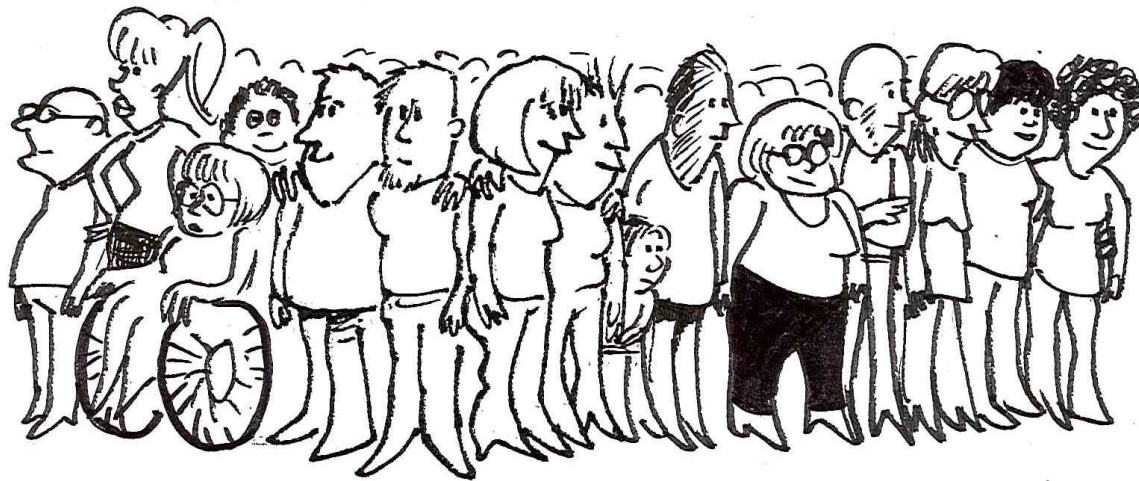




Victorian Equal Opportunity
& Human Rights Commission

LGBTIQ Equality Initiatives in Local Government Forum

Darebin City Council and Hobsons Bay City Council

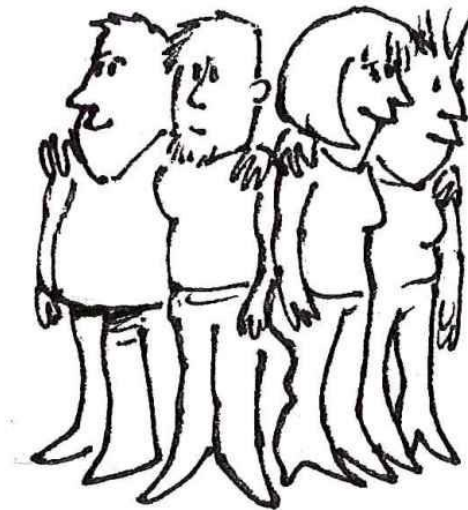


Thursday 23 January 2014, 3.30 to 6.00pm

Program outline

- Introducing LGBTIQ human rights
- LGBTIQ rights protected under the Victorian Charter of Human Rights and Responsibilities
- Cross-over with the EOA 2010
- Local governments and their responsibilities

How the human rights laws fit...

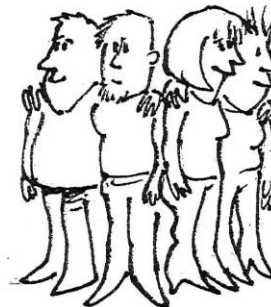


How the human rights laws fit...

United Nations Declaration of Human Rights

**International Covenant of Civil
and Political rights**

**International Covenant of Economic,
Social and Cultural Rights**



Covenants

United Nations Declaration of Human Rights

**International Covenant of Civil
and Political rights**

**International Covenant of Economic,
Social and Cultural Rights**



CERD (Racial Discrimination)

CEDAW (Women)

CROC (Children)

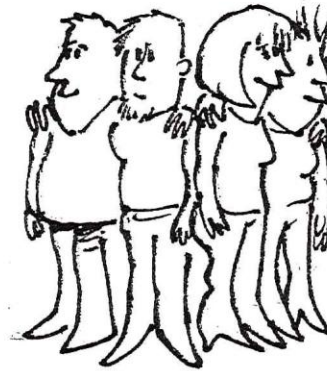
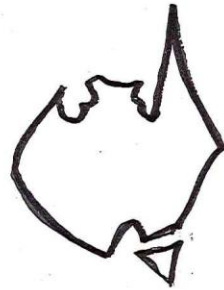
CRPD (Disability)

