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The Human Rights Law
Resource Centre Ltd aims to:

1. Contribute to the harmonisation of Australian law and policy with international human rights norms;
2. Build the capacity of the legal profession, judiciary and community sector to develop Australian law and policy consistently with international human rights standards; and
3. Empower people that are disadvantaged or living in poverty by operating within a human rights framework.

The HRLRC achieves these aims by conducting and supporting human rights legal services, litigation, education, training, research, policy analysis and advocacy.

OPINION

Democracy Enhanced, Not Diminished

Contrary to what some might have us believe, 1 January 2007 will not, in retrospect, be identified as the date when the corrosion of Victoria’s parliamentary democracy began in earnest with the commencement of the *Charter of Human Rights and Responsibilities*. Rather, if we fully exploit the opportunities afforded by the Charter, the Equal Opportunity and Human Rights Commission would argue that we are actually embarking on a path of change that will fundamentally enhance not just our system of government, but our community in general.

The Charter is intended to foster a culture of human rights. A significant dimension of such a culture is the relationship that exists between government and its citizens. Whilst the core mechanics of democracy rest upon majority rule, we both trust and rely on governments to govern for the benefit of the whole community. This can only occur when the actions of government are required to be undertaken in accordance with human rights, which provide a framework for assessing and moderating the impact of legislation, policies and practices on the interests of a range of often marginalised groups whose voices can be absent from, or drowned out in, a very crowded public policy environment.

We have well established mechanisms to assess the actions of government in terms of economic impact, regulatory burden and, to a lesser extent, environmental impact. Such scrutiny is both appropriate and vital, but within a culture of scrutiny it is surprising that some still ask why we need to include human rights – surely the more pressing question is why has it taken us so long to do so? It is worth repeating that Australian jurisdictions are the last western democracies to adopt comprehensive human rights instruments, despite the review and assessment of similar instruments in other jurisdictions such as New Zealand and the United Kingdom finding they add fundamental value to the public policy process in terms of encouraging durable policy outcomes that add to the cohesiveness of the community.

Of course human rights considerations have not been entirely absent from the Victorian public policy landscape. However, now that human rights form part of the domestic law of Victoria, the human rights discourse can be significantly improved. By enshrining these standards in law government has adopted a clear and consistent benchmark that will not only inform assessments of government performance, but will also provide a transparent and collectively understood platform for debate and

advocacy on issues. This is particularly significant for individuals and organisations active in lobbying to promote the interests of disadvantaged and marginalised groups. The Charter can be used to shift the discussion around human rights issues from what is *right* to what is *lawful*, and hopefully from *what* needs to occur to *how* human rights progress might be realised.

Under the Charter, a further enhancement to human rights discourse is that it can expand beyond its previous, almost exclusive focus on discrimination, to become far more holistic and multi-faceted. Reducing and eliminating discrimination will undoubtedly be a vital feature of Charter dialogue, and existing mechanisms to address discrimination will be complimented and enhanced by the mechanisms of the Charter, in particular its emphasis on addressing issues pro-actively, at the point of planning and decision making. However, with its focus on the outcome and impact of policies and practices, tested against established human rights norms, the Charter will also apply and be able to respond to a much broader range of issues, many of which are currently not captured by the often restrictive focus on narrow causative tests that characterise anti-discrimination statutes.

Amongst all the optimism surrounding the Charter there is a need to highlight what may be a self-evident warning – the Charter is not an outcome; it is an instrument. The Charter provides an armory of formal and informal mechanisms to promote human rights and realise the benefits associated with this. However, it is up to government in all its forms and the community to understand and meaningfully employ these mechanisms, otherwise the Charter will amount to little more than rhetoric. Critical to this is the need to inform the general community so it understands the relevance of human rights, and becomes genuinely disturbed by policies and practices that are non-compliant. Arguably this is the most significant challenge facing all those who are engaged in the Charter's implementation. Of course a human rights culture depends on more than the conduct of government. Its emergence or demise is also significantly influenced by how individuals view and relate to each other. A range of contemporary issues call into question just how sincere and embedded our community's perceived commitment to a 'fair go' actually is. If the

Charter results in government leading by example, and thereby demonstrating to the community that human rights are important, that they belong to all and their promotion enriches everyone, not just a few, that may well be government's most important and enduring contribution to the health and well-being of our community.

