



# Second Time's the Charm – 2015 Review of the Victorian Charter

The recent review of Victoria's *Charter of Human Rights and Responsibilities Act 2006* is the first step to strengthening the only state-based human rights act in Australia (the ACT also has one).

## The process

Unlike the previous Government's 2011 review of the Charter, which recommended gutting it, this review by Michael Brett Young recommends allowing people to commence legal action alleging a breach of their human rights without having to prove some other breach of the law first, as is currently required. This is a sensible move which we recommended in our submission to the review.

Brett Young also seeks to make remedies more accessible by enabling people to bring a claim in the Victorian Civil and Administrative Tribunal, and by giving the Victorian Equal Opportunity and Human Rights Commission (VEOHRC) the power to resolve Charter disputes. Given the difficulty and expense of bringing a claim in a superior court, this would be a significant step forward for access to justice.

As Brett Young points out, we know from national experience with OH&S, privacy and discrimination law that behaviour is unlikely to change without the likelihood of consequences, and behaviour change in government administration is really what a Charter is all about. The work done to date to train Public Authorities (government agencies and those performing governmental functions) has raised awareness of human rights obligations, but according to Brett Young the Charter has suffered a 'deprioritisation' within Government over the last few years. Without Ministers and senior officials publicly committing to human rights, and making clear their expectation that public servants should do the same, a human rights culture can (and will) wither on the vine.

During the past few years, the Human Rights Unit in the Department of Justice has been running on the smell of an oily rag. When surveyed by Brett Young, it had only 1.7 full-time equivalent staff to advise the whole Victorian Public Sector (of around 217,000 employees) on its Charter obligations. Citing submissions like the Castan Centre's own, Young recommends that the Human Rights Unit's capacity be boosted so that it can restore its crucial advice and training functions.

Young adds that VEOHRC, which is currently responsible for most Charter-based education, 'does not have sufficient capacity for this broader educative role across government, but has tried to fill a gap in recent years.' From first-hand experience, I can attest to the fact that VEOHRC stretches its resources for this task a very long way. Clearly though, a serious approach to further development

of a human rights culture across Victoria will require a boost in resourcing for VEOHRC and the Human Rights Unit, as well as a 'reprioritisation' at the most senior levels of government. One of the most important educative tasks identified by the Review is to inform people as to how their rights may be limited by bodies such as Local Councils, to ensure their expectations are in line with the law (see Chapter 5). Brett Young also recommends that VEOHRC be empowered (and appropriately resourced) to require Public Authorities to provide relevant information and to mediate human rights disputes, which would provide a much more cost-effective option for those who might otherwise have to resort to litigation (see Chapter 3). One caveat is that those seeking financial remedies may well still need to proceed in the courts, because VEOHRC will not have the power to award compensation.

Young's other constructive recommendations for the Charter include clarification of what exactly constitutes a 'public authority' (see Chapter 2) and how the courts should interpret other statutes in light of human rights under the Charter after the confusing *Momcilovic* High Court decision.

Readers may be aware that the Charter is based on a 'dialogue model,' in which the courts provide feedback to Parliament about the operation of its laws. Another, less well recognised dialogue under the Charter is between Parliament and the Executive. This involves a parliamentary committee (the Scrutiny of Acts and Regulations Committee) reviewing legislation before it is enacted. In his Report, Brett Young makes several welcome recommendations to strengthen this process.

Finally, Brett Young recommends another review be conducted in four years' time.

At 267 pages, this latest Charter Review Report obviously contains an awful lot of detail which I am not able to convey here. Even from this brief overview though, I hope it is apparent that this Review has been far more constructive than the last one. We might quibble with some aspects of it (eg failing to recommend that certain fundamental rights be excluded from the limitations provision in section 7(2) of the Charter), but overall the Castan Centre welcomes the Report. It is a cogent and accessible document which provides a practical blueprint for the Victorian Government to get the Charter project back on the rails after a lamentable period of neglect. In fact, if Young's major recommendations are implemented, the Charter will be stronger than ever.