CAT (Torture)

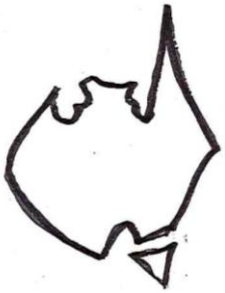
DRIP (Indigenous People)

**Yogyakarta
Principles**

And in Australia...



And in Australia...



Australia (Federal / National)

Racial Discrimination Act

Sex Discrimination Act

Australian Human Rights Commission

Disability Discrimination Act

Age Discrimination Act

**Sexual
orientation,
gender identity
and intersex**

From 1 August 2013...

...it is unlawful under federal law (the SDA) to discriminate against a person on the grounds of their:

- sexual orientation
- gender identity
- intersex status

Same-sex couples are now also protected from discrimination under the new definition of 'marital or relationship status' (this was previously 'marital status').

The Federal Sex Discrimination Act

Discrimination may be unlawful when it occurs in protected areas of public life, including:

- employment
- education
- provision of goods, services and facilities
- providing land, housing or accommodation
- membership and activities of licensed clubs
- the administration of Commonwealth laws and programs.

Federal definition: sexual orientation

Sexual orientation means a person's sexual orientation towards:

- a) persons of the same sex or
- b) persons of a different sex or
- c) persons of the same sex and persons of a different sex

Federal definition: gender identity

Gender identity means

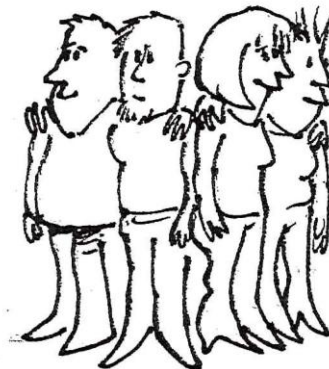
- the gender-related identity, appearance or mannerisms or other gender-related characteristics of a person
- This includes the way people express or present their gender and recognises that a person's gender identity may be an identity other than male or female.

Federal definition: Intersex

Intersex status 'means the status of having physical, hormonal or genetic features that are:

- a) neither wholly female nor wholly male or
- b) a combination of female and male or
- c) neither female nor male.'

And in Victoria...



And in Victoria...

STATE LAWS

Equal Opportunity Act

Racial and Religious Tolerance Act

Charter of Human Rights & Responsibilities Act



Laws covered by the State level of government include:

- Hospital
- Public Transport
- Police
- Schools and education
- Housing

The Charter's approach

The State has a responsibility to:

- **Respect** (don't breach)
- **Protect** (don't allow others to breach)
- **Promote** (educate, communicate)
- **Fulfil** (realise, avoid the loss of) human rights

“Dialogue approach” to human rights protection

- Rooted in **international** human rights law
- all rights are **equally important**
- **inter-related** and inter-connected to each other

Charter applies to:

