

Chapter 4

Taking Stock of the Audit Power

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I Introduction

One of the most powerful arguments in favour of the adoption of a human rights charter is that such legislation enables the establishment of a human rights culture. The mechanisms for implementation and enforcement within such a charter are key to the creation of a human rights culture. The charters adopted in the ACT and Victoria – the only two Australian jurisdictions to adopt such legislation – are both examples of the ‘dialogue’ model. This model aims at promoting thought and discussion about human rights, as legislation and policy are made, ensuring that the executive complies with human rights, and establishing a dialogue between the legislative and judicial arms of government. As described by ACT Supreme Court Chief Justice Helen Murrell:

the [Human Rights Act] impacts upon the three arms of government: compatibility must be considered in relation to a bill that is to be presented to the Legislative Assembly ... the executive and public authorities must act in a way that is compatible with human rights ... and, in so far as it is possible to do so, the courts must interpret laws in a way that is compatible with human rights.¹

The courts do not have the power to strike down legislation for incompatibility or inconsistency with human rights in either jurisdiction. The most they can do is declare that the legislation concerned is incompatible with human rights² or cannot be interpreted consistently with human rights,³ leaving the legislature to respond to this declaration. In theory, the focus on measures such as human rights compatibility statements⁴ to accompany new legislation should mean that resort to enforcement mechanisms through the courts is less frequent.⁵

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1 ACT Chief Justice Helen Murrell, ‘ACT Human Rights Act – A Judicial Perspective’ (Speech delivered at the Conference on the Tenth Anniversary of ACT Human Rights Act, 1 July 2014) 3: <<http://regnet.anu.edu.au/sites/default/files/uploads/2015-06/Chief%20Justice%20Helen%20Murrell.pdf>>.

2 *Human Rights Act 2004* (ACT) (the ACT Charter) s 32.

3 *Charter of Human Rights and Responsibilities Act 2006* (Vic) (the Victorian Charter) s 36.

4 ACT Charter s 37; Victorian Charter s 28.

5 ACT Chief Justice Helen Murrell, above n 1, 3.

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