Dr Helen Szoke is the CEO of the Victorian Equal Opportunity and Human Rights Commission.

Matthew Carroll is Manager of the Commission's Human Rights Unit.

NEWS

UN Human Rights Committee Calls for Comment on Draft General Comment on Equality before Courts and the Right to a Fair Hearing

The UN Human Rights Committee has called for comment and feedback on its draft General Comment on art 14 of the *ICCPR*, which enshrines the right to equality before courts and tribunals and to a fair hearing.

General Comments are authoritative statements on the interpretation and application of human rights treaty provisions by the relevant treaty body.

The draft General Comment begins by recognising that the rights to a fair trial and to equality before the courts and tribunals are human rights in and of themselves, are key elements of the promotion and protection of other human rights, and serve by procedural means to safeguard the rule of law. Art 14 of the *ICCPR* is fundamentally concerned with access to, and the proper administration of, justice.

The draft General Comment identifies a range of guarantees and conditions that are subsumed by art 14, including:

- the right to access the courts;
- a right to legal advice and representation;
- a requirement that the costs of litigation not de facto prevent a person from access to courts and justice;
- the right to procedural fairness;
- the right to a public hearing;
- the right to a hearing by a competent, independent and impartial tribunal;

- the right to a presumption of innocence;
- the right to an expeditious hearing without undue delay;
- the right to a free interpreter where necessary;
- various rights in relation to persons accused of criminal offences;
- various rights in relation to juveniles;
- the right to review by a higher court or tribunal;
- the right to compensation in cases of miscarriage of justice; and
- the rule against double jeopardy.

The draft General Comment is likely to be of particular significance in Victoria, with ss 23-27 of the Victorian *Charter of Human Rights* being largely modelled on art 14, and s 32(2) providing that the jurisprudence of bodies such as the Human Rights Committee should be considered in interpreting and applying the *Charter*.

The draft General Comment, together with a call for submissions by 16 February 2007, is available at <http://www.ohchr.org/english/bodies/hrc/generalcomment.htm>

CASENOTES

Lack of Adequate Health Care for Prisoners may Amount to Cruel, Inhuman or Degrading Treatment

***Holomiov v Moldova*, (Application No 30649/05), 7 November 2006 (European Court of Human Rights)**

The European Court of Human Rights has found a violation of art 3 (prohibition of inhuman or degrading treatment) of the *European Convention on Human Rights* on account of the authorities' failure to provide a prisoner with medical care appropriate to his conditions.

Facts

The applicant, Victor Holomiov, is a Moldovan national who was arrested on 24 January 2002 on suspicion of having aided and abetted bribery. He was indicted the next month and remained in custody pending the hearing of the case. His detention was prolonged several times until 23 May 2002. After that date, the applicant remained in detention without having

his detention warrant renewed. In total, the hearing was adjourned 44 times: on 15 occasions due to the applicant's ill-health or to change his lawyers, and on the rest due to the management of proceedings by the Moldovan authorities.

The applicant suffers from a number of serious urological diseases. During his detention, he was prescribed medical treatment and even urgent surgery on his kidneys; however, these recommendations were never followed up. The applicant submitted numerous requests for release relying, in particular, on his medical condition and on the impossibility of receiving appropriate medical care in prison due to a lack of specialised doctors and medication. These requests were all rejected.

Complaints and Findings

The applicant alleged that he was detained in inhuman and degrading conditions and that he was not provided with proper medical care. He further complained that he was detained unlawfully after his detention warrant had expired. Finally, he complained about the length of the criminal proceedings. He relied on arts 3, 5(1) and 6(1) of the Convention.

Article 3

Article 3 of the Convention prohibits torture and inhuman or degrading treatment or punishment. The Court concluded that, while suffering from serious kidney diseases entailing serious risks for his health, the applicant was detained for almost four years without appropriate medical care. It found that the applicant's suffering constituted inhuman and degrading treatment and held, unanimously, that there had been a violation of art 3.

