

# HARMONISING INTERNATIONAL HUMAN RIGHTS LAW AND DOMESTIC LAW AND POLICY: THE ESTABLISHMENT AND ROLE OF THE HUMAN RIGHTS LAW RESOURCE CENTRE

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*[In a recent case, Royal Women's Hospital v Medical Practitioners Board of Victoria, the President of the Victorian Court of Appeal commented that 'an Australian jurisprudence drawing on international human rights law is in its early stages' and that further progress will necessarily involve judges and practitioners working together to develop a common expertise. Despite significant capacity and expertise in the private legal profession, at the Victorian Bar, amongst community organisations, and in university law schools, Australian lawyers and judges have traditionally, though with notable exceptions, made relatively limited use of international human rights law in domestic forums. This article discusses a recent innovative initiative, the Human Rights Law Resource Centre. The fundamental aims of the Centre are to contribute to the harmonisation of Australian law and policy with international human rights norms and to support and enhance the capacity of the legal profession, judiciary, government and community sector to develop domestic law and policy consistently with international human rights standards. The Centre seeks to achieve these aims by providing pro bono expert advice, assistance, resources and support to community legal centres, human rights organisations, non-profit organisations and marginalised or disadvantaged groups to pursue human rights litigation, policy analysis and advocacy, education, monitoring and reporting.]*

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## I INTRODUCTION

The Australian ‘reluctance about rights’ and the lacuna between international human rights law and Australian domestic law, policy and practice are well documented.<sup>1</sup> Despite ratifying all of the major international human rights treaties — namely the *International Covenant on Civil and Political Rights*;<sup>2</sup> the *International Covenant on Economic, Social and Cultural Rights*;<sup>3</sup> the *Convention on the Elimination of All Forms of Discrimination against Women*;<sup>4</sup> the *Convention on the Elimination of All Forms of Racial Discrimination*;<sup>5</sup> the *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*;<sup>6</sup> and the *Convention on the Rights of the Child*<sup>7</sup> — Australia has not fully implemented or incorporated their provisions into domestic law. Australia remains the only Western democracy without a legislatively or constitutionally enshrined charter of human rights. While Australia relies on a range of mechanisms to implement human rights — including the doctrine of ‘responsible government’, the enactment of anti-discrimination and privacy legislation at both state and federal levels, and the operation of state and federal equal opportunity commissions and tribunals<sup>8</sup> — it has recently, and rightly, been said that ‘[t]he fabric of human rights in Australia resembles more of a patchwork quilt, frayed at the edges, than a secure and comprehensive regime of rights and freedoms’.<sup>9</sup>

Unsurprisingly, the lack of legal protection of human rights in Australia is felt most regularly and acutely by marginalised and disadvantaged individuals and groups. A recent Victorian report on human rights, which was informed by over 2500 written submissions, found that people with disabilities, older people, young people, prisoners, Indigenous people, women, people experiencing homelessness, ethnic and religious minorities, and gay, lesbian, bisexual, transgender and intersex communities are particularly vulnerable to human rights violations.<sup>10</sup> In the international sphere, a number of United Nations treaty monitoring bodies have, over the last decade, expressed concerns about the

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<sup>1</sup> See, eg, Hilary Charlesworth, ‘The Australian Reluctance about Rights’ in Philip Alston (ed), *Towards an Australian Bill of Rights* (2004) 21, 21–2.

<sup>2</sup> Opened for signature 19 December 1966, 999 UNTS 171 (entered into force 23 March 1976) (‘*ICCPR*’).

<sup>3</sup> Opened for signature 16 December 1966, 993 UNTS 3 (entered into force 3 January 1976) (‘*ICESCR*’).

<sup>4</sup> Opened for signature 18 December 1979, 1249 UNTS 13 (entered into force 3 September 1981) (‘*CEDAW*’).

<sup>5</sup> Opened for signature 21 December 1965, 660 UNTS 195 (entered into force 4 January 1969) (‘*CERD*’).

<sup>6</sup> Opened for signature 10 December 1984, 1465 UNTS 85 (entered into force 26 June 1987) (‘*CAT*’).

<sup>7</sup> Opened for signature 20 November 1989, 1577 UNTS 3 (entered into force 2 September 1990) (‘*CRC*’).

<sup>8</sup> See generally Government of the Commonwealth of Australia, *Australia’s National Framework for Human Rights: National Action Plan* (2005) 5–10.

<sup>9</sup> Australian Alliance of Lawyers, *Submission 1017 to the Human Rights Consultation Committee* (2005) as cited in Human Rights Consultation Committee, Parliament of Victoria, *Rights, Responsibilities and Respect: The Report of the Human Rights Consultation Committee* (2005) 5.

<sup>10</sup> Human Rights Consultation Committee, above n 9, 6–9.

human rights of children and young people,<sup>11</sup> women,<sup>12</sup> Indigenous people,<sup>13</sup> gay and lesbian people,<sup>14</sup> refugees and asylum seekers,<sup>15</sup> and prisoners,<sup>16</sup> among others.

## II HUMAN RIGHTS AND THE ROLE OF LAWYERS

The lack of domestic legal protection of human rights across Australia is compounded by the relatively limited use made of international human rights law by advocates and judges in domestic forums.<sup>17</sup> While international human rights norms and principles may be referred to or relied upon in the context of the review of administrative decisions,<sup>18</sup> the development of the common law,<sup>19</sup> the exercise of judicial discretions<sup>20</sup> and the interpretation of statutes,<sup>21</sup> and arguably the application of the *Australian Constitution*,<sup>22</sup> the opportunities for rapprochement between domestic and international human rights law remain limited, reactive and ad hoc. Moreover, the receptiveness of courts, tribunals and individual judges to international human rights law submissions is highly variable, and the capacity and expertise of many advocates with respect to making such submissions is limited. As Wendy Lacey has written, ‘from a detailed consideration of the existing case law, it is clear that the potential significance of international human rights law ... is yet to be fully realised in Australia’.<sup>23</sup> In a case recently handed down by the Victorian Court of Appeal, Maxwell P described ‘the development of an Australian jurisprudence drawing on international human rights law’ as being ‘in its early stages’.<sup>24</sup>

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<sup>11</sup> Committee on the Rights of the Child, *Consideration of Reports Submitted by States Parties under Article 44 of the Convention: Concluding Observations: Australia*, UN Doc CRC/C/15/Add.268 (30 September 2005).

<sup>12</sup> Committee on the Elimination of Discrimination against Women, *Report of the Committee on the Elimination of Discrimination against Women*, UN Doc A/52/38/Rev.1 (12 August 1997) [365]–[408].