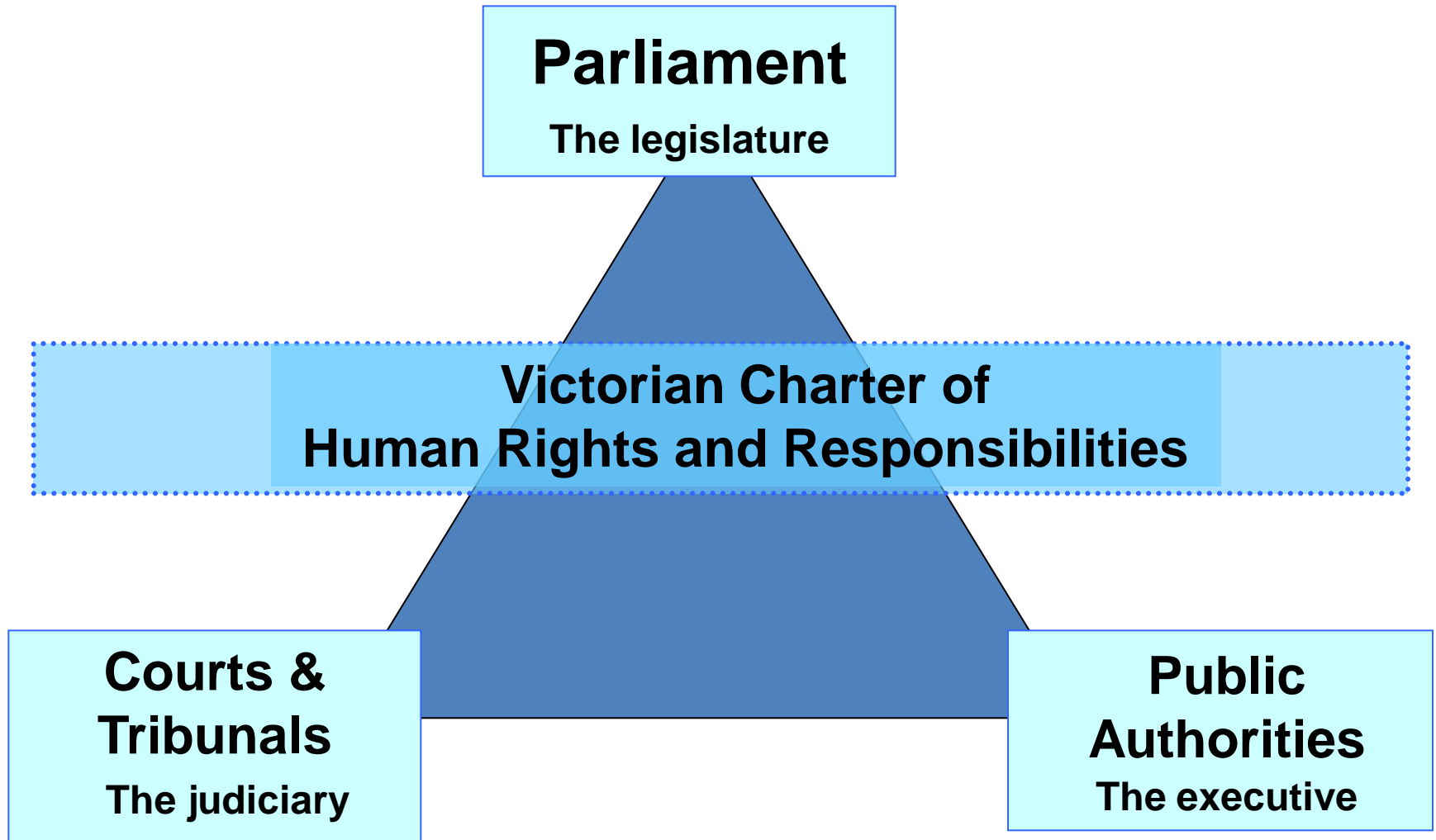
State government:

- Hospital
- Public Transport
- Police
- Schools and education
- Equal opportunity
- Housing
- Victorian Charter

Local government:

- Local traffic
- Public drinking
- Town planning
- Building inspections
- Domestic animals
- Rubbish/waste management

How the Charter works



Rights protected by the charter

s-8 Recognition and equality before the law

s-9 Right to life

s-10 Protection from torture and cruel, inhuman or degrading treatment

s-11 Freedom from forced work

s-12 Freedom of movement

s-13 Protection of privacy and reputation

s-14 Freedom of thought, conscience, religion and belief

s-15 Freedom of expression

s-16 Right to peaceful assembly and freedom of association

s-17 Protection of families and children

s-18 Entitlement to participate in public life (including voting)

s-19 Cultural rights, including recognition of the distinct cultural rights of the Aboriginal people of Victoria

s-20 Property rights

s-21 Right to liberty and security of person

s-22 Humane treatment when deprived of liberty

s-23 Appropriate treatment of children in the criminal process

s-24 Fair hearing

s-25 Rights in criminal proceedings

s-26 Right not to be tried and punished more than once

s-27 Protection from retrospective criminal laws

Charter obligations

- **s.7 Limitations** – if you must **limit a right**, limits must be reasonable, necessary and justified...
- **s.32 Interpretation** – laws must be **interpreted compatibly with rights**... so far as possible consistent with their purpose...
- **s.38 Conduct** – **public authorities** must never breach a human right, or fail to give proper consideration to protected rights

