



22 July 2005

Professor George Williams  
Chair, Human Rights Consultation Project  
55 St Andrews Place  
Melbourne VIC 3000

**By Post and Email** (HumanRights@justice.vic.gov.au)

Dear Professor Williams

### **Human Rights Charter for Victoria**

The Law Institute of Victoria (**LIV**) welcomes the opportunity to provide a submission to the Human Rights Consultation Committee (**Committee**) in response to its Human Rights Consultation Community Discussion Paper on questions around ways in which human rights can be better protected in Victoria, including the possibility of a Human Rights Charter.

We attach our submission, representing input from various LIV Sections, Committees and individual members whose interests in law reflect numerous legal practice areas including criminal, disability, refugee/asylum seeker, litigation, family, workplace relations, access to justice and human rights law.

The LIV would welcome the opportunity to provide further comments on a Human Rights Charter as a supplementary written or oral submission and would value such an invitation to further contribute to the consultation process. We also intend to provide the Committee with a supplementary submission to expand upon our initial comments as to what should happen if a person's rights are breached (refer Question 5) after further consideration of this issue.

If you have any questions about this submission, please contact me ([livpres@liv.asn.au](mailto:livpres@liv.asn.au) / 03 9607 9367) or Jo Kummrow ([jkummrow@liv.asn.au](mailto:jkummrow@liv.asn.au) / 03 9607 9385).

Yours sincerely

**Victoria Strong**  
President  
Law Institute of Victoria

Attach.

# Submission

## Administrative Law & Human Rights Section

To: Professor George Williams, Chair, Human Rights Consultation Project

### **Submission: A submission on the Human Rights Community Discussion Paper and a Human Rights Charter for Victoria**

A submission from: Law Institute of Victoria

Date: 22 July 2005

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### A. Introduction

The Law Institute of Victoria (**LIV**) is pleased to make this submission to the important and timely inquiry by the Human Rights Consultation Committee in support of a Human Rights Charter for Victoria.

The LIV applauds the Attorney General, Mr Rob Hulls and the Victorian Government for initiating a process with the aim of promoting and protecting human rights in Victoria.

In May 2004, the Government released the *Justice Statement—New Directions for the Victorian Justice System (Justice Statement)*<sup>1</sup>. Amongst a number of proposed reforms, the Justice Statement included a commitment to protecting human rights and addressing disadvantage, possibly by a Charter of Rights and Responsibilities (**Human Rights Charter**).

On 18 April 2005, the Government appointed a Human Rights Consultation Committee chaired by Professor George Williams. The Committee was asked to consult with the community and report, by 30 November 2005, on how human rights and responsibilities could best be protected and promoted in Victoria. In May 2005, the Government also released a Statement of Intent that establishes the scope of the consultation process.<sup>2</sup>

This progressive initiative of government undoubtedly raises the profile of human rights at a time in Australia where the Australian Capital Territory is the only jurisdiction to have introduced specific human rights legislation<sup>3</sup> and some in our judiciary are debating the need for a national Bill of Rights and the propriety of construing Australian law to accord with international law<sup>4</sup>. Further, the LIV is aware of the significant criticism, both domestically and internationally about Australia's position on human rights in the context of treatment of asylum seekers, treatment of Indigenous peoples and the introduction of and amendments to various laws that impair the human rights of Australians, such as the *Australian Intelligence Services Organisation Act 1979*<sup>5</sup>.

The LIV, including its various Sections, Committees and individual members have provided content for and comment upon on this submission, including members of the:

- Administrative Law & Human Rights Section, including its Charter of Rights Committee, Disability Law Committee and Indigenous Issues and Aboriginal Reconciliation Working Group;
- Criminal Law Section; and
- Law Reform Committee of the Young Lawyers' Section.

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Accordingly the submission represents the view of many of our members whose interests in law reflect numerous legal practice areas including criminal, disability, refugee/asylum seeker, litigation, family, workplace relations, access to justice and human rights law.

The LIV welcomes any invitation to provide comment on a Human Rights Charter as a supplementary written or oral submission and would value such an opportunity to further contribute to the consultation process.