<sup>13</sup> Committee on the Elimination of Racial Discrimination, *Consideration of Reports Submitted by States Parties under Article 9 of the Convention: Concluding Observations of the Committee on the Elimination of Racial Discrimination: Australia*, UN Doc CERD/C/AUS/CO/14 (14 April 2005); UN Human Rights Committee, *Concluding Observations of the Human Rights Committee: Australia*, UN Doc A/55/40 (10 October 2000) [498]–[528].

<sup>14</sup> UN Human Rights Committee, above n 13, [498]–[528].

<sup>15</sup> *Ibid.*

<sup>16</sup> Committee against Torture, *Concluding Observations of the Committee against Torture: Australia*, UN Doc A/56/44 (17 November 2000) [47]–[53].

<sup>17</sup> Cf Justice Michael Kirby, ‘Chief Justice Nicholson, Australian Family Law and International Human Rights’ (2004) 5 *Melbourne Journal of International Law* 221.

<sup>18</sup> See, eg, *Minister for Immigration and Ethnic Affairs v Teoh* (1995) 183 CLR 273, 291.

<sup>19</sup> See, eg, *Mabo v Queensland (No 2)* (1992) 175 CLR 1, 42.

<sup>20</sup> See generally *Dietrich v The Queen* (1992) 177 CLR 292; Wendy Lacey, ‘Judicial Discretion and Human Rights: Expanding the Role of International Law in the Domestic Sphere’ (2004) 5 *Melbourne Journal of International Law* 108, 113.

<sup>21</sup> See, eg, *Newcrest Mining (WA) Ltd v The Commonwealth* (1997) 190 CLR 513, 660–1.

<sup>22</sup> See generally Devika Hovell and George Williams, ‘A Tale of Two Systems: The Use of International Law in Constitutional Interpretation in Australia and South Africa’ (2005) 29 *Melbourne University Law Review* 95, 106–13.

<sup>23</sup> Lacey, above n 20, 131.

<sup>24</sup> *Royal Women’s Hospital v Medical Practitioners Board of Victoria* [2006] VSCA 85 (Unreported, Warren CJ, Maxwell P and Charles JA, 20 April 2006) [71].

The relatively limited capacity and expertise of lawyers with respect to the use of international human rights law in domestic litigation and advocacy is a significant deficiency in Australia's framework of human rights protection. The availability of information, advice, assistance and advocacy about human rights must be an integral component of the implementation and realisation of such rights, with the right to equality before the law and the administration of justice being both a human right of itself and an important aspect of the promotion, protection, fulfilment and enforcement of other human rights.<sup>25</sup> It is particularly important that human rights advocacy and legal services be made available to marginalised and disadvantaged individuals and groups, many of whom are vulnerable to human rights violations and for whom ordinary legal services are not accessible.<sup>26</sup> According to the UN Office of the High Commissioner for Human Rights ('OHCHR'), the availability and accessibility of human rights legal services and the justiciability of human rights are among the 'most important tools' to prevent or seek redress for rights violations.<sup>27</sup> The UN's *Basic Principles on the Role of Lawyers* recognise this, referring in the preamble to the fact that

[a]dequate protection of the human rights and fundamental freedoms to which all persons are entitled, be they economic, social and cultural, or civil and political, requires that all persons have effective access to legal services provided by an independent legal profession ...<sup>28</sup>

Article 14 of the *Basic Principles on the Role of Lawyers* goes on to oblige lawyers, 'in protecting the rights of their clients and in promoting the cause of justice ... to uphold human rights and fundamental freedoms recognized by national and international law'.<sup>29</sup>

### III ESTABLISHMENT OF THE HUMAN RIGHTS LAW RESOURCE CENTRE

Recognising the need to increase and enhance the capacity and expertise of the legal profession and judiciary to develop Australian law and policy consistently with international human rights standards, the Public Interest Law Clearing House Inc ('PILCH') and the Victorian Council for Civil Liberties Inc ('Liberty Victoria') jointly incorporated the Human Rights Law Resource Centre Ltd ('HRLRC') in January 2006.

The HRLRC proposal was developed by PILCH and Liberty Victoria over a two year period with significant input from diverse stakeholders, including legal professional associations, community legal centres, legal aid, the private legal profession and human rights and community organisations. In particular, the

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<sup>25</sup> *ICCPR*, above n 2, art 14. The right to a fair trial and equal access to justice is also protected by *CRC*, above n 7, art 40; *CEDAW*, above n 4, art 15(2); *CERD*, above n 5, art 5(a).

<sup>26</sup> Office of the High Commissioner for Human Rights, *Draft Guidelines: A Human Rights Approach to Poverty Reduction Strategies* (2002) [44]–[45] <[www.unhcr.ch/development/povertyfinal.html](http://www.unhcr.ch/development/povertyfinal.html)> at 22 May 2005; Office of the High Commissioner for Human Rights, *Basic Principles on the Role of Lawyers* (1990) arts 3–4, available at <<http://www.ohchr.org/english/law/lawyers.htm>> at 22 May 2006. See also *Dietrich v The Queen* (1992) 177 CLR 292.

<sup>27</sup> OHCHR, *Basic Principles on the Role of Lawyers*, above n 26.

<sup>28</sup> *Ibid.*

<sup>29</sup> *Ibid.*

development built on, and was informed by, the significant human rights commitment and experience of community legal centres and legal aid and pro bono practitioners over the last three decades. This input included a proposal by the then Senator Gareth Evans in 1996 to establish a specialist human rights community legal centre.<sup>30</sup> The development of the proposal had close regard to the findings of a series of consultations conducted during 1999–2000 by the International Human Rights Law Group (now called Global Rights) with the input of over 125 human rights legal organisations from more than 50 countries. The aim of the consultations was to identify the characteristics, methods and strategies of effective human rights legal organisations.<sup>31</sup> Amongst others, the following six key findings informed the development of the HRLRC. First, human rights lawyering organisations that have clearly stated and narrowly defined objectives and targets tend to be more effective than organisations with wide-ranging and comprehensive goals. Second, the most effective organisations tend to develop individual specialisations or focus on thematic priorities or groups. Organisations that think structurally and strategically about the application of limited resources have the greatest impact. Third, strategic litigation is an important tool for promoting human rights, but it is most effective when combined with other strategies such as advocacy, education, lobbying and policy work. Amicus interventions were identified as being particularly useful as they tend to be less resource-intensive and do not have the potential adverse costs implications of being party to litigation. Fourth, the most effective human rights legal organisations work cooperatively and collaboratively with non-legal human rights Non-Governmental Organisations. Fifth, the principle and practice of client empowerment is central to effective human rights legal organisations and lawyering. Sixth, successful human rights legal organisations have expertise in the application of international human rights norms in domestic courts and in the use of international human rights complaint mechanisms.<sup>32</sup>

The HRLRC is Australia's first specialist human rights legal service and has two primary aims. First, it aims to promote, protect and contribute to the fulfilment of human rights in Australia — particularly the human rights of people who are disadvantaged or living in poverty — by contributing to the harmonisation of law, policy and practice in Australia with human rights norms and standards. Through a range of activities, including particularly strategic superior litigation, the HRLRC will seek to bring to bear the influence of international human rights instruments and standards on domestic law and policy.