The Court's view was that the issue was not the lack of medical care in the prison system in general, but rather the lack of adequate medical care for the applicant's particular conditions. The Court was careful to point out that art 3 does not lay down a 'general obligation to release detainees on health grounds'. It found that the authorities had failed to act where one of the doctors had stressed the seriousness of the applicant's condition and pointed to the risk that the applicant could lose his kidney if surgery was not performed. Indeed, the Court noted that the domestic courts accepted that there was a lack of appropriate medical care during the applicant's detention.

The case is particularly important for confirming, however, that the state owes particular obligations to persons in its custody or control. According to Rachel Marcus of One Crown Office Row:

The quality of healthcare to those imprisoned by the action of the state is not to be relative. Whilst an individual in society may have no right to healthcare under the Convention, let alone adequate healthcare, where he is in the state's custody the state must ensure that he receives the medical care he requires. Scarce resources or logistical difficulty will not be legitimate excuses.

Article 5(1)

Article 5(1) of the Convention provides that everyone has the right to liberty and security of person. The Court found that the applicant's detention after the expiry of his detention warrant issued on 23 May 2002 was not based on any legal provision. Accordingly, it found unanimously that there had been a violation of art 5(1).

Article 6(1)

Article 6(1) of the Convention provides a detailed right to a fair trial, which includes the requirement that a trial take place within a reasonable time. The Court noted that the proceedings had lasted for nearly five years and, having regard to the circumstances of the case, it considered that such a length of time was excessive. Accordingly, the Court concluded unanimously that there had been a violation of art 6(1).

The applicant was awarded 25,000 euros in compensation for the collective violations.

The Court's decision is available at <http://www.echr.coe.int/ECHR/>

HRLRC POLICY, ADVOCACY and LAW REFORM

The Right to a Fair Hearing: The Relevance of the Victorian Charter of Rights to Civil Justice

As part of its review of Victoria's civil justice system, the Victorian Law Reform Commission invited the HRLRC to make a submission on the likely impacts and implications of the Victorian *Charter of Human Rights and Responsibilities Act 2006* (Vic) on the process of civil justice reform in Victoria. The HRLRC's

submission addressed the impact that the Victorian Charter, specifically the right to a 'fair hearing' enshrined in s 24, is likely to have on civil litigation in Victoria and made recommendations about ensuring a balance between providing access to the state's courts and the demands placed upon this limited public resource.

The HRLRC's submission:

- firstly, provided a summary of international and comparative human rights law and jurisprudence to assist in determining what may be considered to be the minimum requisite elements of the right to a 'fair hearing' in civil proceedings; and
- secondly, discussed the impact that the right to a 'fair hearing' in the Victorian Charter is likely to have on the civil justice system in Victoria by reference to experiences in other jurisdictions.

The submission concluded that the right to a fair hearing is an essential aspect of the judicial process and is indispensable for the protection of other human rights. In essence, the right to a fair hearing requires a party to be able to present his or her case and evidence to the court under conditions that do not place him or her at a substantial disadvantage when compared with the other party. Based on jurisprudence developed in other jurisdictions containing human rights charters, the basic elements of the right to a fair hearing are:

- equal access to, and equality before, the courts;
- the right to legal advice and representation;
- the right to procedural fairness;
- the right to a hearing without undue delay;
- the right to a competent, independent and impartial tribunal established by law;
- the right to a public hearing; and
- the right to have the free assistance of an interpreter where necessary.

While many of these principles are already embedded into the common law and specific legislation, the development of policies to guarantee the right to a fair hearing inevitably involves striking a balance between providing greater access to justice and reducing the number of unmeritorious cases brought before the courts that cause a strain on limited public resources.

In the United Kingdom, there has not been the expected avalanche of litigation in UK courts following the introduction of the *Human Rights Act 1998* (UK). Rather than having a dramatic impact on the resources of the courts, the UK experience has demonstrated the importance that policy and procedure play in the management of an effective and efficient civil justice system.

International and comparative jurisprudence on the basic elements of the right to a fair hearing indicate that access to justice and equality before the law are fundamental values underpinning not just the right to a fair hearing, but also the civil justice system. Although these values do not have great leverage in decision-making by the courts, they are a crucial foundation of the civil justice system and a powerful argument for arrangements such as legal aid and the impartial application of the law.

