

The Charter of Human Rights and Responsibilities: **A Practitioner's Guide**

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Introduction

1. In 1948, in the immediate aftermath of the Second World War and the human rights abuses that accompanied it, the nations of the world came together, under the chairmanship of an Australian Attorney-General, to pass the Universal Declaration of Human Rights.
2. Since then, a range of other human rights instruments have been agreed by the international community. Amongst the most prominent of these is the International Covenant on Civil and Political Rights (“the ICCPR”), signed by the Whitlam government and ratified by the Fraser government.
3. Alone of all western nations, Australia has never comprehensively incorporated these international human rights instruments into our domestic law. The State of Victoria has redressed this gap with the *Charter of Human Rights and Responsibilities Act 2006* (Victoria), (“the Charter”).

Purpose of this Seminar

4. The purpose of this seminar is to give practitioners an overview of the operation of the Charter, which partially commenced operation on 1 January 2007. It becomes fully operative on 1 January 2008.
5. We propose to walk practitioners through the Act from a practical perspective, giving some indication of the type of advice or advocacy which they may be called on to provide.

Note: This is a confidential Victorian Bar CLE seminar paper intended for use by other Barristers only under the prescribed condition of participation in that scheme. For full details see <https://www.vicbar.com.au/e.4.3.4.aspx?SecureTarget=https://www.vicbar.com.au/e.4.5.1.aspx>

Use of International Instruments in the Domestic Legal Context

6. The Charter reflects the great international human rights instruments – particularly the ICCPR. But the Charter only applies to Victorian law. The interplay between Commonwealth and State legislation, as well as the common law, may require, in many cases, both the Charter approach, and the common law utilization of international instruments, to be argued.
7. If an international convention to which Australia is a party¹ has not been incorporated into Australian municipal law by statute, it cannot operate as a direct source of individual rights and obligations under Australian municipal law.² However, an unincorporated treaty may be invoked in various ways in the conduct of domestic affairs.³ A statute of the Commonwealth or a State is to be interpreted and applied, as far as its language permits, so that it is in conformity with Australia's obligations under an international convention. Where legislation is ambiguous, an interpretation of Commonwealth or a State statute which is consistent with international human rights obligations should be preferred to one that is inconsistent⁴, all the more so where the legislation is enacted after, or in contemplation of, Australia's entry into the relevant convention.

¹ See the summary of those instruments in Appendix 2, as collated by Kate Eastman of Counsel, Sydney, in Kinley, David (ed), *Human Rights in Australian Law: Principles, Practice and Potential* (The Federation Press, Leichhardt, N.S.W., 1998) at p.xxxii.

² *Minister for Immigration and Ethnic Affairs v Teoh* (1995) 183 CLR 273 at 286-287 per Mason CJ and Deane J.

³ See the examples given by McHugh and Gummow JJ in *Re Minister for Immigration & Multicultural and Indigenous Affairs; Ex parte Lam* (2003) 214 CLR 1 at 33 [100].

⁴ *Minister for Immigration and Ethnic Affairs v Teoh* (1995) 183 CLR 273 at 287 per Mason CJ and Deane J; *Kartinyeri v The Commonwealth* (1998) 195 CLR 337 at 384 [97] per Gummow and Hayne JJ; and *Lim* (1992) 176 CLR 1 at 38. Some judges support a narrow view of ambiguity, such that '[i]f the language of the legislation is susceptible of a construction which is consistent with the terms of the international instrument and the obligations which it imposes on Australia, then that construction should prevail.' See *Teoh* (1995) 183 CLR 273, 282. See also *Al Masri* [2003] FCAFC 70, [156] According to Kirby J, this principle equally applies to constitutional interpretation: *Newcrest Mining (WA) Ltd v Commonwealth* (1997) 190 CLR 517 at 660 ('*Newcrest Mining*'). Gleeson CJ sent mixed messages in the recent case of *Plaintiff S157/2002 v Commonwealth* [2003] HCA 2 ('*Plaintiff S157*'). The

8. An international human rights convention to which Australia is a party can:
- (a) be a legitimate and important influence on the development of the common law;⁵
 - (b) serve as an indication of the value placed by Australia on the rights provided for in the convention and as an indication of contemporary values;⁶
 - (c) be weighed as a factor in the exercise of judicial discretion,⁷ including:

Chief Justice appeared to narrow the scope of the rule of construction by stating that it applies only ‘where legislation has been enacted pursuant to, or in contemplation of, the assumption of international obligations under a treaty or international convention’ (at [27]) *and* a legislative ambiguity exists. His Honour then appeared to accept a broader scope, however, by stating at [28]:

courts do not impute to the legislature an intention to abrogate or curtail fundamental rights or freedoms unless such an intention is clearly manifested by unmistakable and unambiguous language. General words will rarely be sufficient for that purpose. What courts will look for is a clear indication that the legislature has directed its attention to the rights or freedoms in question, and has consciously decided upon abrogation or curtailment.

The latest decision of the Full Family Court of Australia in *B and B v Minister for Immigration and Multicultural and Indigenous Affairs* [2003] FamCA 451 (‘*B and B*’) does *not* alter the statutory construction rules relating to international human rights obligations: at [251]. This case, however, was ground breaking in its finding that amendments to the *Family Law Act 1975* (Cth), under the *Family Law Reform Act 1995* (Cth), ‘did intentionally incorporate certain articles of United Nations Convention on the Rights of the Child into municipal law’ (at [275]) such that an alternative constitutional head of power for the amendments was the external affairs power (that is, alternative to the marriage, divorce and incidental power). It is seriously questionable that this part of the decision will withstand scrutiny by the High Court.

See also The Hon Sir Anthony Mason ‘The Role of the Judiciary in Developing Human Rights in Australian Law’ in Kinley, above n, at 43; and Eastman and Ronalds, ‘Using Human Rights Laws in Litigation: A Practitioner’s Perspective’ in Kinley, above n, at 325.

⁵ *Mabo v Queensland [No. 2]* (1992) 175 CLR 1 at 42 per Brennan J (with whom Maso CJ and McHugh J agreed); *Dietrich v The Queen* (1992) 177 CLR 292 at 321 per Brennan J and at 360 per Toohey J, who referred to an international agreement being used as a guide when the common law is unclear; *Minister for Immigration and Ethnic Affairs v Teoh* (1995) 183 CLR 273 at 288 per Mason CJ and Deane J.

