acknowledge:

- The Honourable Chief Justice Alstergren of the Federal Circuit and Family Court of Australia
- The Honourable Michael O'Brien MP
- Director of Public Prosecutions, Kerri Judd KC
- Victorian Legal Services Commissioner, Fiona McLeay
- Dr Matt Collins AM KC
- Pride in Law Founder and National Director, Dean Clifford Jones, and National Director Julie Paino
- Pride in Law's Victorian Chapter Executive Committee, including President Vanessa Bacchetti and Vice President Tiffany Tullberg
- State and Federal judicial colleagues
- Members of the LGBTQIA+ communities and the legal profession

I am honoured to have the opportunity to speak tonight and I thank Pride in Law for inviting me to do so.

It is a great pleasure to celebrate the launch of Pride in Law's Victorian Chapter here at the Supreme Court.

We have just heard about some of the important work underway in Victoria and nationally.

Yesterday was International Day Against Homophobia, Biphobia, Intersex discrimination and Transphobia which makes this is a particularly fitting day to acknowledge the commitment and the drive that sits behind that work.

When we open the Court each day, we do so with the purpose of serving the community by upholding the law through just, independent, and impartial decision making.

That purpose is underpinned by values that include equality before the law, accessibility, integrity, courtesy and respect.

Tonight is an opportunity to demonstrate our strong support for an inclusive and diverse legal profession.

It is also an opportunity to reinforce our commitment to creating welcoming and positive environments for all.

As Chief Justice, I acknowledge the impact of historical laws on members of the LGBTQIA+ communities. I am very conscious that those laws form part of the context in which people come to the Court.

We should not forget that it is only 42 years ago that homosexual acts were decriminalised in Victoria.

The repeal of those laws, which came into effect in March 1981, was a step in the right direction, but substantive equality has been a slow process. Other legal advances since then include:

- Discrimination based on sexual orientation and gender identity has been unlawful since 2000;
- Surrogacy and assisted reproduction options for same-sex couples were widened in 2010;
- Historical convictions for homosexual offences could be expunged from 2014;
- Adoption by same-sex couples was legalised in 2016;
- Domestic partnership laws in Victoria were reformed in 2016;
- Same-sex marriage was legalised by the Federal Parliament in 2017; and
- Conversion therapy laws were changed in 2021.

For too long, intolerance has been threaded through the fabric of our society and our justice system. Tonight I want to acknowledge that while there has been much progress, prejudice and discrimination remains a continuing issue. I acknowledge the courage and resilience of so many people in the face of that intolerance.

Creating safe spaces

We do not know whether the LGBTQIA+ communities are underrepresented in the legal profession historically or today. But we do know that discrimination limits opportunity.

We know that some from these communities experience rejection by family members and violence.

We know that prejudice has meant some lawyers have felt unable to be open about this aspect of their lives.

The historical invisibility of these communities is slowly being corrected but it speaks to a terrible reality for those individuals who could not bring their whole selves to their professional lives, not because they chose privacy but because they sought to avoid prejudice.

We know that diverse and equitable workplaces produce better outcomes for organisations and the individuals within them.

But it is not enough that diversity exists in an organisation or workplace. It is not simply a matter of ticking a diversity box by having a person who does not identify as heterosexual on the team, for example. Diversity must be able to be openly expressed. It must be welcomed and acted on.

I want to acknowledge the contribution that LGBTQIA+ lawyers have made to the profession over many years here in Victoria and nationally. That contribution is both seen and unseen. It covers the breadth of our profession helping clients at risk, keeping the wheels of commerce turning, delivering insights through academic endeavour, offering brilliant advocacy and enhancing our jurisprudence.

We know that we have LGBTQIA+ judges, court staff, barristers, solicitors and clients - we have that level of diversity at all levels in and outside the Court.

Looking around the Court today brings me great pride to see this reflected.

Ideally, the composition of the judiciary, the legal profession, and other organisations would reflect the diversity of Australian society – there is a long way to go in this regard.

Tonight I want to send a message from the highest Court in Victoria: all are welcome here.

Sexual Harassment and LGBTQIA+ communities

I often speak about the responsibility on us to create safe, inclusive and respectful workplaces in our courts.

In 2020, the Respect@Work Report from the Australian Human Rights Commission found that discrimination and harassment against LGBTQIA+ people at work continued to be a significant issue. The 2022 survey found that while 33% of people had been sexually harassed at work in the last five years the figure among those who identified as LGBTQIA+ was 46%.