The role of procedure is often regarded as of secondary importance compared with substantive law. However, international and comparative jurisprudence indicates that procedure is essential in ensuring adherence to the basic elements of the right to a fair hearing. Consequently, civil justice policies and formal procedures must be compatible with the basic elements of the right to a fair hearing that are enshrined in the Victorian Charter.

The HRLRC submission identified the following issues relating to the likely impact of the Victorian Charter:

- Based on the experience in the UK, it is likely that the Victorian Charter will most often be used to supplement existing grounds for cases, rather than actually lead to an increase in the number of cases being brought in the courts.
- Access to justice is a fundamental requirement of a fair civil justice system. The Victorian Government must take steps to ensure greater equality in access to justice, including:
 - providing adequate funding for legal aid, community legal centres and impecunious and disadvantaged litigants;
 - increasing accessibility to courts by simplifying rules of procedure and preventing the disproportionate impact of

associated costs of litigation for certain individual litigants; and

- providing adequate services to assist individuals in accessing the justice system, including legal aid and free interpreters.
- The courts, rather than policies concerned with cost and efficiency, are the best placed to differentiate between those claims deserving of access to justice and those claims that are without merit.

A copy of the HRLRC submission may be downloaded at www.hrlrc.org.au.

Ben Schokman is on secondment to the Human Rights Law Resource Centre from Allens Arthur Robinson.

HRLRC CASEWORK

Stefan Nystrom: Exporting Australia's Human Rights Obligation

The HRLRC has been involved in preparing a communication to the UN Human Rights Committee regarding the deportation of a long-term Australian resident, Stefan Nystrom.

Mr Nystrom was born in Sweden on 31 December 1973. His mother, a permanent resident of Australia, was pregnant and had traveled to Sweden to visit family members. When it became clear that it would be difficult to return to Australia because of her advanced state of pregnancy, his mother stayed in Sweden for Mr Nystrom's birth. When he was 25 days old, Mr Nystrom traveled to Australia and has not left Australia since that time. Mr Nystrom is now 33 years old and for that time has resided in Australia on the basis of a Transitional (Permanent) Visa. He does not have any relevant connections with Sweden, having not met any of his cousins (nor even knowing their names) and having never learned the Swedish language.

On 12 August 2004, the Minister for Immigration and Multicultural Affairs and Indigenous Affairs cancelled Mr Nystrom's visa because of his failure to pass the 'character test' specified in s 501(6) of the *Migration Act 1958* (Cth) due to his 'substantial criminal record'. Following the Minister's decision, Mr Nystrom brought proceedings in the Federal Magistrates' Court for judicial review of the decision to cancel his visa. The essence of

Mr Nystrom's case was that he did not hold a Transitional (Permanent) Visa but rather was the holder of an 'absorbed person visa' by virtue of his long residence in Australia and pursuant to section 34 of the Act. While Hartnett FM dismissed Mr Nystrom's claim, the Full Federal Court quashed the Minister's decision on appeal and deemed him to be 'an absorbed person', ordering his release. However, in November 2006, the High Court upheld an appeal by the Minister. As a result of the High Court decision, Mr Nystrom was held in Maribyrnong Immigration Detention Centre before being deported to Sweden on 29 December 2006.

On this basis, the HRLRC has prepared and submitted a communication to the Committee alleging violations by Australia of the following articles of the *International Covenant on Civil and Political Rights*:

- *Article 17 – Right to protection from interference with family and home*
Australia has arbitrarily and/or unlawfully interfered with Mr Nystrom's rights to privacy, family and home. Further, Australia has failed to provide clear legislative protection from arbitrary interference with privacy, family or home of persons in Mr Nystrom's position.
- *Article 23 – Right to protection of the family*
Australia has arbitrarily interfered with Mr Nystrom's right to protection of his family. Further, Australia has failed to provide clear legislative protection of the family for persons in Mr Nystrom's position.
- *Article 12(4) – Right to enter one's own country*
In cancelling his Transitional (Permanent) Visa, Australia has arbitrarily deprived Mr Nystrom's of his right to enter his own country.
- *Article 9 – Right to be free from arbitrary detention*
Australia incorrectly cancelled Mr Nystrom's Transitional (Permanent) Visa and, as a result, he was arbitrarily detained in immigration detention. Further, Mr Nystrom was held in 'immigration detention' in a maximum security prison, Port Phillip Prison, for 9 months while his matter was before the Australian courts.