### B. LIV position on a Human Rights Charter

The LIV fully supports and actively advocates for a Human Rights Charter for Victoria. The LIV has been involved in discussions and in networks to develop and promote the idea of a Human Rights Charter for a number of years.

In 2001, the LIV's Administrative Law and Human Rights (**AL&HR**) Section established the Bill of Rights Committee, in collaboration with like-minded bodies, to advance the introduction of Federal and State Bills of Rights. This group has been actively engaged in lobbying for a Bill of Rights in Victoria, and has published various letters and articles<sup>6</sup> (including organising a special issue of the *Law Institute Journal* in December 2004) and initiated several LIV functions to promote the cause, including an event called, 'HumanWrites 3' (9 June 2005) with Professor George Williams and The Right Hon. Malcolm Fraser AC CH, who each spoke on the rights and responsibilities underpinning human rights.

At its June 2005 meeting, the LIV Council adopted a position paper in support of the introduction of a Human Rights Charter. (**Position Paper**). The Position Paper calls for:

- (a) the introduction of a Human Rights Charter into State law;
- (b) the protection of human rights set out in the International Covenant for the Protection of Civil and Political Rights and in the International Covenant on Economic, Social and Cultural Rights;
- (c) the protection of these rights in the Victorian Constitution;
- (d) a legislative framework granting individuals a right to seek a remedy for breaches of protected rights;
- (e) other additional enforcement mechanisms such as:
  - (i) a duty for Courts to interpret laws consistently with a Human Rights Charter, and when impossible a power to declare the law in breach, with a duty on government to take action in Parliament;
  - (ii) a duty for the executive to comply with a Human Rights Charter, enforceable by administrative law remedies;
  - (iii) an expanded Equal Opportunity Commission with power to receive, initiate and conciliate complaints of human rights breaches, with appeal to VCAT or the Court; and

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- (iv) a requirement that all cabinet submissions contain a Human Rights Charter compliance section, and that Bills before Parliament be scrutinised and assessed on Charter criteria;
- (f) a Human Rights Charter which is subject to Parliamentary sovereignty, but which promotes co-operation between Parliament, the Courts, the Executive and the people; and
- (g) the Government to support ongoing community education and information to raise and maintain awareness of everyone's responsibility to respect each other's human rights.

### C. Response to Statement of Intent

In its Statement of Intent, the Government noted that it does not favour:

- a constitutionally enshrined Human Rights Charter;
- the inclusion of economic, social and cultural rights in a Human Rights Charter; or
- the creation of an individual cause of action for breaches of rights.

The LIV has concerns about the above limitations and that the Government did not set up a lengthy consultation process nor provide for a well resourced community education process around human rights. The LIV views the above three points as critical to a much strengthened and improved model to that currently operating in the ACT (the *Human Rights Act 2004*). The LIV believes that the Victorian Government can learn a lot through the ACT experience and seek to build upon and expand the scope of and rights under the ACT *Human Rights Act 2004*, which celebrated its first anniversary on 1 July 2005.

#### i. Constitutionally enshrined Human Rights Charter

While the LIV supports a constitutionally enshrined Human Rights Charter to give due weight to human rights, the experience of the United Kingdom and New Zealand show that this is not essential. Further, the LIV is pragmatic about the Victorian Constitution itself being an act of Parliament and, therefore, subject to change by the parliamentary majority of the day. In this way, the LIV supports a Human Rights Charter being enacted as legislation, although it recognises the potential for a future government to undo the good work done to protect human rights by the previous governments.

#### ii. Inclusion of economic, social and cultural rights, and rights of the child, in a Human Rights Charter

There is also strong argument for a Human Rights Charter to include the rights enunciated in the International Covenant on Economic, Social and Cultural Rights (*ICESCR*). These rights include rights to just and favourable conditions of work,

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adequate food and clothing, access to adequate housing and to highest available standards of physical and mental health. The LIV acknowledges that these rights raise “difficult issues of resource allocation”, but consistent with the treatment of such rights in international law and as incorporated in the South African Bill of Rights, the LIV regards such rights as key components of a culture of human rights and vital for a community that respects human rights.

The LIV regards other human rights treaties as equally important for sectors of the community as these in turn shape the culture of human rights for the entire community, in particular, the Convention on the Rights of the Child. It has been long standing LIV policy that this Convention should be entrenched in State law and establish a Childrens’ Commissioner.