⁶ *Schoenmakers v Director of Public Prosecutions* (1991) 30 FCR 70 at 75 (the approach in *Schoenmakers* (and other Federal Court cases) to the test for granting bail under the *Extradition Act 1988* (Cth) was overruled in *United Mexican States v Cabal* (2001) 209 CLR 165); *Dietrich v R* (1992) 177 CLR 292 at 321 per Brennan J; cf *Baker v Minister of Citizenship and Immigration* [1999] 2 SCR 817 at 860-862.

(i) in respect of the exclusion of evidence,⁸

(ii) in sentencing.⁹

“A decision may have greater legitimacy if it accords with international norms that have been accepted by scholars and then by governments of many countries of the world community than if they are simply derived from the experience and predilections of a particular judge.”¹⁰

(d) be relevant to the interpretation and application of legislation. Legislation should be interpreted, so far as any ambiguity permits, consistently with human rights.¹¹

9. It is not yet finally settled whether customary international law is incorporated into Australian common law or whether a rule of customary international law is generally not to be considered as part of Australian law until it has been adopted and made part of our law by the decisions of judges, by an Act of Parliament or by long established custom.¹² However, even if incorporation theory is held not to apply:

(a) customary international law is a source of Australian law¹³ and can contribute to the development of the common law,¹⁴

⁷ See generally, Wendy Lacey, “Judicial Discretion and Human Rights: Expanding the Role of International Law in the Domestic Sphere”, 5 *Melbourne Journal of International Law* 108 (2004).

⁸ *McKellar v Smith* [1982] 2 NSWLR 950 at 962F; *R v Swaffield* (1998) 192 CLR 159 at 213 per Kirby J and see s. 138(3)(f) of the *Evidence Act 1995* (Cth).

⁹ *R. v Hollingshed* (1993) 112 FLR 109 at 115; *Walsh v Department of Social Security* (1996) 89 A Crim R 65; *R. v Togiass* (2001) 127 A Crim R 23 at 37 [85] per Grove J, 43 [123] per Einfield JA; contra *Smith v R* (1998) 98 A Crim R 442 at 448.

¹⁰ M D Kirby, “The Role of the Judge in Advancing Human Rights by Reference to International Human Rights Norms” (1988) 62 *Australian Law Journal* 514 at 526.

¹¹ *Minister for Immigration and Ethnic Affairs v Teoh* (1995) 183 CLR 273, 287 (Mason CJ and Deane J).

¹² See the discussion in *Nulyarimina v Thompson* (1999) 96 FCR 153 and Kristen Walker, “Treaties and Internationalisation of Australian Law”, in *Courts of Final Jurisdiction: The Mason Court in Australia*, 204 at 227-234 (Cheryl Saunders Ed, 1996).

¹³ *Chow Hung Ching v The King* (1949) 77 CLR 449 at 477 per Dixon J, referring to international law being one of the sources of English law.

¹⁴ *Mabo v Queensland [No 2]* (1992) 175 CLR 1 at 42 per Brennan J

(b) a universally recognised principle of international law would normally be applied by Australian Courts,¹⁵ except where it may involve the creation of a criminal offence.¹⁶

Every effort should be made to construe Australian legislation so as to avoid breaches of international law (including customary international law).¹⁷

10. In construing an international human rights convention, it is legitimate to have regard to the opinions and decisions of bodies established to receive reports or determine claims under the convention.¹⁸ This is also consistent with the broader principle that it is desirable, as far as possible, that expressions used in international agreements be construed in a uniform and consistent manner by both municipal courts and international courts and panels.¹⁹ International soft law instruments can be referred to by municipal courts for the purpose of understanding the broader international context and for the purpose of interpreting rules of international law.²⁰

11. In an appropriate case, counsel should be ready to argue these principles alongside the Charter arguments.

¹⁵ *Chow Hung Ching v The King* (1949) 77 CLR 449 at 462 per Latham CJ, who expressed the view at 462 that “international law is not as such part of the law of Australia”.

¹⁶ *Nulyarimina v Thompson* (1999) 96 FCR 153; *Thorpe v Kennett* [1999] VSC 442.

¹⁷ *Polites v Commonwealth* (1945) 70 CLR 60 at 68-69 per Latham CJ; *Koowarta v Bjelke-Petersen* (1982) 153 CLR 168 at 204 per Gibbs CJ.

¹⁸ *Commonwealth v Bradley* (1999) 95 FCR 218 at 237 [39] per Black CJ (with whom Tamberlin J agreed); *Commonwealth v Hamilton* (2000) 108 FCR 378 at 387 [36], 388 [39]; *Minister for Immigration and Multicultural and Indigenous Affairs v Al Masri* (2003) 126 FCR 54 at 91 [148]; *Minister for Immigration and Multicultural and Indigenous Affairs v B* (2004) 206 ALR 130 at 167 [148] per Kirby J; *Jacomb v Australian Municipal Administrative Clerical and Services Union* (2004) 140 FCR 149 at 163 [43]; *Matadeen v Pointu* [1999] 1 AC 98 at 115F, 116C.

¹⁹ *Rocklea Spinning Mills Pty Ltd v Anti Dumping Authority* (1995) 56 FCR 406 at 421E; see also *Povey v Qantas Airways Ltd* (2005) 216 ALR 427 at 433 [25] per Gleeson CJ, Gummow, Hayne and Heydon JJ.

²⁰ *Koowarta v Bjelke-Petersen* (1982) 153 CLR 168 at 219 per Stephen J; *Commonwealth v Tasmania* (1983) 158 CLR 1 at 174-177 per Murphy J; *Re Little Joe Rigoli* [2005] VSCA 325 at [5] and footnote 1 per Maxwell P. Lord Bingham of Cornhill made extensive reference to international soft law instruments in his speech in *A v Secretary of State for the Home Department (No 2)* [2006] 1 All ER 575.

12. Moreover, because the Charter incorporates rights referred to in international instruments, these principles mean that the jurisprudence in relation to those instruments, which is substantial, can be invoked in cases concerning the Charter.