The second aim of the HRLRC is to empower people who are disadvantaged or living in poverty by operating and providing services within a human rights framework, including by: treating people with fairness, dignity and respect; promoting equality and freedom from discrimination; promoting participation

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<sup>30</sup> Justice Chris Maxwell, 'Human Rights Lawyering, Litigation and Advocacy' (Speech delivered at the launch of the HRLRC, Melbourne, Australia, 14 March 2006).

<sup>31</sup> Richard Wilson and Jennifer Rasmusen, *Promoting Justice: A Practical Guide to Strategic Human Rights Lawyering* (2001).

<sup>32</sup> See generally *ibid.* See also Deena Hurwitz, 'Lawyering for Justice and the Inevitability of International Human Rights Clinics' (2003) 28 *Yale Journal of International Law* 505; Dina Francesca Haynes, 'Client-Centered Human Rights Advocacy' (2006) 13(2) *Clinical Law Review* (forthcoming).

and the principle that people should have a say in processes and decisions that affect them; and promoting social inclusion and community development. This aim is informed by research and past practice which demonstrates that a client's relationship with his or her lawyers, together with that client's experience of legal processes, can itself contribute to, or derogate from, the physical, psychological, social and emotional well being and human rights of the client.<sup>33</sup> For example, research in the United Kingdom regarding 'what people do and think about going to law' demonstrates that individuals who receive legal services of a high quality are 56 per cent more likely than self-represented participants to consider that the legal system and its substantive outcomes are 'fair and just'.<sup>34</sup> Similarly, research in both Australia and the United States reveals that being treated with respect and dignity throughout the process is often more important to many clients' perceptions of justice, fairness and satisfaction than the substantive legal outcome.<sup>35</sup>

The HRLRC will seek to achieve its dual aims through a range of activities, including by supporting, conducting, coordinating, resourcing, facilitating and enhancing the provision of legal services, litigation, education, training, research, policy analysis and advocacy regarding human rights. The HRLRC will undertake these activities through partnerships which draw together and coordinate the capacity and resources of pro bono lawyers and legal professional associations, the human rights law expertise of university law schools, and the networks, grassroots connections and community development focus of community legal centres and human rights organisations.

In addition to the key findings referred to above, the International Human Rights Law Group consultations also disclosed two important findings regarding the structure, governance and financial operation of successful human rights lawyering organisations. First, the consultations found that it is imperative that the corporate governance and management of human rights lawyering organisations be independent, autonomous, flexible, streamlined and responsive.<sup>36</sup> Organisations governed by numerous and diverse stakeholders tend to be generalist in their approach and less able to develop specialisations or priorities. As a result, they may be less able to use scarce resources efficiently or to achieve the greatest impact.<sup>37</sup> Recognising this, the HRLRC is governed by a streamlined Board of Directors comprising three directors appointed by PILCH, two Directors appointed by Liberty Victoria and one director appointed by an

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<sup>33</sup> Michael King, 'Applying Therapeutic Jurisprudence from the Bench' (2003) 28 *Alternative Law Journal* 172, 172.

<sup>34</sup> Hazel Genn, *Paths to Justice: What People Do and Think about Going to Law* (1999) 211.

<sup>35</sup> See, eg, Tom Tyler, 'The Psychological Consequences of Judicial Procedures: Implications for Civil Commitment Hearings' in David Wexler and Bruce Winnick (eds), *Law in a Therapeutic Key: Developments in Therapeutic Justice* (1996) 3–15 in a US context; King, above n 33, 173 in an Australian context.

<sup>36</sup> See generally Wilson and Rasmusen, above n 31.

<sup>37</sup> For example, the International Human Rights Law Group consultations found that human rights legal organisations that were largely governed by tertiary institutions found that their litigation capacities were compromised by pedagogical commitments. Other research has found that a lack of independence as between universities and law school human rights clinics in the US has resulted in operational difficulties because of the tension between scholarship and advocacy, and the use of university resources for advocacy purposes: Hurwitz, above n 32, 531.

Advisory Committee. The Advisory Committee comprises 20 members, including representatives from community legal centres and legal aid, human rights organisations, community organisations, law firms, legal professional associations and university law schools. The Advisory Committee's function is to provide strategic guidance and advice and to make recommendations to the HRLRC Board in relation to the realisation of the HRLRC's objectives and the conduct of its activities.

The second key finding of the International Human Rights Law Group with respect to governance and operation is that the availability of adequate, reliable and recurrent funding is critical to the ongoing effective operation of human rights lawyering organisations. The consultations disclosed that 'funding is the single most important factor in the ability of human rights lawyering organisations to effectively predict and meet program objectives'.<sup>38</sup> To date, the HRLRC has received funding for a pilot period from 1 January 2006 to 30 June 2007. Funding has been received from a range of philanthropic and corporate sponsors, including the National Australia Bank Legal Department, Allens Arthur Robinson, the R E Ross Trust and the Victoria Law Foundation. The HRLRC has also received significant in-kind support and contributions from PILCH, Freehills and the Law Institute of Victoria. During the pilot period, further funding will be sought for the comprehensive independent evaluation of the HRLRC. This evaluation will use a range of consumer evaluation, impact evaluation, outcome evaluation and peer review techniques. Pending the outcomes of the evaluation, recurrent funding for the operation of the HRLRC will be sought from a range of philanthropic, private and public sector sources. In particular, funds will be sought from the Victorian Government as a component and outcome of the Government's Human Rights Consultation Project. Funding may also be sought from both federal and state governments through the Community Legal Services Program Fund. Such an application would, however, be subject to additional monies being made available to that fund such that a distribution would not dilute the pool of funds available to community legal centres.

#### IV THE ROLE AND ACTIVITIES OF THE HRLRC IN PROMOTING HUMAN RIGHTS

As discussed above, the HRLRC will provide pro bono expert advice, assistance, resources and support to community legal centres, human rights organisations, non-profit organisations and marginalised or disadvantaged groups to pursue human rights litigation, policy analysis and advocacy, education, monitoring and reporting. Each of these activities, together with hypothetical examples, is discussed in further detail below.

##### A *Human Rights Litigation*

The HRLRC will provide services and support to assist non-profit organisations and community groups with cases and matters that raise an issue of human rights under an international human rights treaty or customary international human rights law. Such cases could arise or be pursued in domestic or international forums.