### iii. **Creation of an individual cause of action for breaches of rights**

The LIV believes a significant weakness of the ACT *Human Rights Act 2004* is that it does not provide a cause of action for a breach of human rights. Instead the courts are required to interpret legislation consistently with the rights protected under the *Human Rights Act 2004* unless this would be contrary to the objects of the legislation. The ACT experience has demonstrated that a Human Rights Charter need not lead to a flood of litigation, as was suggested before its introduction. The *Human Rights Act 2004* has been cited in only eight judgments of the Supreme Court of the ACT, one judgment of the Court of Appeal, and one decision of the Administrative Appeals Tribunal of the ACT.

The LIV supports the inclusion of an effective remedy under the Human Rights Charter for the infringement of an individual’s human rights by any department or agency of government (including corporate authorities performing public functions or acting as agents of government). In this respect, the LIV proposes that the method of enforcement currently contained in the UK *Human Rights Act 1998* be adopted. The LIV intends to provide the Committee with a supplementary submission on this issue shortly.

## D. **Response to key questions**

The LIV’s submission responds to the ten key questions as set out in the Human Rights Consultation Community Discussion Paper (*Discussion Paper*)<sup>7</sup>:

### 1. ***Is change needed in Victoria to better protect human rights?***

Australia is alone among Western democracies (and many others) in not providing for legislative or constitutional protection of human rights in accordance with international law. This means that there is no coherent rights jurisprudence founded on basic principles of human rights.

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Victoria (like the ACT) is in a position to take a lead role in addressing broader human rights issues for the community and enhancing human rights protections.

Without a government's strong commitment to a robust human rights framework, gaps arise in the operation of laws and the development of policies, and injustices are suffered particularly by marginalised groups in the community, for example people with a disability, young people, gay, lesbian, bisexual and transgender people, indigenous peoples and the homeless.

Access and equity issues for the above minority groups are broad ranging and continue to represent significant barriers to their personal fulfilment as members of the community.

### 2. *If change is needed, how should the law be changed to achieve this?*

The LIV unequivocally supports the introduction of a Human Rights Charter in Victoria to promote and protect human rights. The LIV believes that such a document is critical to:

- recognising and protecting universally agreed rights;
- placing human rights above politics and arbitrary government action;
- improving the quality of government policy making, decision making and public administration;
- ensuring Victorian legislation reflects human rights standards;
- educating the community about human rights and promoting a culture of respect for human rights in Victoria;
- ensuring equal respect for everyone's human rights;
- bringing Victoria, as a major State of Australia, into line with the international community; and
- fulfilling our legal obligations under international law.

#### i. **Perceived tension between Parliament and human rights**

The LIV notes that members of Westminster-system Parliaments are frequently concerned to argue that a Human Rights Charter should be implemented in a way that is consistent with parliamentary sovereignty. In this, they are noting the difference between the United States' system and the Westminster system of responsible government, and concerned about perceived problems with the role of the United States Supreme Court. The principle of parliamentary sovereignty is an important constitutional principle but it not ought to be interpreted so as to allow consistent infringement upon the rights of minorities. It is this point that the LIV submits is precisely why a Human Rights Charter is needed. Restraint, including respect for minorities and indeed individuals in the face of majority rule, is necessary, the LIV suggests, to safeguard democracy against corruption.

For this reason, among the others set down in this submission, the LIV believes that a Human Rights Charter is required for Victoria and should include features

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from the United Kingdom, New Zealand and the ACT models. In doing so, Victoria will join the ACT in setting a fine example to its residents and creating a path for other states and territories, the Australian Government and other countries to follow in preserving the sanctity of human rights. The LIV suggests that Victoria's Human Rights Charter can play a valuable role in reconnecting Australian domestic law with international human rights jurisprudence that Australia has publicly promised the world to uphold and implement through its signing and ratification of several international human rights treaties. It will also serve to minimise the prospect that Australia and Victoria will be found in breach of its human rights obligations by the human rights monitoring committees of the United Nations. In recent years, these committees have been increasingly critical of this nation's human rights performance.