Sexual harassment, bullying, discrimination and other unlawful or inappropriate behaviour must not be tolerated in workplaces.

In the national inquiry that preceded that Report, the Commission heard that experiences of discrimination affected the communities' willingness to speak up about workplace sexual harassment.

In August 2020, I, together with the then Attorney-General, commissioned a Review into Sexual Harassment in the Victorian Courts and VCAT which was undertaken by Dr Helen Szoke.

The Szoke report noted that sexual harassment was disproportionately experienced by those who identify as LGBTQIA+.

In implementing Dr Szoke's recommendations, we have taken the opportunity to make changes that go towards addressing not only sexual harassment but also bullying and discrimination.

For example:

- there are new policies and complaints processes for all three types of conduct;

- the Judicial Commission has published a guideline on sexual harassment and will soon publish a guideline on judicial bullying;
- there is now an explicit requirement that those to be appointed by me as Senior Counsel be of good character and demonstrate professional respect and courtesy for people they interact with in their professional roles.

These are just some examples of the changes we are making across the courts. We recognise that there is more work to do.

Diversity and Inclusion

The Szoke Report also called for the courts and VCAT to find practical ways to recognise and support lesbian, gay, bisexual, transgender, intersex, queer and gender-diverse people, and ensure these staff can thrive in workplaces that are free from sexual harassment.

This echoes findings from the Australian Human Rights Commission that the level of organisational support for LGBTQI people is an important factor influencing how comfortable and included they feel at work.

Steps that the Supreme Court has taken to recognise and support these communities, include the establishment within the Court of a judicial-led Diversity and Inclusion Committee.

The Committee developed the Practice Note published in April this year which invites parties, lawyers and other participants to advise the Court of pronunciations of names, forms of address and pronouns, including Mx, for use in a proceeding.

This may not seem like much of an innovation to the many organisations who have implemented something similar. It is a small but I hope important signal of support for diversity within the profession and for the LGBTQIA+ communities.

The Committee will be engaging in discussions with the profession to hear about issues being experienced in the Court by different groups. I encourage people to take part in this process, to be frank and share their experience.

The Committee also intends to look at mentoring and internship opportunities.

Court Services Victoria, which employs the staff who work in the courts, has also created an active Pride Network in 2021. This network is an employee-led initiative to create a community for its workforce, which was formally launched yesterday on IDAHOBIT Day. The Pride Network comprises 50 members across the courts in Victoria and I hope that its membership will continue to grow.

Wellbeing is influenced by whether we are able to develop and learn in a supportive environment.

My experience has been that encouraging and mentoring younger or new members of teams maximises the whole team's performance – recognising that everyone has something to contribute and that a different perspective goes a long way.

Following this theme, the Court also established a Pride Working Group and People with Disability Working Group, meeting for the first time in March and April respectively.

The working groups are chaired by an associate judge and comprise staff from across the Court and Court Services Victoria.

The working groups are formulating a number of activities aimed at building cultural safety by focussing on capability, awareness and advocacy based on lived experience. These activities will focus on the experience of Court staff.

Creating the space for people to connect is about creating the time and opportunity to help people develop their skills and boost their confidence.

Conclusion

I see all of this as ongoing work for the courts; it is not a set and forget.

Each of us has the responsibility to treat people decently and respectfully; to be leaders and model this behaviour.

We want all people to feel welcome in our courts and to thrive in our profession.

We want to build public confidence in the work of the Court, and reflect the values of the community of which we are a part.

It can be difficult to look back on our history.

To use the words of the Honourable Justice Kristen Walker at her welcome ceremony last year, “the message I choose to take from that history is that law can change for the better; its promise of justice and fairness can be fulfilled.”¹

Justice Walker is unable to be here this evening because she is overseas. But she has asked me to pass on her good wishes for the launch of the Victorian Chapter of Pride in Law, and to congratulate all those involved in this important initiative. She looks forward to attending future events.

I want to commend Pride in Law for providing the time, space and energy to build advocacy, change and visibility in the law, as well as opportunities for networking and support within the communities and their allies.

Congratulations on creating a new chapter here in Victoria.

I wish you, the LGBTQIA+ communities and their allies, the very best for the future.

The Hon. Chief Justice Anne Ferguson
Chief Justice, Supreme Court of Victoria
18 May 2023

¹ Welcome ceremony of the Honourable Justice Kristen Walker, Tuesday, 3 May 2022