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<sup>38</sup> Wilson and Rasmusen, above n 31, 26.

The HRLRC will consider requests for legal services, resources and litigation support having regard to the following aspects of the case or matter:

1. Whether it raises an issue of human rights under an international human rights treaty or customary international human rights law;
2. Whether it falls within the HRLRC's thematic priorities and target groups;
3. Its legal merit and prospects of success;
4. Its potential impact and outcome;
5. The purpose and means of the applicant individual, group or organisation;
6. The availability of legal aid or other more appropriate services;
7. The availability and feasibility of partnerships or collaboration with other service providers;
8. The availability and use of the HRLRC's resources; and
9. An analysis of the associated risks.

Each of these factors is considered in further detail below.

### 1 *Nature of Case or Matter*

The HRLRC aims to provide legal services, resources and litigation support to cases and matters that raise an issue of human rights under an international human rights treaty or customary international human rights law. This may include cases and matters that relate to international human rights norms that have been implemented or incorporated as part of domestic law, such as matters arising under the *Sex Discrimination Act 1984* (Cth) or the *Racial Discrimination Act 1975* (Cth).

At a domestic level, this may include, but is not limited to, cases or matters that seek to rely on or refer to international human rights norms in the context of statutory or constitutional interpretation, the development of the common law, and the exercise and review of administrative and judicial discretions. Such cases could be contemplated or initiated in federal, state and territory courts and tribunals, the Human Rights and Equal Opportunity Commission ('HREOC'), or state and territory anti-discrimination and equal opportunity commissions and tribunals.

At an international level, cases or matters could include, but are not limited to, applications, communications, complaints, petitions, reports and submissions to the various *Charter of the United Nations* and treaty monitoring bodies, including the UN Human Rights Committee ('HRC'), the UN Committee on Economic, Social and Cultural Rights, the UN Committee on the Elimination of Discrimination against Women, the UN Committee on the Elimination of Racial Discrimination, the UN Committee on the Rights of the Child, the UN Committee against Torture, and UN Special Rapporteurs. Although there is currently no regional human rights monitoring or complaints body, the work of the HRLRC would extend to such a jurisdiction if it arose.

### 2 *Thematic Priorities and Target Groups*

The HRLRC's thematic priorities will be set through a process of consultations with stakeholders, clients and constituents, including the Advisory

Committee. The priorities will be aligned with key identified human rights issues, needs, challenges and opportunities. While the HRLRC will not be exclusive in this regard, it will give preference to cases and matters that raise issues of relevance to its thematic priorities. This is consistent with the finding of the International Human Rights Law Group that human rights legal organisations that develop individual specialisations, or focus on thematic priorities or groups, tend to have the greatest impact.<sup>39</sup>

Initial consultations with the HRLRC Advisory Committee about the identification and prioritisation of human rights issues and needs have disclosed the following emerging themes and preliminary priorities, listed in no particular order. First, the HRLRC will focus on the treatment and conditions of detained persons, including asylum seekers, prisoners and involuntary patients. Second, the HRLRC will conduct research and advocacy regarding the content, implementation, operation and review of the proposed Victorian Charter of Human Rights and Responsibilities. Third, the HRLRC will have a strong focus on economic, social and cultural rights, particularly the rights to health, housing and social security. Fourth, equality rights, particularly the right to non-discrimination on the grounds of race, religion, ethnicity and poverty, will be a particular area of focus. The HRLRC has also identified people with a disability, people with a mental illness, Indigenous people, people living in poverty, children and young people, and people subject to discrimination on the grounds of race, religion and ethnicity as priority target groups for action, recognising the particular vulnerability of members of these groups to human rights violations.

### 3 *Legal Merit and Prospects of Success*

A case or matter must have legal merit to be eligible for support from the HRLRC. As a general rule, it should also have a reasonable prospect of success. The Centre may obtain the assistance of pro bono counsel to advise as to the merits and prospects of a case for the purpose of this analysis. The HRLRC may give consideration to cases or matters that do not have a reasonable prospect of success if the anticipated impact or effect of the case or matter may otherwise advance human rights. This could involve consideration of its legal, social and political contexts.

### 4 *Potential Impact and Outcome*

The HRLRC will have regard to the potential or likely impact and outcome of each case or matter. This may include consideration of its anticipated impact on: the promotion, protection and fulfilment of human rights; the development of human rights law and jurisprudence; and affected individuals, groups, communities and organisations.

The HRLRC will also have regard to the availability, implementation, enforceability and effects of potential remedies, and the role and potential of the case or matter in relation to broader human rights campaigning, advocacy, education, lobbying, law reform and community development activities. Again, this is consistent with the finding of the International Human Rights Law Group

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<sup>39</sup> Ibid 13–14.

that while strategic litigation is an important tool for promoting human rights, it is most effective when combined with such strategies.<sup>40</sup> As concluded in 2003 at the Inaugural Conference of the International Network for Economic, Social and Cultural Rights:

Social movements are extremely important in the enforcement of [human rights] and the implementation of decisions ... if there are not social movements to enforce judicial rights, they are just paper rights ... effective lawyering and litigation of [economic, social and cultural rights] matters involves having an understanding of social movements so that one proceeds with cases that are supported by victims, rather than by selecting an issue and subsequently seeking plaintiffs.<sup>41</sup>

### 5 *Purpose and Means of Applicant*

Applications for assistance may be made by individuals, communities and groups that are disadvantaged, vulnerable, marginalised, or that experience financial hardship or social exclusion. Applications for assistance may also be made by community legal centres, legal practitioners and not-for-profit human rights and community organisations. As a general rule, the purpose of the applicant in pursuing the case or matter should be consistent with the aims and priorities of the HRLRC.

### 6 *Availability of Legal Aid or Other More Appropriate Services*

As discussed above, international human rights law provides and recognises that governments have a fundamental obligation to provide adequate funding and legal aid to ensure equal access to justice.<sup>42</sup> The provision of pro bono legal services, resources and support is not a substitute for an adequately funded legal aid service and must not be provided in a way that enables governments to abdicate their responsibilities and implementation obligations in this regard. Accordingly, the HRLRC generally will not assist with a case or matter that is eligible for a grant of legal aid or where there is another more appropriate service provider.

### 7 *Feasibility of Partnerships and Collaboration*

Vital to a campaign's efficiency is the ability of human rights lawyering organizations to work with other NGOs, legal and non-legal. NGO networking can be an essential strategic element that allows an NGO to capitalize on limited resources. Non-legal NGOs often possess advocacy skills and contacts that can enhance a human rights lawyering NGO's objectives.<sup>43</sup>

Recognising this, the HRLRC is committed to working cooperatively and collaboratively with other legal service providers and human rights

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<sup>40</sup> Ibid 78.