Overview of the Charter and its Operation

13. The Charter creates a system of checks and balances addressing the protection of human rights in relation to the interpretation of all existing Victorian legislation, the drafting of new legislation and the decision making processes of Victorian public authorities. Although the Charter's ambit is wide, the mechanisms introduced therein are not internationally novel and the rights have been the subject of considerable international jurisprudence.
14. The Charter has two underlying features:
- (a) the preservation of Parliamentary sovereignty; and
 - (b) the establishment of a "dialogue" between the arms of government about human rights. Dialogue is an appropriate metaphor, because as will be seen below, the Charter provides new mechanisms for The Executive, Parliament, the Judiciary and individual litigants to contribute to the development of the ambit and application of rights in our State, whilst preserving Parliamentary sovereignty.
15. Parliamentary sovereignty is preserved in two ways:
- (a) the Charter is an ordinary Act of Parliament, rather than an entrenched constitutional document; and
 - (b) the Judiciary's power is limited to interpretation and non-enforceable declarations, without the power to invalidate any law.
16. The dialogue between the Executive government, Parliament and the Judiciary about rights answers the main criticism of Bills of Rights, namely that such documents are fundamentally undemocratic if they give non-elected judges the chance to strike down legislation created by the elected representatives of the people.
17. The Preamble and Purpose are the strongest statements in the Charter, and where you propose to argue the Charter should be applied, you should make explicit

reference to these. Without reference to them, the Charter reads as a piece of legislation with multiple layers of caveat.

Charter of Human Rights and Responsibilities Act 2006²¹

[Assented to 25 July 2006]

Preamble

On behalf of the people of Victoria the Parliament enacts this Charter, recognising that all people are born free and equal in dignity and rights.

This Charter is founded on the following principles—

- human rights are essential in a democratic and inclusive society that respects the rule of law, human dignity, equality and freedom;*
- human rights belong to all people without discrimination, and the diversity of the people of Victoria enhances our community;*
- human rights come with responsibilities and must be exercised in a way that respects the human rights of others;*
- human rights have a special importance for the Aboriginal people of Victoria, as descendants of Australia's first people, with their diverse spiritual, social, cultural and economic relationship with their traditional lands and waters.*

The Parliament of Victoria therefore enacts as follows:

1. Purpose and citation

(1) This Act may be referred to as the Charter of Human Rights and Responsibilities and is so referred to in this Act.

²¹ *Minister's second reading speech—*

Legislative Assembly: 4 May 2006

Legislative Council: 19 July 2006

The long title for the Bill for this Act was "to protect and promote human rights, to make consequential amendments to certain Acts and for other purposes."

(2) *The main purpose of this Charter is to protect and promote human rights by—*

- (a) setting out the human rights that Parliament specifically seeks to protect and promote; and*
- (b) ensuring that all statutory provisions, whenever enacted, are interpreted so far as is possible in a way that is compatible with human rights; and*
- (c) imposing an obligation on all public authorities to Act in a way that is compatible with human rights; and*
- (d) requiring statements of compatibility with human rights to be prepared in respect of all Bills introduced into Parliament and enabling the Scrutiny of Acts and Regulations Committee to report on such compatibility; and*
- (e) conferring jurisdiction on the Supreme Court to declare that a statutory provision cannot be interpreted consistently with a human right and requiring the relevant Minister to respond to that declaration.*

(3) *In addition, this Charter—*

- (a) enables Parliament, in exceptional circumstances, to override the application of the Charter to a statutory provision; and*
- (b) renames the Equal Opportunity Commission as the Victorian Equal Opportunity and Human Rights Commission and confers additional functions on it; and*
- (c) makes consequential amendments to certain Acts.*

18. The rights granted are in addition to any other rights or freedoms already guaranteed (s.5). In Australia, this refers to our limited Constitutional rights, reference by way of the common law to international rights documents (predominantly sourced from the ICCPR) and specific rights created by domestic statutes.

19. Only real persons have human rights (s.6). Corporations or other legal persons do not have human rights.

20. The rights described in Part 2 of the Charter are essentially modelled on the ICCPR. They are articulated as ‘open-textured’ rights²², in that they are expressed in broad and essentially vague terms. This is a deliberate drafting strategy to accommodate unforeseeable future situations and needs, and is intended to allow the management of diversity and disagreement within our pluralistic community²³. Speaking plainly, the rights are designed to avoid the US-style problems that have arisen from very specifically and absolutely worded rights, such as the constitutionally entrenched “Right to Bear Arms”.
21. Although the rights are open-textured, they must be applied in concrete situations. They will be given this initial content and ongoing refinement by the dialogue mechanisms set out below²⁴. This will ultimately be driven by advocates raising these issues in contexts which assist their client’s cases.
22. The rights listed in Part 2 are :
- ◆ Recognition and Equality before the Law. (s.8)
 - ◆ Right to Life. (s.9)
 - ◆ Protection from Torture and Cruel, Inhuman or Degrading Treatment. (s.10)
 - ◆ Freedom from Forced Work. (s.11)
 - ◆ Freedom of Movement. (s.12)
 - ◆ Privacy and Reputation. (s.13)
 - ◆ Freedom of Thought, Conscience, Religion and Belief. (s.14)
 - ◆ Freedom of Expression. (s.15)
 - ◆ Peaceable Assembly and Freedom of Association. (s.16)
 - ◆ Protection of Families and Children. (s.17)
 - ◆ Taking Part in Public Life. (s.18)

²² Debeljak, J., *Human Rights and Institutional Dialogue: Lessons for Australia from Canada and the United Kingdom* (PhD Thesis, Monash University, 2004) 100.

²³ Debeljak, J., ‘Parliamentary Sovereignty and Dialogue under the Victorian *Charter on Human Rights and Responsibilities*: Drawing the Line Between Judicial Interpretation and Judicial Law-Making’ (2007) *Monash University Law Review* (forthcoming).

²⁴ Debeljak, J., ‘Parliamentary Sovereignty and Dialogue under the Victorian *Charter on Human Rights and Responsibilities*: Drawing the Line Between Judicial Interpretation and Judicial Law-Making’ (2007) *Monash University Law Review* (forthcoming).

- ◆ Cultural Rights. (s.19)
 - ◆ Property Rights. (s.20)
 - ◆ Right to Liberty and Security of Person. (s.21)
 - ◆ Humane Treatment when Deprived of Liberty. (s.22)
 - ◆ Children in the Criminal Process. (s.23)
 - ◆ Fair Hearing. (s.24)
 - ◆ Rights in Criminal Proceedings. (s.25)
 - ◆ Right not to be Tried or Punished more than once. (s.26)
 - ◆ Retrospective Criminal Laws. (s.27)
23. The rights should be interpreted in a manner which renders them “practical and effective, not theoretical and illusory”.²⁵
24. The Charter is a “living document” which should be interpreted and applied in the context of contemporary and evolving values and standards.²⁶
25. Each of these rights has already been the subject of substantial jurisprudence. For more information, see the ‘Further Resources’ in Appendix 1 of this paper.
26. Under the Charter, rights are not absolute. Rights may be limited in three ways :
- (a) First: Internal, specific limitation or qualification: that is, by specific limitations or qualifications within a right itself (e.g. freedom from forced work (subsection 11(3)), and freedom of expression (s.15)) ;
 - (b) Second: External, general limitation: that is, by an over-arching general limitations clause which is external to any section articulating the individual rights, but that applies to all of the protected rights, such as s.7 of the Charter. General limitation clauses are usually broad enough to resolve various conflicts that will arise between rights and other values in a democratic society, and the Charter’s clause is no exception. For example:

25 *Goodwin v United Kingdom* (2002) 35 EHRR 47, [73] – [74]

26 *Tyner v United Kingdom* (1978) 2 EHRR 1, 10. See also the classic statement of Lord Wilberforce in *Minister of Home Affairs v Fisher* [1980] AC 319, “These antecedents, . . . call for a generous interpretation avoiding what has been called ‘the austerity of tabulated legalism’, suitable to give to individuals the full measure of the fundamental rights and freedoms referred to.”

