

Landmark conference looks at the development of human rights in Victoria

By Julie Debeljak

Victoria's courts have not yet used the *Charter of Human Rights and Responsibilities Act* to fully address problems faced by the state's prison population, according to the Centre's Associate Director, Julie Debeljak.

Dr Debeljak was speaking at a gathering of local and international experts on human rights hosted by the Monash Law Faculty.

In early August, the Faculty of Law jointly joined with the Supreme Court of Victoria, the Human Rights Law Centre, the Judicial College of Law and the Victorian Law Foundation for a conference called *Human Rights under the Charter: The Development of Human Rights in Victoria*. The conference focused on aspects of the *Charter of Human Rights and Responsibilities*, particularly the obligation to interpret statutes compatibly with human rights, the human rights obligations of public authorities, proportionality analysis, and the impact of the *Charter* on some discrete practise areas.

Castan Centre Deputy Director Julie Debeljak's paper focused on the impact of the *Charter* in the context of prisons – in particular, the treatment of prisoners and their conditions of detention. Julie examined the high point of *Charter* jurisprudence, which concerned the continuation of a prisoner's IVF treatment. The plaintiff secured her right to continue IVF treatment for her infertility whilst imprisoned, but this right did not extend to giving Ms Castle's free choice of a service provider, and her access to treatment was granted on a visit by visit basis. Although this case is considered the high point, the case was not strictly decided on *Charter* grounds (rather it was decided on ordinary statutory interpretation principles), and Julie criticised the reluctance of Justice Emerton to indirectly recognise rights that are not directly recognised in the *Charter*, and her Honour's approach to restricting rights.

Julie also considered the low point of the *Charter* jurisprudence, which was illustrated by cases where the conditions of detention have led to a reduction in sentence. In a series of cases concerning reducing a prison sentence because of the harsh conditions in which the accused is detained, the court recognised the potential for harm from the conditions of detention, especially noting the extent of the deprivation and the risk to mental health. However, even though the judicial reasoning indicated a potential breach of the *Charter* right to be free from torture and cruel, inhuman and degrading punishment, as well as the *Charter* right to be treated humanely when detained, the judge did not mention the *Charter* at all. This case represents a "missed opportunity" to avail prisoners of the benefit of rights jurisprudence.

Julie concluded by identifying three themes arising from the prisoner's rights cases: first, that the obligation to interpret statutes compatibly with human rights (where possible) has had little impact in the area of prisoner's rights; secondly, that to ensure that prisoners are in prison *as* punishment and not for punishment, greater focus must be placed on fully and transparently articulating the justifications for limiting the rights of prisoners (other than the right to liberty); and thirdly, that the distinct under-utilisation of the *Charter* by prisoners must be addressed. By way of conclusion, Julie suggests that practitioners and the judiciary pay closer attention to arguments about proportionality, and view the rights-compatible interpretation provision as a remedy for rights violations.

[A selection of papers are now published in Volume 2 of the Judicial College of Victoria Online Journal](#)

Closing the gap on Indigenous birth registrations

Most people take it for granted that they can prove who they are. If necessary, they can obtain a birth certificate relatively easily. However, this is not the case for many Indigenous Australians. In today's world, this can cause a host of problems when someone wants to enrol in education, get a driver's licence, open a bank account, travel overseas, start a business, get a job in the public service, or even get a tax file number.

The Castan Centre, Plan International Australia and UNICEF Australia held a symposium on Tuesday 2 December with a broad range of experts who addressed this issue and explored ways to practically and progressively ensure that the births of ALL Australians are registered.

There was a particular focus on barriers to birth registration encountered by Indigenous Australians and Cultural and Linguistically

Diverse (CALD) communities. The symposium enabled:

- The sharing of best practices in Australia and globally;
- the identification of opportunities to "scale up" existing local solutions;
- A discussion of the role that civil society, governments (state and federal) and Indigenous and CALD communities can play in overcoming birth registration barriers.
- An exploration of whether a consortium should be created to advocate for universal birth registration across Australia.

[For more information on this issue visit the Castan Centre Indigenous Birth Registration project website](#)