<sup>41</sup> International Network of Economic, Social and Cultural Rights, *Domestic Adjudication: The Experience and Lessons of Litigating ESCR in Various Countries* (2003) <<http://www.escr-net.org/ConferenceDocs/W3DomesticAdjudication.doc>> at 22 May 2006.

<sup>42</sup> See above n 25 and accompanying text.

<sup>43</sup> Wilson and Rasmusen, above n 31, 75.

organisations. As a general rule, priority will therefore be given to cases or matters that provide opportunities for partnerships, such as co-counsel arrangements.

#### 8 *Availability and Use of HRLRC Resources*

The HRLRC relies and draws on the voluntary and pro bono commitments and resources of the private legal profession, legal professional associations and university law schools to provide legal services and support. The availability and use of the Centre's capacity and resources in respect of a potential case or matter will be assessed. Preference may be given to cases or matters which involve an amicus curiae intervention, a co-counsel arrangement or the provision of expertise and litigation support.

#### 9 *Risks Associated with the Case or Matter*

The HRLRC will conduct an analysis of the risks associated with a case or matter, including but not limited to issues such as any legal conflicts of interest, any potential conflicts of interest with key stakeholders, the community of interest between the client and other constituents, the likely impact of the case or matter on the client, the likely impact of the case or matter on other constituents, and the availability of any other more desirable courses of action.

#### 10 *Examples*

Informed by the considerations above, the HRLRC has recently taken on its first case, which involves a potential constitutional challenge to the Electoral and Referendum Amendment (Electoral Integrity and Other Measures) Bill 2005 (Cth), if and when that Bill is enacted. The Bill which, at the time of writing, is before Federal Parliament, seeks to amend the *Commonwealth Electoral Act 1918* (Cth) to remove the franchise from any person serving a custodial sentence. If and when the Bill becomes law, it will have the effect of denying the right to vote to approximately 20 000 prisoners across Australia. This is likely to exacerbate a sense of social exclusion, dislocation and discrimination, all of which are major risk factors of recidivism and are likely to operate to the detriment of post-release prisoners reintegrating and participating in the community. The Bill constitutes a clear potential violation of art 25 of the *ICCPR*, which enshrines the right to vote, as well as art 10(3) of the *ICCPR*, which provides that the essential aim of imprisonment should be reformation and social rehabilitation. In addition to being manifestly inconsistent with the right to vote under art 25 of the *ICCPR*, the proposal to deny the franchise to prisoners is also inconsistent with a number of instruments and norms pertaining to the rights

and treatment of prisoners, including:

- Article 5 of the UN's *Basic Principles for the Treatment of Prisoners*, which provides that all prisoners shall retain their human rights and fundamental freedoms except to the extent that a limitation is 'demonstrably necessitated by the fact of incarceration';<sup>44</sup>
- Article 10 of the *Basic Principles for the Treatment of Prisoners*, which provides that prisoners should be subject to conditions 'for the reintegration of the ex-prisoner into society';<sup>45</sup>
- Article 60(1) of the UN's *Standard Minimum Rules for the Treatment of Prisoners*, which states that correctional services should 'seek to minimize any differences between prison life and life at liberty which tend to lessen the responsibility of the prisoners or the respect due to their dignity as human beings';<sup>46</sup> and
- Article 10 of the *ICCPR*, which provides that prisoners must be accorded all of their civil and political rights, including the right to vote, subject to the restrictions that are 'unavoidable in a closed environment'.<sup>47</sup>

Finally, the move to disenfranchise prisoners is likely to constitute a violation of art 5(c) of the *CERD* which, read in conjunction with arts 1 and 2, provides that the right to vote must be equally accorded to all citizens without distinction on the grounds of race, and that any restriction to this right must have neither the purpose nor effect of discriminating on the grounds of race.<sup>48</sup> Given that Indigenous people are 16 times more likely to be imprisoned than non-Indigenous people and comprise approximately 20 per cent of the prisoner population compared with roughly two per cent of the general population,<sup>49</sup> it is clear that a blanket disenfranchisement of prisoners will have a significantly disproportionate and therefore discriminatory impact on Indigenous people, contrary to the *Convention*. Having regard to these issues, the HRLRC is working with pro bono lawyers from Allens Arthur Robinson, pro bono counsel from the Victorian Bar and community lawyers from Brimbank Melton Community Legal Centre to prepare a possible constitutional challenge to the Bill on the basis that, by removing the franchise from a significant group, it violates the requirement in ss 7 and 24 of the *Australian Constitution* that

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<sup>44</sup> *Basic Principles for the Treatment of Prisoners*, GA Res 45/111, UN GAOR, 45<sup>th</sup> sess, 68<sup>th</sup> plen mtg, Annex, UN Doc A/Res/45/111 (14 December 1990).

<sup>45</sup> *Ibid*.

<sup>46</sup> OHCHR, *Standard Minimum Rules for the Treatment of Prisoners*, adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Geneva, Switzerland (1955), available at <<http://www.ohchr.org/english/law/treatmentprisoners.htm>> at 22 May 2006.

<sup>47</sup> *ICCPR*, above n 2. See also UN Human Rights Committee, 'General Comment No 21: Article 10 (Humane Treatment of Persons Deprived of Their Liberty)' in *Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies*, UN Doc HRI.GEN/1/Rev.7 (12 May 2004) 153.

<sup>48</sup> *CERD*, above n 5. See also Committee on Elimination of Racial Discrimination, 'General Recommendation XX on Article 5 of the *Convention*' in *Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies*, UN Doc HRI.GEN/1/Rev.7 (12 May 2004) 211, 212.

<sup>49</sup> Australian Bureau of Statistics, *Prisoners in Australia 2004* (2005) 5.

members of the Senate and House of Representatives, respectively, be ‘directly chosen by the people’. If counsel advises that a constitutional challenge is unlikely to be successful and that there are no other effective domestic remedies available, it is likely that the HRLRC would then lodge a complaint with the UN HRC under the *Optional Protocol to the International Covenant on Civil and Political Rights*,<sup>50</sup> alleging a violation of arts 25 and 10(3) of the *ICCPR*. Counsel’s Memorandum of Advice would be attached to the complaint to demonstrate that there are no effective domestic remedies available, which is a precondition to a complaint being made admissible under the *First Optional Protocol*.<sup>51</sup>