Equal Opportunity Act 2010

Prohibits:

- **direct** and **indirect** discrimination, sexual harassment and victimisation

Requires:

- **positive duty** to eliminate and prevent
- to make reasonable adjustments for people with disability
- flexibility for parents and carers at work

Thinking about equal opportunity

- As a service provider
 - e.g. how can you create services that are inclusive and accessible?
- As an employer
 - e.g. create a workforce that represents your community, including people with disability
- Advocating for your clients
 - e.g. how can you use the laws to prevent or address discrimination?

Direct discrimination EOA 2010

Occurs where a persons treats (or proposes to treat) a person

- Unfavourably
- In an area of public life
- Because of their attribute

(characteristic, something about them)

Areas of public life

- Employment
- Goods and services
- Education
- Local government
- Accommodation
- Sport
- Clubs and club membership
- Disposal (sale, transfer) of land

18 protected attributes

- Age
- Disability
- Physical features
- Race
- Religious belief/activity
- Industrial activity
- Political belief/activity
- Employment activity
- Sex (M or F)
- Marital status
- Pregnancy
- Breastfeeding
- Parental
- Carer status
- **Lawful Sexual Activity**
- **Sexual orientation**
- **Gender Identity**
- Personal Association

Gender identity

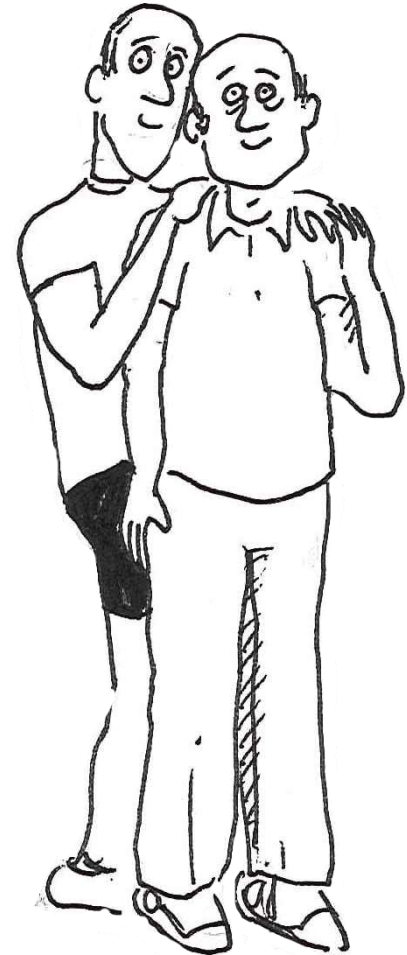
gender identity means—

- (a) the identification on a bona fide basis by a person of one sex as a member of the other sex (whether or not the person is recognised as such)—
 - (i) by assuming characteristics of the other sex, whether by means of medical intervention, style of dressing or otherwise; or
 - (ii) by living, or seeking to live, as a member of the other sex; or
- (b) the identification on a bona fide basis by a person of indeterminate sex as a member of a particular sex (whether or not the person is recognised as such)—
 - (i) by assuming characteristics of that sex, whether by means of medical intervention, style of dressing or otherwise; or
 - (ii) by living, or seeking to live, as a member of that sex;

Scenario

Aaron is refused promotion in a 'family-oriented' firm after he discloses that after leaving his wife he has established a relationship with **Samuel**.

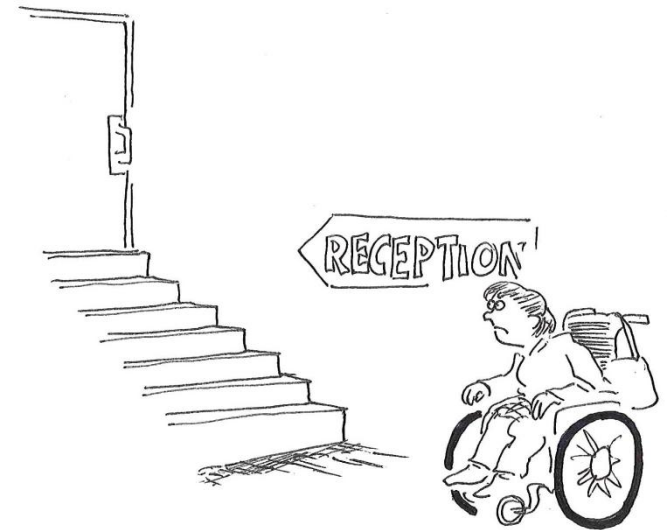
- ☐ Unfavourable treatment?
- ☐ Area of public life?
- ☐ Protected attribute?