- (i) It allows there to be a balancing between two conflicting protected rights (e.g. Freedom of Expression (s.15) vs Freedom of Religion (s.14); or the right to a Fair Hearing (s.24) vs. Privacy and Reputation (s.13)); and
 - (ii) it allows there to be a balancing between protected rights and other non-protected values and community needs (e.g. in the case of refusing to take a breath test, the community's interest in safety on the roads vs. the privilege against self incrimination from within the right to a Fair Hearing (s. 24));
- (c) Third: By Parliament's express power to override the Charter in s.31.

Note that all the external limitations still apply to rights with built in qualifications or limitations. Thus, the Victorian Charter seems to have an overkill of limitation powers, given the Judiciary's relatively benign powers within the dialogue process.

27. It is worth pausing on the s.7 general limitation power (sometimes referred to as the proportionality clause), which allows reasonable limits to be placed on rights. In other words, limits on rights *per se* are not a problem; a limit on a right may be lawful if it satisfies the test laid down in s.7. Accordingly, whenever a law is found to limit a right, the court will then have to ask if that limit is nevertheless justified under the general limitations power. This section will be relevant to all Charter litigation. The general statement of the limitations test is borrowed from section 1 of the Canadian *Charter of Rights and Freedoms*, whilst the list of factors for assessing the justifiability of limitations has been lifted from the South African *Bill of Rights*. Section 7 of the Charter states:

7. *Human rights—what they are and when they may be limited*

- (1) *This Part sets out the human rights that Parliament specifically seeks to protect and promote.*
- (2) *A human right may be subject under law only to such reasonable limits as can be demonstrably justified in a free and democratic society based on human dignity, equality and freedom, and taking into account all relevant factors including—*

- (a) *the nature of the right; and*
- (b) *the importance of the purpose of the limitation; and*
- (c) *the nature and extent of the limitation; and*
- (d) *the relationship between the limitation and its purpose; and*
- (e) *any less restrictive means reasonably available to achieve the purpose that the limitation seeks to achieve.*

(3) *Nothing in this Charter gives a person, entity or public authority a right to limit (to a greater extent than is provided for in this Charter) or destroy the human rights of any person.*

28. The Parliamentary override power in s. 31 is problematic from an international human rights perspective. Some rights are absolute at the international level and do not permit of derogation (the international law equivalent of an override power), such as the prohibition on torture, slavery and the right to be free from punishment without law.²⁷ If these rights were overridden in Victoria using s. 31, complainants could file a Communication with the appropriate international body, such as the UN Human Rights Committee in the case of an ICCPR right violation.

The Mechanisms

29. The easiest way to understand how the Charter works is to go through a cycle of intra-governmental dialogue using the mechanisms set up under the Charter. We will then look at some examples.

The Executive

30. Since 1 January 2007, the Executive Government is now required to consider the impact on human rights of all new legislation. Thus the executive makes the first contribution to dialogue through legislative drafting. Note that from 1 January 2008, the executive will also be required to formulate policy for public authorities

²⁷ See generally Debeljak, J., ‘Balancing Rights in a Democracy: The Problems with Limitations and Overrides of Rights Under the Victorian *Charter of Human Rights and Responsibilities Act 2006* (forthcoming).

that is consistent with the protected rights. This additional aspect of the Charter will be addressed after the mechanisms have been set out.

31. The Executive's main contribution to the dialogue comes via the requirement in s.28 to provide a 'Statement of Compatibility', with the human rights as articulated in the Charter, for all new legislation.
32. The section requires a Member of Parliament who introduces a Bill into the House to prepare a Statement of Compatibility to be laid before Parliament prior to the Second Reading Speech. There are two aspects of rights that must be considered in the s.28 Statement, namely the applicability of particular rights to the subject matter of the legislation, and any limits of those rights imposed by the legislation. The Statement must cover:
 - (a) whether, in the Member's opinion, the Bill is compatible with human rights and, if so, how; and
 - (b) if, in the Member's opinion, any part of the Bill is incompatible with human rights, the nature and extent of the incompatibility.

Statements declaring incompatibility will greatly reduce the sting in the tail of any subsequent interpretative or declaratory responses by the Judiciary, but nonetheless, the UK experience with this mechanism has shown the politicians have great reluctance to express incompatible intentions, even where such meaning is plain on the face of the legislation. Similar mechanisms are also used in the UK, Canadian, New Zealand and ACT rights documents.

33. Under sub-section (4), this Statement of Compatibility is not binding on any Court or tribunal but it obviously becomes the key piece of extrinsic material to assist Courts in interpreting the legislation. Under s.29, the failure to comply with s.28 does not affect the validity, operation or enforcement of that Act.
34. The executive's other traditional means of communicating about its policy formulation remain available. Explanatory memoranda, second reading speeches, even discussion papers and the like may address human rights issues.

The Parliament

35. Next, under s.30, the Scrutiny of Acts and Regulations Committee ("SARC") must report to Parliament as to whether each Bill is incompatible with human

rights. The SARC is composed of members of Parliament. Section 21 of the *Subordinate Legislation Act 1994* also requires the SARC to review all statutory rules and report any that it considers to be incompatible with human rights.

36. The SARC reports may be used in the usual political ways within the Parliamentary process. All the traditional means of amending Bills are available should the Parliamentarians be minded to use them.