A hypothetical example of another case or matter with which the HRLRC could assist in a domestic context may be to resource a community legal centre to conduct litigation in the Supreme Court to seek to develop the scope of the State’s duty of care to prisoners, to ensure that drug dependent prisoners have adequate access to drug treatment services in accordance with the requirements of the *CAT*, the right to health under art 12 of the *ICESCR* and the *UN Standard Minimum Rules for the Treatment of Prisoners*. At an international level, the HRLRC could act for a person who is homeless to lodge a complaint under the *First Optional Protocol* with the UN HRC, alleging that his or her lack of access to adequate housing, income support and health care is a violation of the State’s positive obligations arising from the rights to life, liberty and security of person.<sup>52</sup> While such cases may not ultimately be successful before a court or complaint mechanism, the impact of such cases can be broad, educative and normative, with experience from overseas suggesting that

[p]ublic interest litigation serves as an important instrument for publicizing human rights abuses and for helping to provide protection to marginalized groups. Even if a lawsuit fails to change an unjust law, the act of going to court can influence or even change attitudes about the law and contribute to a climate for reform. Unorthodox arguments can serve to suggest innovative uses of the law; complaints can present a cumulative record that documents mistreatment.<sup>53</sup>

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<sup>50</sup> Opened for signature 16 December 1966, 999 UNTS 302 (entered into force 23 March 1976) (*‘First Optional Protocol’*).

<sup>51</sup> *Ibid* art 2.

<sup>52</sup> For a consideration of ‘positive obligations’ arising in respect of the rights to life and security of person, see UN Human Rights Committee, ‘General Comment No 6: The Right to Life’ in *Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies*, UN Doc HRI.GEN/1/Rev.7 (12 May 2004) 128, 128–9. For an example of an instance in which such obligations were found to arise in a domestic context, see the Canadian case of *Gosselin v Attorney General of Quebec* (2002) 221 DLR (4th) 257, [141] (L’Heureux-Dubé J dissenting), [310] (Arbour J dissenting). See also the Indian cases of *Francis Coralie Mullin v The Administrator, Union Territory of Delhi* (1981) 2 SCR 516; *Shanti Star Builders v Narayan K Totama* (1990) 1 SCC 520; *Ahmedabad Municipal Corporation v Nawab Khan Gulab Khan* (1997) 11 SCC 123.

<sup>53</sup> Helen Hershkoff and Aubrey McCutcheon, ‘Public Interest Litigation: An International Perspective’ in Mary McClymont and Stephen Golub (eds), *Many Roads to Justice: The Law-Related Work of Ford Foundation Grantees Around the World* (2000) 283, 295.

Indeed, as Hershkoff and McCutcheon note:

Benefits may be best gauged not solely in terms of cases won and lost, but in its educational value, as judges learn about human rights standards and integrate international norms into domestic systems.<sup>54</sup>

### B *Human Rights Monitoring and Reporting*

Australia is obliged under each of the human rights treaties to which it is party to report periodically to the relevant UN treaty monitoring body regarding the implementation and realisation of rights in that treaty.<sup>55</sup> At a domestic level, the HREOC has powers, exercisable both on its own initiative or by reference from the Attorney-General, to inquire into and receive submissions and reports regarding compliance with and implementation of civil and political human rights.<sup>56</sup> All of the UN human rights treaty monitoring and reporting bodies encourage NGOs to submit written and oral information regarding Australia's compliance with international human rights obligations, to supplement or 'shadow' the Australian Government's report. Increasingly, this information is relied upon by the treaty monitoring bodies to formulate their observations and make recommendations about action to implement human rights and remedy violations.<sup>57</sup> Although these recommendations are not enforceable under Australian domestic law, they can be politically and publicly persuasive and perform a significant educative function. As Maria Foscarinis of the US National Law Center on Homelessness and Poverty has identified in a US context:

the appeal to international norms places debate outside the US and current political climates. By invoking the world stage, it appeals to US policymakers to consider a bigger perspective. How will the US be perceived? How are its national policies affecting its international standing? How can homelessness and dire poverty be tolerated in a country with our resources? An international perspective encourages us to look at the US reality from a stranger's perspective, one in which these questions may appear more starkly.<sup>58</sup>

An appeal to international human rights standards also holds governmental policy and practice accountable to its own citizens. As Dianne Otto has observed:

Legal discourse can provide an essential check on the reasonableness or justifiability of governmental action in light of its effects on human well-being, and ensure that fundamental guarantees of human dignity are safeguarded.<sup>59</sup>

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<sup>54</sup> Ibid 292.

<sup>55</sup> See, eg, *ICCPR*, above n 2, art 40(1).

<sup>56</sup> *Human Rights and Equal Opportunity Commission Act 1986* (Cth) s 11(j)–(k).

<sup>57</sup> See, eg, Committee on Economic, Social and Cultural Rights, *Substantive Issues Arising in the Implementation of the International Covenant on Economic, Social and Cultural Rights: NGO Participation in the Activities of the Committee on Economic, Social and Cultural Rights*, UN Doc E/C.12/2000/6 (7 July 2000).

<sup>58</sup> Maria Foscarinis, 'Homelessness and Human Rights: Towards an Integrated Strategy' (2000) 19 *Saint Louis University Public Law Review* 327, 353.

<sup>59</sup> Dianne Otto, 'Resisting the Erosion of Economic and Social Rights: What Role Can Legal Discourse Play?' (Speech delivered at the Human Rights and Global Challenges Conference, Melbourne, Australia, 11 December 2001).

Having regard to this, the HRLRC can assist, support, resource and work with organisations and groups that want to make submissions or reports to UN human rights bodies, or to other such domestic or international bodies. So, for example, the Centre could resource and support an aboriginal health organisation to research, draft and submit a report to the UN Committee on Economic, Social and Cultural Rights in relation to the realisation of the right to health for Indigenous people, or to lobby the UN Special Rapporteur on Health to investigate such issues.

### C *Human Rights Policy Analysis, Lobbying and Advocacy*

International human rights law can also play a significant role in the areas of policy analysis, advocacy and law reform. Although it may not confer directly enforceable rights in Australia, it does establish minimum standards by which governmental policy and action can be judged. It also evinces a commitment by Australia, before the international community, to conform to those standards.<sup>60</sup> As the OHCHR has asserted:

The human rights approach offers an explicit normative framework — that of international human rights. Underpinned by universally recognised moral values and reinforced by legal obligations, international human rights provide a compelling normative framework for the formulation of national and international policies.<sup>61</sup>

The HRLRC can advise, resource, support and assist non-profit and community organisations to analyse, measure, monitor and develop policies and practices having regard to human rights standards and principles. For example, the Centre could advise, resource and assist an organisation representing ex-offenders to lobby the Victorian Government to amend the *Equal Opportunity Act 1995* (Vic) to prohibit discrimination on the ground of ‘criminal record’ consistently with the right to non-discrimination under art 26 of the *ICCPR*.<sup>62</sup> Similarly, the HRLRC could support a tenants’ organisation to lobby for amendment of the *Residential Tenancies Act 1997* (Vic) to prohibit evictions that result in homelessness, consistent with the right to adequate housing under art 11 of the *ICESCR* and jurisprudence of the UN Committee on Economic, Social and Cultural Rights.<sup>63</sup> As a final example, the HRLRC could work with the Victorian Council of Social Service to analyse and critique a federal or state budget having regard to the relevant government’s non-derogable core and progressive human rights obligations under art 2(1) of the *ICESCR*.<sup>64</sup>

<sup>60</sup> HREOC, *Human Rights in Australia* (2005) <[http://www.hreoc.gov.au/hr\\_explained/hr\\_in\\_australia.html](http://www.hreoc.gov.au/hr_explained/hr_in_australia.html)> at 22 May 2006.

