

The Hon. Jaclyn Symes  
Attorney-General  
Level 36, 121 Exhibition Street,  
Melbourne, VIC 3000

**By email only:** [jaclyn.symes@parliament.vic.gov.au](mailto:jaclyn.symes@parliament.vic.gov.au)

Dear Attorney-General,

**Re: Human Rights Legislative and Charter Review Reform in Victoria**

The Law Institute of Victoria ('LIV') congratulates you on your appointment as Attorney-General and we look forward to working with you throughout your term.

We write in relation to the *Charter of Human Rights and Responsibilities Act 2006 (Vic)* ('the Charter') in 2020. During the COVID-19 pandemic the central role that Victoria's human rights legislation played has been a fundamental tenant of ensuring accountable, rights compatible decision making and democratic processes are upheld in times of emergency.

To this end, the LIV writes to strongly encourage the Attorney-General to place reforming the Charter as a priority for your legislative and policy agenda next year.

The Charter has been a critical piece of legislation this year. It has provided a framework for balancing competing rights when implementing the Chief Health Officer's directions in a time of emergency. It has secured confidence in government decision making by ensuring any restrictions on rights were proportionate and reasonably necessary. It has provided a decision making framework for accountable and transparent consideration of the impact of unprecedented health measures to be considered.

The LIV notes the case of *Loiello v Giles* [2020] VSC 722 which demonstrates how the Charter operated as a successful decision-making framework. In this case, the Court ruled that the curfew in place during Victoria's Stage 4 Lockdown was proportionate to achieve the public health response. The Charter allowed for a careful and appropriate analysis of competing rights that led to a strong, accountable public decision being upheld by the Court.<sup>1</sup>

The Charter has also been critical to the recent Royal Commission into the Management of Police Informants. The Royal Commission report has made several recommendations to ensure that Victoria Police's policies and protocols are consistent with the Charter.<sup>2</sup> The recommendations reinforce the role the Charter plays as a check on the power of public authorities and a means of ensuring compliance with, and the appropriate monitor of, human rights impacts.

---

<sup>1</sup>*Loiello v Giles* [2020] VSC 722.

<sup>2</sup>*Royal Commission into Management of Police Informants: Report and Recommendations* (Final Report, November 2020) vol 2,3,4. (Recommendations: 7, 21, 30, 34, 90).

We note that as far back as July 2016, the Victorian Government committed to supporting 45 of the 52 recommendations in the 2015 review of the Charter.<sup>3</sup> These recommendations remain timely and relevant. Whilst we applaud the implementation of some of these recommendations, the LIV understands that many of the reforms recommended in the Review of the Charter and the subsequent draft bill have not yet been implemented.<sup>4</sup> The Committee would welcome the opportunity to discuss with you how a number of these recommendations remain timely and important in the current legislative and policy space.

The LIV Human Rights Committee would welcome the opportunity to consult and meet with your office in the new year with a view to providing further evidence-based arguments and data in support of our position that reforming Victoria's Human Rights laws remains an important priority. The Charter has the ability to work across many areas of public policy and law to ensure best practice decision-making, accountability and that Victoria continues to promote and protect the fundamental rights and freedoms of all Victorians.

Finally, placing the implementation of the Charter review, including the legislative review, would complement the significant work of your office to date supporting human rights.

We kindly suggest that you consider our request for further consultation in this regard. We look forward to hearing from you.

Yours sincerely,

Sam Pandya

**President**

**Law Institute of Victoria**

---

<sup>3</sup> Department of Justice and Community Safety, Government response to the 2015 review of the Charter of Human Rights and Responsibilities Act <https://www.justice.vic.gov.au/government-response-to-the-2015-review-of-the-charter-of-human-rights-and-responsibilities-act>.

<sup>4</sup>Victorian Equal Opportunity and Human Rights Commission, *2018 report on the Operation of the Charter of Human Rights and Responsibilities* (Report, October 2019) 83. [https://www.humanrights.vic.gov.au/static/04c2141ef817b4fd15843ac72d9e1dd1/Resource-Charter\\_Report-2018.pdf](https://www.humanrights.vic.gov.au/static/04c2141ef817b4fd15843ac72d9e1dd1/Resource-Charter_Report-2018.pdf) 83.