The Judiciary (and advocacy before the Courts)

37. Division 3 explains the Judiciary's role in the intra-governmental dialogue. Section 32 of the Charter creates an obligation for all Courts to give legislation a rights compatible interpretation. It operates as follows: an individual with an existing cause of action may challenge or rely on any relevant legislation by insisting that, "so far as it is possible to do so consistently with their purpose, all statutory provisions must be interpreted in a way that is a compatible with human rights". Whilst the section's wording is internationally unique, it appears from examination of our parliamentary documents associated with this part of the Charter, to be fairly declaratory of the UK's leading case on the interpretative obligation, *Ghaidan v Mendoza*²⁸. The s.28 Statement will be the most significant extrinsic document, although all other devices of statutory interpretation are also available.
38. When interpreting legislation in a rights-compatible manner, sub-section 32(2) allows the Court to consider international law and other judgments of domestic, foreign and international Courts and Tribunals relevant to the given human right. This sub-section really adds nothing to the existing common law powers, but it should provide a ground of appeal where the Tribunal is reluctant to consider this material. Reference to international and comparative material on human rights may encourage a more expansive reading of the Charter than black letter, common law lawyers would normally contemplate.

²⁸ [2004] UKHL 30 at [33] and [132]. The case involved housing rights for a same sex couple, and rewards close reading for its inspirational prose as well as its articulation of legal principle.

39. An articulated human rights issue can stay a proceeding under s.33. Where a question of law arises in a proceeding before any Court or Tribunal that relates to the application of the Charter, that question may be referred to the Supreme Court by the party or the Tribunal itself. Once that question has been referred the Tribunal must not make a determination to which the question is relevant whilst the referral is pending. Further, the renamed Victorian Equal Opportunity and Human Rights Commission (“VEOHRC”) has the power to be joined to proceedings or to intervene under s.40, as does the Attorney-General under s.35.

40. In practice, it is our view that Judicial Review mechanism will operate as follows.

(a) First, the classic human rights questions will need to be answered:

(i) The Court will be called upon to consider whether any given law limits any Charter right.

(ii) If so, the Court will then go on to consider whether the limitation can be justified under the Charter, whether under the general limitations clause or a specific limitation or qualification

Guiding such legal argument and judicial decision will be the jurisprudence of the Human Rights Committee under the ICCPR, as well as comparative jurisprudence from Canada, the UK and New Zealand. See especially the recent UK decision of *Huang*.²⁹

(b) Secondly, if the law is an unjustified limit on protected rights, the Charter questions will need to be answered. Section 32 empowers the Court to re-interpret the law so as to make it compatible with Charter rights. Guidance on this task may be sought from the UK, especially the case of *Donoghue*,³⁰ where the Court of Appeal stated that:

²⁹ *Huang (FC) (Respondent) v. Secretary of State for the Home Department (Appellant)* [2007] UKHL 11 at [19]. This is an immigration case, and a rare joint opinion from the House of Lords, in which they emphasise the importance of a groundbreaking Canadian case, *R v Oaks* [1986] 1 SCR 103.

³⁰ *Poplar Housing and Regeneration Community Association Ltd v Donoghue* [2001] EWCA Civ 595 [75]. This is now so well established in the UK that whilst more recent decisions no longer cite it, they invariably follow the approach. See *Ghaidan* (supra).

- (i) if a law imposes an unjustified limit on rights, the Court must alter the meaning of the legislative words to the extent necessary to achieve rights compatibility;
 - (ii) then the Court must decide whether the altered legislative interpretation is possible and consistent with statutory purpose (with the task to remain one of interpretation, not judicial legislation).
- (c) If no compatible interpretation of the law is possible, s.36 gives the Court the power to declare that the statutory provision cannot be interpreted consistently with a Charter right. A Declaration of Inconsistent Interpretation does not affect the validity, operation or enforcement of the statutory provision, nor creates in any person any legal right or give rise to any civil cause of action: sub-section 36(4).
41. Thus, an advocate representing a ‘one-time’ user of the litigation system should focus on the Court’s interpretative power, as the flow on effects of a declaration will not assist their client. If you represent a ‘repeat’ user, a Declaration may lead to a systemic improvement for your client. In the United Kingdom, there was a fear amongst lawyers that the lack of a remedy associated with a declaration of incompatibility would discourage litigation on *Human Rights Act* grounds, but this does not seem to have eventuated.
42. Returning to the dialogue metaphor, once the court exercises its s.32 or s.36 powers, the dialogue continues with the Executive and Parliament.
43. First, Parliament or the Executive may respond to any s.32 interpretative activity by the Court in the traditional political or legislative ways. It will be a valid response by Parliament to ignore, overturn or endorse the judicial contribution to the dialogue by general public comment or by actual legislation. However, any response to the Courts’ interpretative work exposes Parliament and the Executive to political and media scrutiny, with the shadow of the next election hanging over those elected representatives.
44. Second, where the Court issues a s. 36 Declaration of Inconsistent Interpretation, the Attorney General must provide the relevant Minister with a copy of the Declaration under ss.32(7). Within six months of receiving the Declaration, the Minister must prepare a written response, lay it before each House of Parliament,

and publish it in the Government Gazette (s.37). The requirement of a written response is one of form, not substance: the Minister must formally notify the Parliament if his/her response, but the response may be action to remedy the inconsistency or inaction such that the inconsistency remains in place.

45. Finally, Parliament may respond to a Declaration of Inconsistent Interpretation by essentially suspending the operation of the Charter and re-instating the status quo. Under s.31, Parliament can expressly declare that an Act or provision of an Act has effect despite being incompatible with one or more human rights. Override declarations must also be made for any subordinate instruments under that Act or provision. The Member introducing the Bill must make a statement to the House explaining the “exceptional circumstances that justify the inclusion of the override declaration.” Under sub-section 31(6), once an override declaration is made, then to the extent of the declaration, the Charter has no application and the Judiciary’s powers of rights-compatible interpretation under s.32 and declaration under s.36 do not apply.
46. Any provision of an Act which has been the subject of an override declaration expires on the fifth anniversary of the day on which that provision comes into operation. Parliament may immediately reproduce an override declaration and re-enact the offending legislation.
47. A failure to comply with the procedures for making the override declaration does not affect the validity, operation or enforcement of the statutory provisions: subsection 32(9).
48. In addition to using the override as a reaction to judicial activity, the override power can be used pre-emptively. The pre-emptive use of the override is the only mechanism under the Charter by which Parliament can close the dialogue between the institutions of government, albeit for five years only. Such an override removes the provision from within the ambit of the Charter, and thereby removes the Courts’ ability to comment on the Charter’s application to the legislation. The power to pre-emptively override seems heavy-handed under the Victorian model because the Judiciary had no power to actually strike down legislation in any

event.³¹ Moreover, the entire concept – whether used pre-emptively or as part of a dialogue – is at odds with the international jurisprudence on certain rights which have been traditionally given an “absolute” status,³² and the safeguards incorporated into s.31 fall far short of the minimum safeguards in international human rights law for the equivalent power of derogation.³³ In the event of an override, it remains theoretically possible for the Judiciary to comment by way of *dicta* or even *ratio* using the existing *Teoh* common law power to do so.