<sup>61</sup> OHCHR, *Human Rights and Poverty Reduction: A Conceptual Framework* (2004) 33.

<sup>62</sup> Above n 2.

<sup>63</sup> See Committee on Economic, Social and Cultural Rights, ‘General Comment No 4: The Right to Adequate Housing’ in *Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies*, UN Doc HRI.GEN/1/Rev.7 (12 May 2004) 19.

<sup>64</sup> UN Human Rights Committee, ‘General Comment No 31: The Nature of the General Legal Obligation Imposed on States Parties to the *Covenant*’ in *Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies*, UN Doc HRI.GEN/1/Rev.7 (12 May 2004) 192; Committee on Economic, Social and Cultural Rights, above n 57, [15]–[18].

The HRLRC will also conduct human rights policy analysis, lobbying and advocacy in its own right. In a recent submission to the Federal Corporations and Markets Advisory Committee Inquiry into Corporate Social Responsibility, for example, the HRLRC lodged a submission which argued that the UN's *Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights*<sup>65</sup> provide the most appropriate framework for the development and implementation of domestic law, policy and practice with respect to socially responsible corporate governance and conduct.

#### D *Human Rights Education, Training, Information and Awareness*

There is a very strong positive correlation between the extent to which individuals and administrative and judicial authorities in any given state are informed about the content and use of international human rights law and the extent to which human rights are respected, protected and fulfilled in that state.<sup>66</sup> Recognising that human rights protective mechanisms are unlikely to be effective unless they are well known and understood and accompanied by effective educational and normative strategies, the HRLRC will also provide and assist with education and training regarding the content, sources and use of human rights law, both in an international and domestic context. This training could be of a general nature (for example, the HRLRC could work with a community legal centre to provide training to staff or volunteers about the potential uses of international human rights law in domestic litigation) or of a more specific or contextual nature. For example, the HRLRC could provide information at a forum regarding discrimination against drug users about the right to non-discrimination under domestic and international law, and the potential redress and remedies available. On an annual basis, the HRLRC will also conduct free training for pro bono and community legal practitioners and workers, to provide a comprehensive overview of international human rights law, its use in domestic litigation and advocacy, and the use of international human rights complaints and monitoring mechanisms.

#### V DEVELOPMENTS IN THE PROMOTION AND PROTECTION OF HUMAN RIGHTS

Both internationally and domestically, the establishment of the HRLRC comes at an opportune time. Internationally, its establishment is consistent with an overall trend towards an increased interest, willingness and ability on the part of many common law courts to have regard to international human rights

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<sup>65</sup> UN Human Rights Committee, *Norms on Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights*, UN Doc E/CN.4/Sub.2/2003/12/Rev.2 (26 August 2003). For the most authoritative exposition of the draft norms, see *Commentary on the Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights*, UN Doc E/CN.4/Sub.2/2003/38/Rev.2 (26 August 2003).

<sup>66</sup> UN Human Rights Committee, 'General Comment No 3: Article 2 (Implementation at the National Level)' in *Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies*, UN Doc HRI.GEN/1/Rev.7 (12 May 2004) 126.

principles and standards, including economic and social human rights, in the development and application of domestic law.<sup>67</sup>

In South Africa, for example, the Constitutional Court had significant regard to the right to adequate housing under art 11 of the *ICESCR* in the *Grootboom Case*,<sup>68</sup> which concerned the right to adequate housing under the *South African Bill of Rights* in ch 2 of the *Constitution of South Africa* (1996). Similarly, in the case of *Minister of Health v Treatment Action Campaign (No 2)*, which concerned access to anti-retroviral drugs, the South African Constitutional Court was informed by the Committee on Economic, Social and Cultural Rights' discussion of the state's minimum core obligation to provide basic human rights to the extent permitted by its resources.<sup>69</sup> The establishment of the Southern Africa Litigation Centre in June 2005 marked the recognition of the need for the development of specialist expertise and resources to assist lawyers and advocates in Southern Africa to bring to bear the influence of international human rights on domestic law and policy. The Centre aims to provide support and assistance to lawyers litigating human rights and public interest cases and to provide training and education both to the legal profession and the judiciary with respect to human rights law and jurisprudence.<sup>70</sup> Like the HRLRC in Australia, the Southern Africa Litigation Centre, 'in partnership with local lawyers and human rights NGO's [sic], will identify the specific constitutional and human rights issues that can be most strategically litigated before the respective domestic courts'.<sup>71</sup> The lead set by South Africa has also been followed, to some degree, by superior courts in the US,<sup>72</sup> Canada<sup>73</sup> and New Zealand,<sup>74</sup> as well as the UK,<sup>75</sup> particularly following the enactment there of the *Human Rights Act 1998* (UK).

In Victoria, the establishment of the HRLRC is contemporaneous with two important developments. First, recent cases and extra-curial comments evince an increased preparedness in the Supreme Court of Victoria to hear and consider submissions on relevant international human rights law.<sup>76</sup> In a recent case concerning the capacity of the Medical Practitioners' Board to access medical records relating to a late-term abortion, contrary to the wishes of both the patient

<sup>67</sup> See, eg, Michael Kirby, 'The Impact of International Human Rights Norms: A Law Undergoing Revolution' (1995) 25 *Western Australian Law Review* 130; Michael Kirby, 'The First Ten Years of the *Bangalore Principles* on the Domestic Application of International Human Rights Norms' (Speech delivered at the NSW Bar Association, Sydney, 17 October 2005).

<sup>68</sup> *Government of the Republic of South Africa v Grootboom* [2001] 1 SALR 46, [41].

<sup>69</sup> [2002] 5 SALR 721 [26].

<sup>70</sup> Southern Africa Litigation Centre, South Africa, *Goals and Objectives* (2005) <<http://www.southernafricalitigationcenter.org/salc/about/goalsobjectives.aspx>> at 22 May 2006.

<sup>71</sup> Southern Africa Litigation Centre, South Africa, *About the Centre* (2005) <<http://www.southernafricalitigationcenter.org/salc/about/overview.aspx>> at 22 May 2006.