- *Article 14(7) – Right not to be tried or punished again for an offence for which one has already been convicted*
Mr Nystrom's visa cancellation and deportation constitutes another punishment for offences in respect of which he has already served his time in accordance with Australian criminal law.
- *Article 7 – Right not to be subjected to cruel, inhuman or degrading treatment*
Mr Nystrom's deportation amounts to cruel, inhuman and degrading treatment because his permanent banishment from Australia, the only country he has ever known, and his permanent separation from his entire family have caused mental distress.
- *Article 26 – Right to non-discrimination and equality before the law*
Australia's cancellation of Mr Nystrom's visa and deportation to Sweden is discriminatory because the same procedure cannot be used against Australian nationals who have committed the same breach of the law.

On the basis of the above violations of the *ICCPR*, the HRLRC communication to the Committee requests the following remedies:

- that Mr Nystrom's permanent Australian residency status be reinstated; and
- that Mr Nystrom be awarded compensation according to the standards applicable under Australian domestic law for his pain and suffering.

Ben Schokman is on secondment to the Human Rights Law Resource Centre from Allens Arthur Robinson.

SEMINARS and EVENTS

Seminar with Justice Zak Yacoob, South African Constitutional Court 5 February 2007

The first seminar in the HRLRC's 2007 Human Rights Seminar Series will be held at 6.00pm on Monday, 5 February 2007 at the Law Institute of Victoria, 470 Bourke Street.

The seminar will be addressed by Justice Zak Yacoob, Judge of the South African Constitutional Court. Justice Yacoob was a member of the ANC and played an

instrumental role in negotiating and drafting the South African Constitution and Bill of Rights.

Justice Yacoob will address the topic of 'Charters of Rights and Socio-Economic Rights: Reflections from South Africa'.

Booking forms are available at www.hrlrc.org.au.

2007 Human Rights Dinner 23 February 2007

The HRLRC's 2007 Human Rights Dinner will be held at the Essoign Club, Melbourne, on Friday, 23 February 2007.

The dinner will be addressed by Prof Sir Nigel Rodley, Vice-Chair of the UN Human Rights Committee and former UN Special Rapporteur on Torture, and Debbie Kilroy OAM, Director of Sisters Inside and recipient of the 2004 Australian Human Rights Medal.

Booking forms are available at www.hrlrc.org.au.

Human Rights Charters: Reflections for Victoria from the UK and the UN 26 February 2007

This breakfast seminar with Prof Sir Nigel Rodley will address the topic of the Legislative protection of human rights. Sir Nigel will draw on his experience and expertise in relation to the *ICCPR* and the UK *Human Rights Act 1998* to offer some thoughts on the likely implications and impacts of the Victorian *Charter of Human Rights and Responsibilities 2006*.

Sir Nigel has been Vice-Chair of the UN Human Rights Committee since 2003. Sir Nigel is also a Professor of Law and Chair of the Human Rights Centre at the University of Essex, in which capacity he has provided extensive legal and judicial education about human rights instruments.

The seminar will be held from 7.30 – 9.00am on Monday, 26 February at DLA Phillips Fox, Level 21, 140 William St, Melbourne.

Booking forms are available at www.hrlrc.org.au.

Human Rights Conference: Freedom, Respect, Equality and Dignity 27 February 2007

The Equal Opportunity Commission and Human Rights Commission of Victoria is convening a major human rights conference on 27 February 2007 at the ANZ Pavilion, Arts Centre, Melbourne.

Keynote speakers include:

- Sir Nigel Rodley, Vice-Chair of the UN Human Rights Committee;
- Major Michael Mori, Lawyer for David Hicks;
- Dr Sima Samar, Chairperson of the Afghanistan Independent Human Rights Commission; and
- Dr Rob Moodie, CEO of VicHealth.

Further information about the Conference, including the Program and Registrations, is available at www.eoc.vic.gov.au.