49. Note that having now exhausted their domestic remedies, individuals may continue their challenge by submitting an Individual Communication to an international treaty monitoring body, say to the Human Rights Committee under the First Optional Protocol to the ICCPR or any other appropriate international treaty.
50. It will also be a valid response by Parliament to ignore, overturn or endorse the judicial contribution to the dialogue by general public comment or by actual

³¹ Debeljak, J., ‘Parliamentary Sovereignty and Dialogue under the Victorian *Charter on Human Rights and Responsibilities: Drawing the Line Between Judicial Interpretation and Judicial Law-Making*’ (2007) *Monash University Law Review* (forthcoming) 37-38.

³² Under international law, absolute rights cannot be derogated from (or overridden) and no circumstance justifies a qualification or limitation of such rights under international law. Rights that are considered absolute under international law that are contained in the *ICCPR* include the prohibition on genocide (art 6(3)); the prohibition on torture or cruel, inhuman and degrading treatment or punishment (art 7); the prohibition on slavery and servitude (arts 8(1) and (2)); the prohibition on prolonged arbitrary detention (elements of art 9(1)); the prohibition on imprisonment for a failure to fulfil a contractual obligation (art 11); the prohibition on the retrospective operation of criminal laws (art 15); the right of everyone to recognition everywhere as a person before the law (art 16); and the right to freedom from systematic racial discrimination (elements of arts 2(1) and 26). See American Law Institute, *Restatement of the Law (Third): The Foreign Relations Law of the United States* (1987) vol 2, 161; Oscar Schachter, *International Law in Theory and Practice* (1991) 85 extracted in Henry Steiner and Philip Alston, *International Human Rights in Context* (2nd edition, Clarendon Press, Oxford, 2000) 230-231; Sarah Joseph, Jenny Schultz, and Melissa Castan, *The International Covenant on Civil and Political Rights: Cases, Materials and Commentary*, (2nd edition, Oxford University Press, 2004) [1.66], [25.75].

³³ See generally Debeljak, J., ‘Balancing Rights in a Democracy: The Problems with Limitations and Overrides of Rights Under the Victorian *Charter of Human Rights and Responsibilities Act 2006* (forthcoming)

legislation. However, any response to the Courts' interpretative work exposes Parliament and the Executive to political and media scrutiny, with the shadow of the next election hanging over those elected representatives

Examples

51. A significant challenge for practitioners is to identify the opportunities to argue the Charter. A red flag should be raised in your mind when the law upon which you must make submissions requires subjective assessment, value judgements or articulation of the public interest or policy considerations. This is likely to arise in applications for discretionary remedies such as exclusion of evidence, stays or adjournments, and of course, administrative law relief. Legislation with gateways and thresholds can be challenged. Also look closely at the interpretation of 'standing' or 'limitations' legislative requirements so as to preserve the right of equality before the law.
52. Overseas experience shows that legislation which can be seen to contain an inherently discriminatory aspect, such as,
- (a) the inheritance rights of married (as distinct from unmarried) persons,
 - (b) the immigration status of married (as distinct from unmarried) persons,
 - (c) the treatment of foreign (as distinct from domestic) terror suspects, or
 - (d) the accommodation rights of persons over a particular age (as distinct from that of younger persons with similar needs)
- readily gives rise to Charter arguments.
53. Here are some examples:

Legal issue	Human Right
Reverse onus drug offences	Fair Hearing. (s.24), and Rights in Criminal Proceedings. (s.25) (see <i>R v Lambert</i> [2001] UKHL 37)
Detention of suspects for two weeks without charges being laid under the <i>Terror (Community Protection) Act 2003</i> , Part 2A	Right to Liberty and Security of Person. (s.21), Humane Treatment when Deprived of Liberty. (s.22),

	Fair Hearing. (s.24), and Rights in Criminal Proceedings. (s.25)
Subpoena access to records of victim's prior statements	Fair Hearing. (s.24) Right to Privacy. (s.13) Right to security of the person. (s.21)
Proceeds of Crime legislation	Property Rights. (s.20)
Offensive Behaviour under s.17 of the <i>Summary Offences Act 1966</i>	Freedom of Expression. (s.15)
Obstruction of forestry officers under s.20 of the <i>Safety on Public Land Act 2004</i>	Freedom of Expression. (s.15) Freedom of movement. (s.12)
The abolition of the right to seek compensation for property damage arising from the formula one race at Albert Park	Property Rights. (s.20) Right to Equality before the law. (s.8)
Lack of same sex relationship recognition in probate law	Recognition and Equality before the Law. (s.8)
Limitation periods	Recognition and Equality before the Law. (s.8) Fair Hearing. (s.24)
Defamation	Freedom of Expression. (s.15) Taking Part in Public Life. (s.18)

The Conduct of Public Authorities

54. From 1 January 2008, the Charter must be applied to all decisions of public authorities, not just governmental law making and interpretation activities. This aspect of the Charter will have a more wide-reaching effect because many more people are affected by decisions of public authorities than by judicial interpretation of legislation. It is by this mechanism one would expect most people to have practical contact with the definitions of their rights, and this process is more likely to create a culture where human rights are debated and discussed.

Obligations

55. Division 4 of the Charter sets out the obligations on public authorities. Under s.38 it will be unlawful for public authorities to (a) act incompatibly with protected rights and (b) when making a decision, to fail to give proper consideration to a human right. Under s.3, an “act” includes a positive act, a failure to act and a proposal to act, so this obligation heralds a more far-reaching change in culture than is required to deal with the legislative and interpretative aspects of the Charter. Section 38(1) contains both a substantive and procedural obligation on public authorities to actually do things and make decisions in a certain manner, as opposed to the potential “lip service” which can be given to human rights in the preparation of documents for statutory interpretation exercises, where words can be cheap.

56. Sub-section 38 (2) provides an exception to the unlawfulness restriction where the public authority could not reasonably have acted differently or made a different decision given the state of the law, including the Commonwealth law. This effectively gives public authorities a “Nuremberg” defence. The solution in this scenario is s.32 interpretation. Through s.32 interpretation, you may be able to change the statutory obligation to a rights-compatible obligation. The rights-compatible interpretation, in effect, becomes your remedy. That is, the law is re-interpreted to be rights compatible, the public authority has obligations under s.38(1), and the s.38(2) exceptions to unlawfulness do not apply.