Indirect discrimination

Occurs where a person imposes, or proposes to impose...

- a **requirement, condition or practice**
- ...that is, or is likely to, **disadvantage** people with a **protected attribute**,
- ...and that is **not reasonable**



Scenario

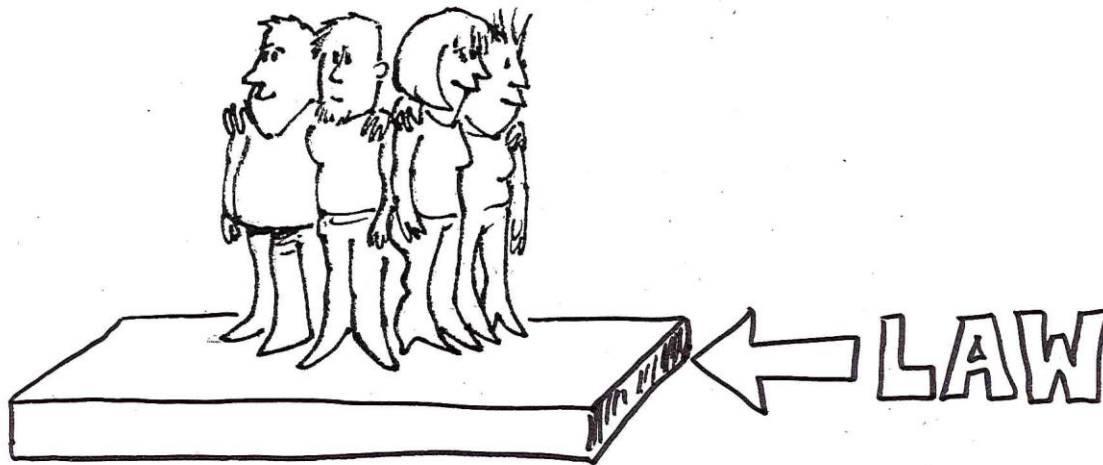
Margaret has been identifying as a woman for two years when she applies for a job in another department.

The organisation's human resources policies do not permit changes to an employee's records. Such a policy means she will have to disclose information about her gender identity in order to explain discrepancies in personal details.