### ii. Rights and responsibilities

The LIV notes the reference in the Justice Statement to a possible 'Charter of Rights and Responsibilities'. The LIV submits that there is a misconception that human rights are legal rights (or entitlements) and the domain of lawyers. The LIV regards human rights as mutual between individuals in that while one person has a right to respect, another person has a duty to show respect. In this way, human rights necessarily entail responsibilities and the LIV discourages references to 'Responsibilities' in a Human Rights Charter, as it may suggest a polarisation where none exists.

The LIV suggests that it may however be useful for a Human Rights Charter to refer expressly to the responsibilities of bodies corporate, private or public. Corporations must have respect for human rights, not only because they interact with human beings, but because they often have responsibilities to their stakeholders. Corporate social responsibility (**CSR**) acknowledges the human rights responsibilities of corporations to all stakeholders (including its workers, individuals and the community) and also its responsibility to the environment. It is arguably a key success factor for progressive corporations. Further, at a time when corporations are increasingly being contracted by government to provide services, once exclusively delivered by government, it is a mechanism for restoring public confidence in corporations and ensuring that they meet human rights standards.

### 3. *If Victoria had a Human Rights Charter, what rights should it protect?*

Along with all authority from the Universal Declaration of Human Rights onwards, the LIV views human rights as indivisible. Civil and political rights cannot be severed from economic, social and cultural rights as they are all part of what defines the human condition and our sense of community.

Being mindful of the limitation in the Statement of Intent, the LIV considers that like the New Zealand *Bill of Rights Act* 1990 and the ACT *Human Rights Act*, Victoria should incorporate the rights in International Covenant on Civil and Political Rights into domestic law.

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### Civil and political rights

The LIV regards the following as key rights for inclusion in a Human Rights Charter:

- Recognition, equality before the law and freedom from discrimination;
- Right to life from birth onwards;
- Protection from torture and cruel, inhuman or degrading treatment;
- Protection of the family and children;
- Privacy and reputation;
- Freedom of movement;
- Freedom of thought, conscience, religion and belief
- Peaceful assembly and freedom of association;
- Freedom of expression;
- Participation in public life;
- Right to liberty and security of person
- Humane treatment when deprived of liberty;
- Children in the criminal process;
- Right to a fair trial;
- Rights in criminal proceedings;
- Compensation for wrongful conviction;
- Right not to be tried or punished more than once
- Retrospective criminal laws;
- Freedom from forced work;
- Rights of Indigenous Victorians; and
- Rights of minorities.

### Economic, social and cultural rights

The LIV also regards the following as key rights for inclusion in a Human Rights Charter, subject to the ICESCR principle of progressive realisation, and the equality of the sexes, and generally, and subject “only to such limitations as are determined by law only in so far as this may be compatible with the nature of these rights and solely for the purpose of promoting the general welfare in a democratic society”:

- Right to work;
- Right to fair working conditions;
- Right to trade unions;
- Right to social security;
- Right to protection for family, mothers and children;
- Right to food, clothing and housing;
- Right to health;
- Right to education (including free, compulsory, primary education); and
- Right to culture and the benefits of science.

Consistent with many international law commentators and recent international law jurisprudence<sup>8</sup>, the LIV does not support the distinction between ICCP and ICESC

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rights. Further, the LIV does not agree with the Government's view, as expressed in the Statement of Intent, that:

- "legislating for ICESCR rights is complicated by the fact that such rights can raise difficult issues of resource allocation and that many deal with responsibilities that are shared between the State and Commonwealth Governments"; and
- "Parliament rather than the courts should continue to be the forum where issues of social and fiscal policy are scrutinised and debated".

As referred to in section 3.2 above, there is strong argument for a Human Rights Charter to include the rights enunciated in the ICESCR. While the Statement of Intent suggests that the purpose of its consultation initiative is to "adequately recognise, protect and promote those rights that have a strong measure of acceptance in the community", the LIV strongly suggests that economic, social and cultural rights, including rights to just and favourable conditions of work, adequate food and clothing, access to adequate housing and highest available standards of physical and mental health are central to the concerns of the community, particularly those most likely to experience hardship and disadvantage.