Definition of “Public Authorities”

57. Public authorities are defined in s.4 of the Act. In effect, there are three categories of body:

- (a) those that are wholly public or “core public authorities”,
 - (i) Public officials – see *Public Administration Act 2004* (sub-section 4(1)(a));
 - (ii) An entity established by statute that has functions of a “public nature” (sub-section 4(1)(b))³⁴;
 - (iii) An entity declared to be so by regulations (sub-section 4(1)(h));
 - (iv) The Victorian Police (sub-section 4(1)(d));
 - (v) Local Councils and Councillors (sub-section 4(1)(e));
 - (vi) Ministers (sub-section 4(1)(f)), or
 - (vii) Members of a Parliamentary Committee when acting in administrative capacity (sub-section 4(1)(g)).
- (b) those that are hybrid public-private or “functional public authorities” as defined in ss 4(1)(c) and (2) (e.g. private law firms conducting local government prosecutions, or private contractors towing cars from clearways), and
- (c) those that are wholly private.

Category (a) bodies will be bound in their internal and public functions. Subsection 38(3) requires category (b) bodies to comply when exercising their public functions, but exempts category (b) when acting in their private capacity and exempts entirely the category (c) bodies.

The current leading case from the UK on public authorities is *YL v Birmingham City Council*³⁵.

³⁴ For the full definition, see *Victorian Charter 2006* (Vic), sections 3 and 4.

³⁵ [2007] UKHL 27. The case involved accommodation in a nursing home. The dissents of Bingham LJ and Hale reflect our own statutorily prescribed features of public authorities, whereas the majority have opted for a much narrower definition. The majority view can probably be rationalised as an example of judicial deference to parliament as the *Human Rights Act 1998* (UK) did not define public authorities and

Examples

Legal issue	Human Right
Prison authorities' exercise of their powers	Protection from Torture and Cruel, Inhuman or Degrading Treatment (s.10) Right to Privacy. (s.13) See <i>Daly</i> [2001] UKHL 26 at [26]
Default fines or withdrawal of access to public utilities	Protection of Families and Children. (s.17) Right to Property (s.20) Right to Life. (s.9) Right to Equality before the Law. (s.8)
Barwon Water's decision to use public funds to sue a protester for defamation in the name of individual Director/Chairman	Freedom of Expression. (s.15) Taking Part in Public Life. (s.18)
Port Phillip Bay dredging	Property Rights (s.20) Cultural Rights (s.19) Right to Life. (s.9)
Declaration of Public Safety Zones prohibiting people from entering logging areas	Freedom of Movement (s.12) Peaceable Assembly and Freedom of Association (s.16) Freedom of Expression (s.15) Taking Part in Public Life (s.17)
Occupational Health and Safety or industrial pickets	Freedom of Movement (s.12) Peaceable Assembly and Freedom of Association (s.16) Right to Life. (s.9) Freedom from cruel, inhuman or

the Court seems to be of the view that the scope should be set by parliamentary, rather than judicial, law making.

	degrading treatment. (s.10)
Same sex Marriage	Freedom of Expression. (s.15) Taking Part in Public Life. (s.18) Right to Equality before the Law. (s.8)

Remedies

58. The general rule in s 39(1) is that no new cause of action is created by our Charter, but decisions can be reviewed using the traditional administrative law avenues of internal and external review in light of failure to make decisions compatible with human rights³⁶. Section 39(2) then sets out two specific examples of the general rule. The first example is that of judicial review of an administrative decision (s.39(2)(a)). Applicants may seek judicial review for unlawfulness, probably on the grounds of *ultra vires*, failure to consider relevant considerations (namely, protected human rights), or an improper exercise of power and substantiate it by reference to the Charter. The second example is that a person may seek a declaration that the public authority acted unlawfully and “associated relief”, such as an injunction to stop the unlawful conduct, a stay of proceedings or an exclusion of evidence (s.39(2)(b)). Judicial review can also consider applicants’ arguments that an act or decision under law was disproportionate under s.7 of the Charter given the human rights considerations.

59. Section 39 allows applicants to seek and adapt existing administrative law. Advocates should remember that these remedies are themselves subject to the judicial duty of interpretation consistent with protected human rights, such that we may see some common law development of these remedies.³⁷ The remedies are also likely to have some extra-territorial effects.³⁸ These remedies are in addition

³⁶ c.f. section.7 of the *Human Rights Act 1998* (UK).

³⁷ For an example of a creative remedy, see *Vishaka v The State of Rajasthan* (1997) Butterworth’s Human Rights Cases, p.261.

³⁸ *Al-Skeini and others (Respondents) v. Secretary of State for Defence (Appellant)* [2007] UKHL 26. British soldiers in British detention centres in Iraq were found to be bound by the UK *Human Rights Act*.

to the influence that any s.32 interpretation by the Courts may have on the statutory obligations of a public authority, or any s.36 declaration of incompatibility. It is expressly stated that the Charter does not give rise to any right to damages.

60. Other substantive remedies against public authorities under the Charter are:
- (a) the Equal Opportunity Commission of Victoria under s.40 may intervene or join as a party where the application of the Charter is at issue, and
 - (b) The Ombudsman is given power to investigate government and public authority actions for compatibility with human rights under s.47 of the *Consequential Amendments Act*.

Concluding Remarks

61. The Charter is itself subject to a four-year and eight-year review. That review process will come up soon, with issues papers in place at the two year mark, and then a two year process to consider public submissions. Involvement in this process at an early stage will be an important way to make your contribution to the rights debate.
62. One of the main repositories of information relevant to this assessment will be the VEOHRC's annual report on the Courts' interpretative work³⁹. See also the various publications and brochures available at this world record length internet link:
www.humanrightscommission.vic.gov.au/human%20rights/the%20victorian%20charter%20of%20human%20rights%20and%20responsibilities/
63. Whilst entire text books have been penned on comparative law, you will find the following particular aspects of other bills of rights worthy of study in relation to these areas:
- (a) United Kingdom, especially:
 - (i) Statements of compatibility;
 - (ii) The interpretation obligation;

³⁹ See Appendix 3 for their summary the Executive and Parliamentary human rights work so far this year.

- (iii) Declarations of incompatibility (re Victorian declarations of inconsistent interpretation);
- (b) Canada, especially:
 - (i) The general limitations power;
 - (ii) The override power;
- (c) South Africa, especially the formulation of s 7(2) proportionality factors;
- (d) New Zealand, as the *Bill of Rights Act 1990* (NZ) also adopts the ICCPR rights.