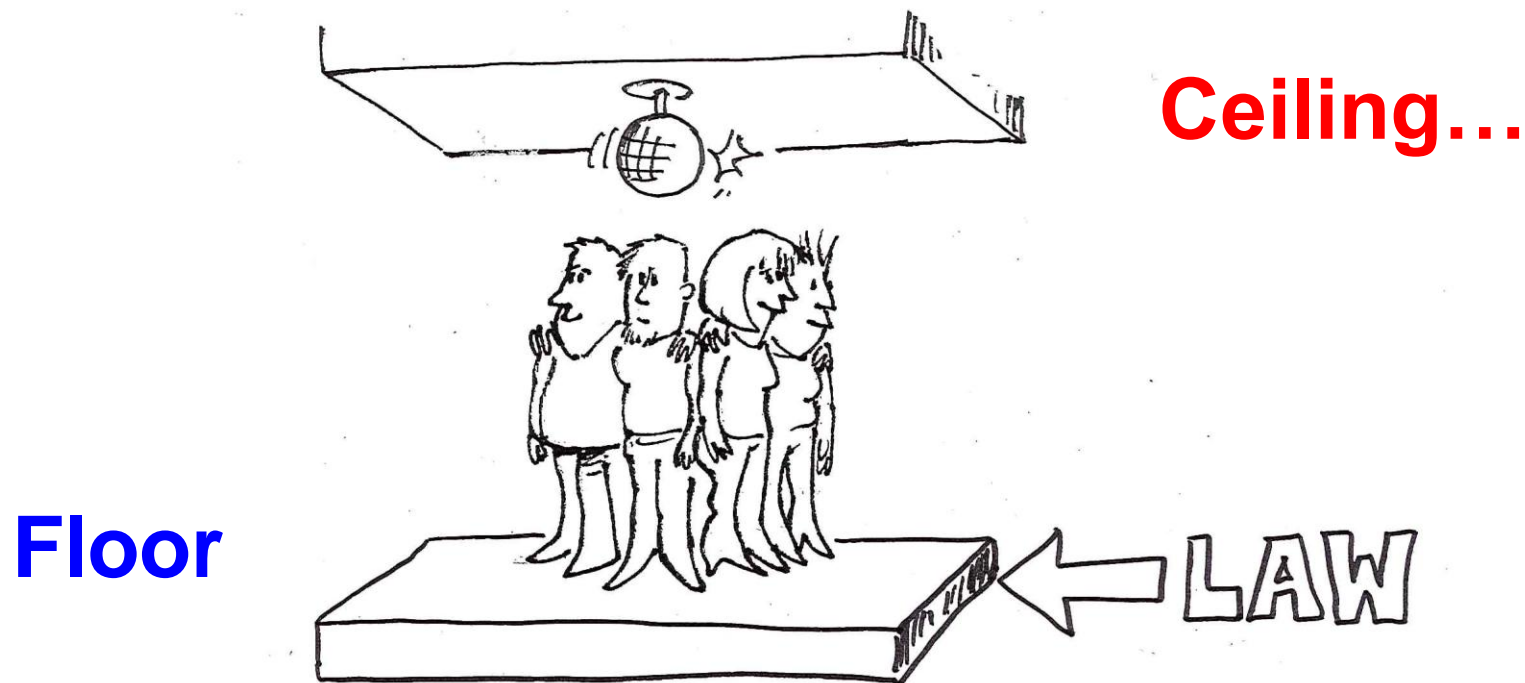


Just a quick reminder about the law...

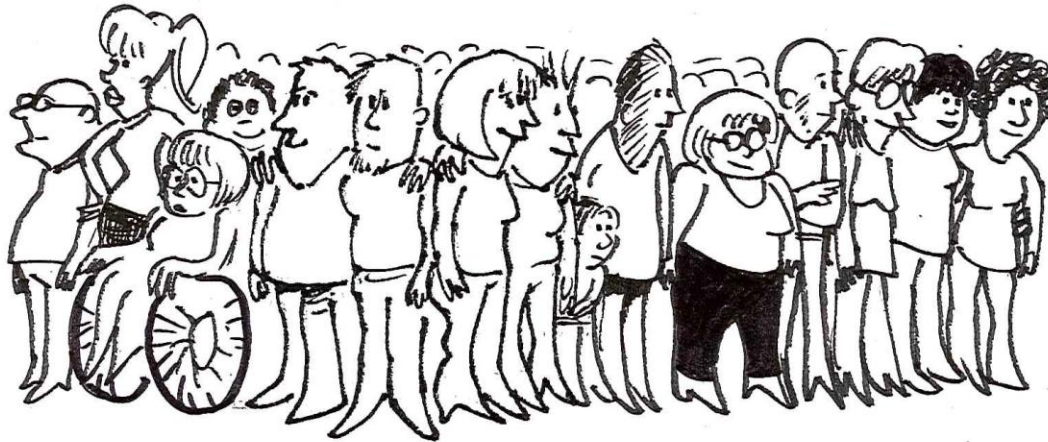
Floor



Just a quick reminder about the law...



For the whole of the LGBTIQ community



LGAs have many roles...

Internal

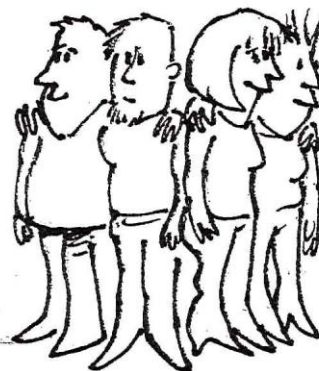
Staff consultative
committees

Human
resources

Realigning
services



HEALTH SPORT



External

Celebrations and
events

Supporting
community
initiatives

Community
Consultation