The LIV urges that the economic, social and cultural rights be included in a Human Rights Charter, but notes that their exclusion from the *ACT Human Rights Act 2004* was subject to a one year review, now taking place, and that such a phased implementation would be necessary if they are not included at first instance.

### Indigenous peoples

The LIV notes various international initiatives<sup>9</sup> to increase the awareness of Indigenous peoples' human rights and to bring about concrete changes in their social conditions. The disadvantage experienced by Indigenous peoples illustrates the failure of government programs and laws to protect their human rights, especially rights to health, education and work, despite Australia's ratification of the ICCPR.

A report released by the Australian Productivity Commission on 12 July 2005<sup>10</sup>, indicates that indigenous Australians do not enjoy the same levels of economic participation as non-Indigenous Australians. The headline indicators set out in the report, such as:

- life expectancy at birth - where indigenous life expectancy is some 17 years less than that of non-indigenous people;
- rates of disability;
- years 10 and 12 retention and attainment;
- household and individual income; and
- suicide and self-harm,

show minimal improvement from the previously published indicators.

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The LIV strongly submits that the human rights of Indigenous peoples should be expressly acknowledged in a Human Rights Charter, ideally in the Preamble to and body of the Charter, which would focus the Victorian Government's attention on remedying the disadvantage of Indigenous Victorians.

The LIV notes that the preamble to the ACT *Human Rights Act 2004* recognises the special significance of human rights to Aboriginal and Torres Islander peoples. Accordingly, the LIV submits that the preamble to a Victorian Human Rights Charter include a similar reference to the special significance of human rights as individuals for whom the issue of rights protection has great and continuing importance. The LIV suggests that such an express statement would reflect the recent amendment to the preamble to the Victorian Constitution the State Government.

The Productivity Commission report also contains case studies which illustrate the critical importance of traditional culture, including land rights, for Indigenous people. The Australian Government has been criticised by the United Nations for the manner in which it wound back the land rights of Indigenous people after the judgment in the *Wik* case. Other cultural rights are weakly protected. The LIV recommends that a Human Rights Charter should recognise the rights of Indigenous peoples to freedom from discrimination, consultation over land and natural resources, social welfare and development and their physical and cultural integrity, as well as to measures for the implementation of their substantive rights.

### **Gay, lesbian, bisexual and transgender people**

Gay men, lesbians and bisexuals face widespread discrimination on the basis of their sexual identity, as do persons of transgender identity. Australia's international human rights obligations require governments to take all necessary measures to eliminate such discrimination. However, current Victorian law provides only limited protection against discrimination and lacks uniformity with other state and territory laws. In particular, the LIV notes that:

- the law generally refuses to recognise same sex relationships;
- gay men and lesbians have been refused treatment because of their sexuality or on the basis of actual or perceived HIV/AIDS status;
- same sex partners have also been refused hospital visitation rights or the right to give medical consent;
- many gay men and lesbians experience physical and verbal abuse; and
- discriminatory laws continue to apply in areas such as taxation, social security, insurance, family law and intestacy and wills.<sup>11</sup>

The LIV considers that a Human Rights Charter should specifically include an express right to freedom of sexuality, encompassing equal rights and freedom from discrimination for gay, lesbian, bisexual and transgender people. The LIV suggests that the educative purpose and aim of promoting tolerance is crucial to an effective Human Rights Charter.

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### Disabled people

Persons with a mental illness are among the most vulnerable and disadvantaged in our community. The LIV suggests that they continue to suffer from widespread systemic discrimination and are consistently denied their human rights and access to adequate support and treatment services. Accordingly, the LIV suggests that a Human Rights Charter should specifically include express rights for people with a physical or mental disability to ensure they have opportunities, freedoms and a standard of living equal to those for people without a disability.

#### 4. ***What should be the role of our institutions of government in protecting human rights?***

A Human Rights Charter should apply to the three branches of government, as well as any person or authority performing a public function, power or duty conferred by law. This should include legislation, policies, practices and service delivery of government.

Under a Human Rights Charter, all branches of the executive government should report to Parliament annually on their compliance with human rights. For example, though an annual report which should include a statement describing the measures taken to respect, protect and promote human rights during the reporting period, as required under the ACT *Human Rights Act 2004*. The LIV also supports the development of a Victorian Plan of Action for Human Rights where its implementation is reviewed and reported to Parliament.