<sup>72</sup> See, eg, *Atkins v Virginia*, 536 US 304 (Va, 2002); *Roper v Simmons*, 543 US 551 (Mo, 2005).

<sup>73</sup> See, eg, *Baker v Canada (Minister of Citizenship and Immigration)* [1999] 2 SCR 817.

<sup>74</sup> See, eg, *Tavita v Minister for Immigration* [1994] 2 NZLR 257.

<sup>75</sup> See, eg, *A v Secretary of State for the Home Department* [2005] 2 AC 68.

<sup>76</sup> See, eg, Justice Chris Maxwell, 'Human Rights: A View from the Bench' (Speech delivered at the Annual General Meeting of the Administrative Law and Human Rights Section of the Law Institute of Victoria, Melbourne, Australia, 23 October 2005).

and the treating doctors, the Court of Appeal directed the parties to make submissions as to the relevance of the international human rights to health and privacy to the interpretation of privacy legislation and the development of the common law with respect to 'public interest immunity'.<sup>77</sup> Further, in his judgment, the President of the Court of Appeal articulated three important principles with respect to the Supreme Court of Victoria's approach to, and receptiveness of, international human rights law argumentation:

1. The Court will encourage practitioners to develop human rights-based arguments where relevant to the question before the Court.
2. Practitioners should be alert to the availability of such arguments, and should not be hesitant to advance them where relevant.
3. Since the development of an Australian jurisprudence drawing on international human rights law is in its early stages, further progress will necessarily involve judges and practitioners working together to develop a common expertise.<sup>78</sup>

In another recent case pertaining to an application for bail made by a prisoner, the Victorian Court of Appeal stated in obiter that the state has an obligation to ensure adequate and appropriate medical care for any person in custody. Importantly, the Court also stated that there is a range of international human rights instruments relevant to that which constitutes appropriate treatment for persons in custody, including art 10 of the *ICCPR*, art 2 of the *ICESCR*, the *Standard Minimum Rules for the Treatment of Prisoners* and the *Basic Principles for the Treatment of Prisoners*.<sup>79</sup>

The second important development is the announcement on 20 December 2005 by the Victorian Attorney-General, the Hon Rob Hulls MP, that the Victorian Government proposes to enact a Charter of Human Rights and Responsibilities in 2006.<sup>80</sup> As is the case with the *Human Rights Act 2004* (ACT) in the Australian Capital Territory, the Charter will take the form of an ordinary Act of Parliament and will enshrine the civil and political rights contained in the *ICCPR*. It will not confer directly enforceable rights but will instead promote a 'dialogical' approach whereby human rights are used as a tool of policy and program analysis and design, an instrument of statutory interpretation, and a guide to the operation and function of 'public authorities'.<sup>81</sup> The announcement follows a process of community consultations undertaken between June and December 2005 by an independent Victorian Human Rights Consultation

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<sup>77</sup> *Royal Women's Hospital v Medical Practitioners Board of Victoria* [2006] VSCA 85 (Unreported, Warren CJ, Maxwell P and Charles JA, 20 April 2006) [71] (Maxwell P).

<sup>78</sup> *Ibid.*

<sup>79</sup> *Re Rigoli* [2005] VSCA 325 (Unreported, Maxwell P and Charles JA, 16 December 2005).

<sup>80</sup> The Hon Rob Hulls MP, 'Victoria Leads the Way on Human Rights' (Press Release, 20 December 2005).

<sup>81</sup> See generally Draft Charter of Human Rights and Responsibilities Act 2006 (Vic), annexed to Human Rights Consultation Committee, above n 9.

Committee comprising Professor George Williams, Rhonda Galbally, Andrew Gaze and Haddon Storey QC, regarding the adequacy of protections in Victoria and the need for law reform to better protect and promote human rights.<sup>82</sup> In addition to committing to the Committee's key recommendation, the Government is also contemplating implementing Recommendation 32 of the Committee's Report, which provides that the Victorian Government should consider how best to implement appropriate and accessible advocacy support as part of its commitment to the Charter. This recommendation recognises that, as discussed above, the availability of information, advice, assistance and advocacy about human rights must be an integral component of the implementation and realisation of such rights. Moreover, it is particularly important that human rights advocacy and legal services be available to marginalised and disadvantaged individuals and groups, many of whom are vulnerable to human rights violations and for whom ordinary legal services are not accessible. As Jenny Park, a homeless woman, who is quoted in the Committee's Report said, 'it is no good having a proper law without a proper lawyer'.<sup>83</sup> The recommendation is also consistent with research conducted by the Institute for Public Policy Research regarding factors that have contributed to implementation successes and failures in the UK in respect of the *Human Rights Act 1998* (UK).<sup>84</sup>

## VI CONCLUSION

In its General Comment No 31, the HRC stated that the existence and activities of human rights organisations, particularly those that use international human rights law as a framework for operation, can contribute towards developing a human rights-respecting culture.<sup>85</sup>

It is clear that the provision and availability of legal services to monitor, assess and advocate the implementation of human rights, to take steps to ensure that they are respected, protected and fulfilled, and to seek redress and remedies for violations, are important and necessary components of federal and state obligations in relation to the realisation of these rights.<sup>86</sup> Particularly in the absence of a constitutionally or legislatively entrenched bill of rights, human rights-focused legal services can and should play a crucial role in developing the

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<sup>82</sup> See generally Human Rights Consultation Committee, above n 9.

<sup>83</sup> *Ibid* 129.

<sup>84</sup> Frances Butler, *Improving Public Services: Using a Human Rights Approach — Strategies for Implementation of the Human Rights Act within Public Authorities* (2005); Frances Butler, *Human Rights: Who Needs Them? Using Human Rights in the Voluntary Sector* (2004).

<sup>85</sup> UN Human Rights Committee, 'General Comment No 31', above n 64, 196. See also ACT Bill of Rights Consultative Committee, *Towards an ACT Human Rights Act: Report of the ACT Bill of Rights Consultative Committee* (2003) 17–41.

<sup>86</sup> See *ICCPR*, above n 2, art 14.

institutional framework necessary for the realisation of human rights and the full implementation of federal and state obligations under international human rights law.<sup>87</sup>

The establishment and operation of the HRLRC represents an important and exciting development in the implementation and enforcement of human rights in Victoria. The Centre will significantly enhance sectoral capacity to undertake human rights litigation and advocacy and has the potential to permit progressive development of a domestic human rights jurisprudence in Victoria which, in turn, will lead to a much needed rapprochement with international human rights law.

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<sup>87</sup> UN Human Rights Committee, 'General Comment No 31', above n 64, 196. See also Norberto Bobbio, *The Age of Rights* (1996) 26.