EDUCATION, RESOURCES and TRAINING

Book Review: Andrew Lynch and George Williams, *What Price Security? Taking Stock of Australia's Anti-Terror Laws* (UNSW Press, 2006)

What Price Security? steps through the raft of anti-terror laws put in place by the Australian Government since 11 September 2001 and their practical application so far. This is no dry academic text, rather it painstakingly builds a case that Australia's terrorist laws have gone too far in eroding our freedoms and values, thus answering the rhetorical question of the title.

Dr Andrew Lynch and Professor George Williams acknowledge the new era of security fears we find ourselves in, and support need to create special anti-terrorist laws.

However, they warn that the Australian Government has overreacted, paralleling the Menzies Government's response to the 'communist threat' half a century earlier.

37 new laws have been enacted, with each major terrorist attack bringing more legislation in response. With new laws being pumped out at the furious rate of about one every 7 weeks,

Lynch and Williams argue that this hasty process has resulted in poorly drafted laws that are rife with problems and even dangerous to Australian security.

Initially, parliament heavily scrutinised each proposed new law, but after the government took control of the Senate, Lynch and Williams argue there has been a worrying trend of enacting anti-terror laws without proper oversight or debate. Subsequent reviews have found substantial flaws in the new laws, but the Government has largely failed to redress these problems.

Lynch and Williams examine the new crimes of terrorism, concluding that offences are defined too broadly, outlawing conduct that should not be characterised as terrorism. Nelson Mandela would have been a terrorist under Australia's laws, which make no allowance for actions taken as part of a struggle for liberation. I would however challenge the authors for an objective definition of a terrorist that is capable of widespread acceptance.

They sound an alarm about the undermining of fundamental legal safeguards, including the presumption of innocence, criminal intent, criminal responsibility and the standard and burden of proof that needs to be met by the prosecution.

Control Orders, as used against Jack Thomas, and Preventative Detention Orders are a key example in point. These orders were rushed through parliament after the London bombings and can impose significant restrictions on a person's liberty and movement, even where they are not suspected of committing a crime.

Lynch and Williams warn that Australia's anti-terror laws are unique in the democratic world in being unconstrained by a charter that protects fundamental rights. They contrast this with the experience of the UK, where the *Human Rights Act 1998* and the *European Convention on Human Rights* have modified the implementation of anti-terror strategies, striking a balance between national security and civil rights.

Freedom of speech is identified as one of the major casualties of the war on terror. Lynch and Williams question how Australia will be safer from terrorism under the new sedition laws, fearing they will inevitably dampen robust critical commentary about the war on terror. The new laws demonstrate just how fragile free speech is in Australia, exposing how we

assume rather than actually protect that freedom.

What Price Security? also examines the growth of security organisations. ASIO has received greatly enhanced powers, a five-fold increase in its budget and a doubling of personnel over the past 5 years. ASIO's powers of detention are more extensive than comparable organisations in the UK, Canada and USA and are unique in allowing the secret detention of non-suspects for the purposes of gathering information.

Lynch and Williams sound the sombre warning that the more repressive or draconian the law, the more likely it is that some people will take extreme action in response. They write 'by our own actions, we may isolate and ostracise members of our community who, instead of assisting with intelligence gathering may become susceptible targets for terrorist recruitment.'

What Price Security? is both a practical guide and a critique of these new laws. Its comprehensive coverage is useful to lawyers needing to get a handle on anti-terror legislation and its readable, topical commentary is interesting and accessible to non-lawyers.

It is a valuable addition to the vocal contribution that Andrew Lynch and George Williams continue to make to public debate since 11 September and empowers readers with a good working knowledge of the Australia's major anti-terror laws and the controversies surrounding them.

Nicole Rees is a volunteer lawyer with the Human Rights Law Resource Centre

Charter of Human Rights and Responsibilities Workshops

The Victorian Equal Opportunity and Human Rights Commission is providing a series of free workshops during February – May 2007 to help community organisations to understand and apply the rights and obligations contained in the Charter.

An introductory workshop will explore the fundamentals of human rights, the function and operation of the Charter, and how organisations can meet their human rights obligations and achieve best practice.

An advanced workshop will build on the understanding gained from the introductory session by further exploring how community

organisations can actively engage in the political process to advocate for policy and legislative change.

For further information, see <http://www.humanrightscommission.vic.gov.au/human%20rights/>, call (03) 9281 7122 or 1800 134 142 or email paula.crimmins@eoc.vic.gov.au.