#### 5. ***What should happen if a person's rights are breached?***

Individual complaints of breaches of human rights (as well as classes of complaints) should be able to be made to the Human Rights Commissioner for investigation, conciliation and compensation that is enforceable. Complaints should be reviewable or referred to the Victorian Civil and Administrative Tribunal (**VCAT**), much like complaints of discrimination.

As stated above, the LIV supports the inclusion of an effective remedy under the Human Rights Charter for the infringement of an individual's human rights by any department or agency of government and strongly recommends the adoption of the method of enforcement currently contained in the UK *Human Rights Act 1998*.

#### 6. ***What wider changes would be needed if Victoria brought about a Human Rights Charter?***

Ministers responsible for the introduction to Parliament of new legislation (or alternatively the Attorney General as the chief legal officer for the State of Victoria) should be required under a Human Rights Charter to make a statement to Parliament that a Bill is compatible with human rights. If the Bill is not compatible with human rights, the statement should set out the policy reasons for continuing

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with the proposed legislation. The LIV supports the models of a statement of compatibility or incompatibility, as the case maybe, and recognises that the human rights implications of proposed legislation should be debated in Parliament at the earliest opportunity.

Under a Human Rights Charter, it should be required that only by express intention can Parliament derogate from the Charter rights. Such rights (ie prescribed by law) that can be demonstrably justified in a free and democratic society may be subject to reasonable limitations.

In addition to the requirement for a statement of compatibility or incompatibility, all current State legislation should be reviewed and amended to include a statement as to which human rights it is specifically concerned to uphold, protect and enhance to bring all existing legislation into line with new human rights-compliant legislation.

Courts and tribunals should be required under a Human Rights Charter to interpret laws consistently with it so far as is possible. The UK model provides that a court must find an interpretation of a provision in question that is compatible with human rights or make a Declaration of Incompatibility.

### **7. *What role could the wider community play in protecting and promoting human rights?***

As set out in question 9, the LIV supports broad community education on human rights. The LIV suggests that this is an important part of the human rights process and as to the specifics of how this could be achieved, the LIV recommends ongoing consultation by government with community stakeholders.

### **8. *What other strategies are needed to better protect human rights?***

The LIV supports the establishment of a Human Rights Commissioner or an extension of the role of the Victorian Equal Opportunity Commission (**Commission**) to one of Human Rights and Equal Opportunity. The Commission should be adequately resourced to take a lead role in the community in the education, promotion and protection of human rights. The Human Rights Commissioner should also have the power to conduct human rights audits of government and semi-government organisations and institutions, such as juvenile justice centres and prisons.

Additionally in relation to breaches of human rights the Commission should have the power to initiate or receive, investigate and conciliate complaints of human rights breaches. It should also have a power, and receive the resources to assist courts when human rights questions arise.

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### 9. ***If Victoria introduced a Human Rights Charter, what should happen next?***

The LIV suggests that the next step after the introduction of a Human Rights Charter should be an education campaign for the community and government.

The LIV suggests that the Government fund and endorse a community education campaign to promote respect for human rights and to educate the community about a Human Rights Charter and human rights generally. This could take the form of a designated webpage with information on the Human Rights Charter, public seminars, school education programs, community training workshops, specialist forums on corrective and mental health services, etc. Government could also use sponsorship of a sporting club, continuing the LIV's link between human rights and Australian Rules Football, similar to the Transport Accident Commission's sponsorship of football clubs, to continue the promotion of human rights messages in the broader community.

Additionally, much work will need to be done within government to ensure that its administration is aware of its human rights obligations under a Human Rights Charter, particularly in relation to government policy, drafting of Bills, application of law, administrative decision making and delivery of government services. In particular, a Human Rights Charter should include a positive duty for government ministers, public servants and public bodies to act in ways that confirm to human rights standards, reviewable at law. The LIV also notes the role of the Bill of Rights Unit in the ACT, which oversees the implementation of the *Human Rights Act 2004* within the ACT Government.