64. The Charter of Rights will bring international jurisprudence more readily into our courts. Some 20 years ago, Phil Slade appeared for a protester who was charged with offensive behaviour. The conduct alleged was the burning of the US flag outside the American embassy. Both before a magistrate and on appeal Phil Slade pointed out that this was permitted in the United States because the US Supreme Court had held that the burning of the flag was to be permitted under the First Amendment of the Constitution. (In the US, the Bill of Rights comprises the various Amendments to the Constitution – the First Amendment concerns freedom of expression). Both the magistrate and the judge on appeal said that the attitude of the US Supreme Court was of no relevance. There was no First Amendment here. The behaviour was offensive, and therefore criminal. With the Charter it is hard to imagine such a stupid result prevailing again.

65. With the Charter our courts will consider overseas jurisprudence. In many cases the issues we debate have received careful international consideration already. Our society will benefit from this sharing of wisdom.

10 August 2007

Brian Walters SC

Simon McGregor

APPENDIX 1

FURTHER RESOURCES

There are many other resources available. The following will be enough to get you going:

Human Rights Textbooks

- Sarah Joseph, Jenny Schultz, and Melissa Castan, *The International Covenant on Civil and Political Rights: Cases, Materials and Commentary*, (2nd edition, Oxford University Press, 2004)
- Henry Steiner and Philip Alston, *International Human Rights in Context* (2nd edition, Clarendon Press, Oxford, 2000)
- Martin Flynn, *Human Rights in Australia: Treaties, Statutes and Cases* (Butterworths, 2003)

Useful Websites

- United Nations Office of the High Commission for Human Rights Website: www.unhchr.ch - then go to Human Rights Bodies, then to Human Rights Committee, then Treaty Bodies Database, then search by Treaty or by Country according to the nature of your enquiry.
- Castan Centre for Human Rights Law: - Victorian academics and consultants www.law.monash.edu.au/castancentre/public-edu/links.html
- Prof Anne Bayefsky website: www.bayefsky.com - This website is pretty easy to navigate and she has it all by country, so if you are after Australian decisions, this may be quicker.
- Commonwealth Human Rights and Equal Opportunity Commission: www.hreoc.gov.au
- Australian Capital Territory Human Rights Office: <http://www.hro.act.gov.au/index.html>
- Human Rights Legal Resource Centre: <http://www.hrlrc.org.au/>

- Australian Human Rights Information Centre:
www.austlii.edu.au/au/other/ahric/
- University of Minnesota Human Rights Library: www.umn.edu/humanrts/
- University of Nottingham Human Rights Centre:
www.ccc.nottingham.ac.uk/~llzweb/hrlc/hrnews/contents.htm

Law Reports

- Butterworths Human Rights Cases
- European Human Rights Reports
- International Human Rights Reports

Useful Journals

- Australian Journal of Human Rights
- Cambridge Law Journal
- European Human Rights Law Review – contains great summaries of British *HRA* jurisprudence
- Human Rights Law Journal
- Human Rights Quarterly
- International and Comparative Law Quarterly
- Modern Law Review
- Osgoode Hall Law Journal
- Oxford Journal of Legal Studies
- Public Law – contains great summaries of *ECHR* and British *HRA* jurisprudence
- Public Law Review
- University of British Columbia Law Journal
- University of Toronto Law Review

Comparative Law Textbooks

- Canada: Peter W. Hogg, *Constitutional Law of Canada*, (3rd edition, Loose-leaf, Carswell: Thomson Professional Publishing, Scarborough, Ontario)

- Canada: Robert J Sharpe, Katherine E Swinton, and Kent Roach, *The Charter of Rights and Freedoms*, (2nd ed, Irwin Law, Ontario, 2002)
- UK: Merris Amos, *Human Rights Law* (Hart Publishing, Oxford, 2006)
- UK: Lester and Pannick (eds), *Human Rights Law and Practice* (Butterworths, London, 2000)
- UK: John Wadham and Helen Mountfield, *Blackstone's Guide to the Human Rights Act 1998* (Blackstone Press Ltd, London, 1999)
- NZ: Andrew Butler and Petra Butler, *The New Zealand Bill of Rights: A Commentary* (LexisNexis NZ Ltd, Wellington, 2005)
- South Africa: Iain Currie and Johan de Waal, *The Bill of Rights Handbook* (5th ed, Juta and Company, Wetten, 2005)

Articles Relevant to Victorian Charter

- Debeljak, J., 'Parliamentary Sovereignty and Dialogue under the Victorian Charter on Human Rights and Responsibilities: Drawing the Line Between Judicial Interpretation and Judicial Law-Making' (2007) *Monash University Law Review*, forthcoming
- Debeljak, J., 'Mission Impossible: "Possible" interpretations under the Victorian Charter and Their Impact on Parliamentary Sovereignty and Dialogue' in Marius Smith (ed), *Human Rights 2006: The Year in Review* (Castan Centre for Human Rights Law, Melbourne, 2007) <http://ecommerce.law.monash.edu.au/categories.asp?CID=2&c=215031>
- Debeljak, J., 'The *Human Rights Act 2004* (ACT): A Significant, Yet Incomplete, Step Toward the Domestic Protection and Promotion of Human Rights' (2004) 15 *Public Law Review* 169-176.
- Debeljak, J., 'The Human Rights Act 1998 (UK): The Preservation of Parliamentary Supremacy in the Context of Rights Protection', (2003) 9 *Australian Journal for Human Rights* 183-235.
- Debeljak, J., 'Rights Protection Without Judicial Supremacy: A Review of the Canadian and British Models of Bills of Rights', (2002) 26 *Melbourne University Law Review* 285-324.

- Carolyn Evans, 'Administrative Law and Australian Bills of Rights' (Presented at the Australian Institute of Administrative Law Annual Forum, Australian, 14 June 2006)
- Simon Evans, 'What Difference Will the Charter of Rights and Responsibilities Make to the Victorian Public Service?' (Presented at Clayton Utz, Melbourne 13 June 2006)
- Simon Evans and Carolyn Evans, 'Legal Redress Under the Victorian Charter of Human Rights and Responsibilities' (2006) 17 *Public Law Review* 264
- Human Rights Law Resource Centre, *Human Rights Law Resource Manual* (2006) <http://www.hrlrc.org.au/html/s02_article/default.asp?nav_cat_id=143&nav_top_id=62&dsb=308>