IF I WERE ATTORNEY-GENERAL...

For the past 35 years, community legal centres have been at the forefront of developing innovative strategies to provide genuine access to justice for disadvantaged Australians. Community legal centres deliver a mix of individual client services, community legal education and law reform activities. Centres recognise that access to justice extends beyond simply advising clients, for example, that they have no recourse if they have been unfairly sacked from their employment. It extends to advocating for laws that appropriately protect clients against unfair dismissal.

In the interests of our clients, community legal centres advocate for change when the law is not working properly or fairly. Our family law system, our family violence laws and protocols, the way we deal with deaths in custody, the way our courts treat victims of sexual abuse, our credit and debt laws, our infringements scheme and many other important tenets of the legal system have been shaped for the better by the law reform contributions of community legal centres.

If I were Attorney General, I would actively encourage community legal centres to continue their vital law reform and policy work and I would commit funding to enable them to do it effectively. I might get frustrated if a government-funded centre criticised one of my government's policies, but I would recognise that the debate would be good for testing the merits of our ideas and good for democracy.

I would then draw a deep breath and turn to my long list of policies.

Currently, there is no Federal or Victorian legislation prohibiting discrimination on the grounds of an irrelevant criminal record. It is perfectly lawful for an employer to refuse to hire or sack a worker for a criminal record that has got nothing to do with the particular job. So, a real estate agency can refuse to hire a receptionist for a possession of cannabis

offence from 5 years ago and a government department can refuse to hire a telephone operator because of a drink driving offence.

Research suggests that the majority of people with a criminal record offend only once, when they are young, and never offend again. Yet, even a single offence on a criminal record can generate strong negative prejudices about the risk of future offending, even if many crime-free years have passed since that offence. Discrimination on these grounds discourages rehabilitation and ultimately reduces community safety.

We need to strike the right balance between the risk of reoffending and rehabilitation.

Where an offence is relevant to the job, for example, an applicant with dishonesty offences seeking work in bank, or a sex offender applying for work with children, an employer should obviously be able to refuse employment. But where the offence has nothing to do with the job, discrimination should be prohibited. As Attorney General, I would ban discrimination on the grounds of an irrelevant criminal record.

My experiences as an employment lawyer for both employers and workers have made me acutely aware that loss of employment can have an enormous detrimental impact on individuals, their family and the community. Australian laws should protect against unfair loss of employment.

Currently, employees in businesses with 100 or less employees are exempt from unfair dismissal laws. Yet, many of the worst unfair dismissal cases I have seen have involved small businesses who either did not know the law or did not care. Unfair dismissal laws are not onerous. They require employers to do only two things; have a good reason for the dismissal and carry out the dismissal in a fair way. No employer, whatever their size, can seriously argue that they need the right to sack their employees unfairly.

As Attorney General, I would act to have my government reinstate unfair dismissal laws for all employees and I would dedicate resources towards providing proper free advice services for small businesses to assist them to comply with their obligations.

I would then introduce a Human Rights Act in Australia and provide a right to sue for damages for breaches of human rights. I would recognise that depriving prisoners of the

right to vote is counter productive to rehabilitation and their responsible participation in society and so I would restore that right. I would provide legal aid funding for civil law matters. I would look at the feasibility of providing tax deductions for the value of pro bono work done by private law firms and barristers.

In Victoria, I would legislate to make Victoria Police vicariously liable for the unlawful acts of its officers committed in the course of duty in the same way that any other employer is liable for the wrongs of employees in the course of their employment. I would expand the civil law jurisdiction of VCAT to cover motor vehicle accidents, fencing disputes, personal civil disputes and appeals against prison Governor's Hearings. I would strengthen the power of the Coroners Court to make recommendations and I would make it compulsory for Government departments to report back on the implementation of recommendations. I would set up a non-litigious scheme along the lines of the Tasmanian Government's recent initiative to provide acknowledgement and compensation for past victims of sexual abuse while in state care.

I would then retire and go back to volunteering at a community legal centre to remember what life was like at the coal face of legal service delivery.

Hugh de Kretser is the Executive Officer of the Federation of Community Legal Centres (Vic) Inc