### 10. ***Is there anything else you would like to tell us about how human rights should be protected in Victoria?***

The LIV has considered the operation of the ACT *Human Rights Act 2004* after its first year and identified a number of shortfalls. The LIV recommends that the Victorian Government adopt and build upon the scrutiny mechanisms under the ACT legislation by incorporating into a Human Rights Charter in Victoria:

- a robust review by the Victorian Parliament's Scrutiny of Acts and Regulations Committee (or similar) of proposed legislation – which is the approach of the equivalent committee in the United Kingdom under the *Human Rights Act 1998*;
- a review of the Human Rights Charter after the first and fifth year of operation; and
- a requirement that all statements of compatibility be detailed – which is the approach taken under the New Zealand Charter

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### Endnotes

- 1 Justice Statement New Directions for the Victorian Justice System (May 2004) (pdf)  
<http://www.justice.vic.gov.au/CA2569020010922A/page/About+the+Department-Policy+Development+and+Consultation-Attorney-General%27s+Justice+Statement?OpenDocument&1=0>About+the+Department~&2=0-Policy+Development+and+Consultation~&3=0-Attorney-General%27s+Justice+Statement~>>
- 2 Statement of Intent (May 2005) (pdf)  
[http://www.justice.vic.gov.au/CA256902000FE154/Lookup/HR\\_Consultation\\_project/\\$file/statement\\_intent.pdf](http://www.justice.vic.gov.au/CA256902000FE154/Lookup/HR_Consultation_project/$file/statement_intent.pdf)
- 3 Human Rights Act 2004 (ACT) <[http://www.austlii.edu.au/au/legis/act/consol\\_act/hra2004148/](http://www.austlii.edu.au/au/legis/act/consol_act/hra2004148/)>.
- 4 Al-Kateb v Godwin [2004] HCA 37 (6 August 2004)  
<http://www.austlii.edu.au/au/cases/cth/HCA/2004/37.html>. See McHugh J at para 73 and Kirby J paras 145-150 and 172.
- 5 Australian Intelligence Services Organisation Act 1979 (Cth)  
[http://www.austlii.edu.au/au/legis/cth/consol\\_act/asioa1979472/](http://www.austlii.edu.au/au/legis/cth/consol_act/asioa1979472/)>.
- 6 See 'The protection of human rights – time to re-open the debate' (2003) 77(4) Law Institute Journal, p.36 <<https://www.liv.asn.au/journal/archive/77-04-Apr2003/77-04-Apr2003-The.html>> and 'Human Rights It's Time' (2004) 78(12) Law Institute Journal, p 40  
<https://www.liv.asn.au/journal/archive/78-12-Dec2004/78-12-Dec2004-Human-2.html>>
- 7 Human Rights Consultation Community Discussion Paper (June 2005) (pdf)  
[http://www.justice.vic.gov.au/CA256902000FE154/Lookup/HR\\_Consultation\\_project/\\$file/community\\_discussion\\_paper.pdf](http://www.justice.vic.gov.au/CA256902000FE154/Lookup/HR_Consultation_project/$file/community_discussion_paper.pdf)>.
- 8 See for example, Craven, M., The International Covenant on Economic, Social and Cultural Rights - A Perspective on its Development, Oxford Clarendon Press (1995).
- 9 The United Nations declared 1995-2004 as the 'International Decade of the World's Indigenous Peoples' and has also prepared a Draft Declaration on the Rights of Indigenous Peoples  
[http://www.unhcr.ch/huridocda/huridoca.nsf/\(Symbol\)/E.CN.4.SUB.2.RES.1994.45.En?OpenDocument](http://www.unhcr.ch/huridocda/huridoca.nsf/(Symbol)/E.CN.4.SUB.2.RES.1994.45.En?OpenDocument)>.

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- 10 Australian Government, Productivity Commission, Overcoming Indigenous Disadvantage: Key Indicators 2005 Indigenous Report (July 2005) (pdf)  
<<http://www.pc.gov.au/gsp/reports/indigenous/keyindicators2005/keyindicators2005.pdf>>.
- 11 See Human Rights and Equal Opportunity Commission  
<[http://www.humanrights.gov.au/human\\_rights/gay\\_lesbian/index.html](http://www.humanrights.gov.au/human_rights/gay_lesbian/index.html)>.

