

# Charting the Way

## HUMAN RIGHTS IN VICTORIA

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**Earlier this year I attended my first Law Institute of Victoria Conference of Counsel in Lorne.**

As the inaugural LIV event for the year, the conference provides the opportunity for all Council members and Section chairs to plan for the coming year.

A guest speaker was Mr Mark Dreyfus QC MP, the federal Member for Isaacs. Mr Dreyfus took the opportunity to discuss some of the priorities and commitments of the new Rudd Labor government in the areas of law and justice.

Among other things Mr Dreyfus dealt with the importance of protection of human rights in Australia. He said:

*"The Rudd Government believes the recognition and protection of human rights and responsibilities is a question of national importance for all Australians."*

Not only is the protection and promotion of human rights on the agenda at the federal level, but some state and territory governments are also committed. Of note, Victoria fully introduced the *Victorian Charter of Human Rights and Responsibilities Act 2006* (the Charter) on 1 January 2008.

Victoria now joins the Australian Capital Territory as the second jurisdiction to introduce human rights legislation. Both Western Australia and Tasmania are also considering bill of rights legislation. Internationally, Canada, the US and South Africa have bills of rights contained in their Constitutions, while the legislatures in the UK and New Zealand have both enacted human rights legislation.

The Charter provides a framework within which these human rights may be tested and explored in Victoria. The rights protected under the Charter include the right to life, freedom of movement and expression, cultural preservation and protection, and rights in criminal proceedings. Other secondary rights, such as the right to education, health and housing that are rights identified in the *International Covenant on Social Cultural and Economic Rights* are not, however, protected under the Charter.

The purposes of the Charter are, among other things, to set out the human rights which Parliament specifically seeks to protect and promote, ensure that statutory provisions are interpreted in a way that is compatible with those human rights and impose a general obligation on public authorities and courts to act and interpret legislation in ways that are compatible with them. It also confers jurisdiction on the Supreme Court to declare that a statutory provision cannot be interpreted so as to operate consistently with a prescribed human right, and requires the relevant minister to respond to such a declaration.

Although the Charter has been criticised as lacking certain enforcement mechanisms, such as a personal cause of action for breach, there is no doubt that the Charter itself is a step forward in terms of recognition of human rights in Australia.

In Victoria, it is too early to comment on its effectiveness. The wide-ranging and often vague language of the Charter provides opportunities for many test cases in Victoria, which may result in a more concrete platform for human rights in the jurisdiction or may shed light on potential inadequacies of the Charter itself. Until it has been tested in the Victorian legal system the full impact of the Charter on Victorians will not be known.

In the meantime, the Charter is here to stay and young practitioners in Victoria should familiarise themselves with the content and scope of it now, so they are in a strong position to advise clients on its impact on their businesses and activities.