



The rights agenda

By Richard Faulks

As I take on the role of National President, many challenges face not only the legal profession, but all Australians.

The shoes I seek to fill are, indeed, large ones. The previous National Presidents of this organisation have all been leading advocates from across Australia. The quality of their lobbying and written submissions and the work they have done for our profession and individual Australians has been outstanding. I believe a common thread is the desire to fight for the rights of individual Australians and the lawyers who represent them. This is a concept I can readily understand and support.

Never before has the need to fight been so important. At the 2005 NSW State Conference, Peter Cashman spoke of the need for a 'civil rights watchdog', stressing the failure of governments and others to take into account 'unintended adverse consequences of certain reforms'. Stephen Argument, Special Counsel for Phillips Fox, replied that we already had an appropriate check in place in the form of legislative scrutiny committees. He maintained that such committees were well regarded and operated in a 'bipartisan fashion'. Tellingly, he then went on to stress how in the ACT all legislation must be measured against the standards required by the *Human*

Rights Act 2004. Therein lies the rub. Without such a safeguard, there is really nothing to ensure that legislation takes account of those fundamental human rights.

We need an independent judiciary that can deliver justice by ensuring that laws do not trample on rights which all Australians should hold as important and indispensable. As Jon Stanhope, Chief Minister of the ACT, said when speaking of his *Human Rights Act*: 'In the past few years, the Federal Government has acted in ways that the former President of the Human Rights and Equal Opportunity Commission, Sir Ronald Wilson, described as a retreat by Australia from the observance of international human rights standards... I am mindful of (the Act) being a light to my colleagues in other states so I want desperately for it to succeed.'

Similarly, in a paper delivered to the National Press Club on 3 March 2004, ACT Chief Justice Terence Higgins stressed the importance of the independence of the judiciary and the need for human rights legislation. He said, 'The fundamental rationale of an independent judiciary is to render individual justice to all people according to the law. In so doing, it provides a crucial means by which rights may be enforced independent of the political process. It is founded on the understanding that there are groups

or individuals in society who may not have political power, and who some other group in society and, indeed, even the majority of people through their representatives, may wish to oppress, but whose rights must nonetheless be respected.'

At a time when detainees at Baxter have been the subject of 'culpable neglect' (Justice Paul Finn, 5 May 2005), when the rights of the injured have been curtailed in almost all jurisdictions, and when the fundamental rights of the accused in criminal matters is under attack (Tom Percy QC, 21 October 2004), it is clearly time for us to take up the fight to ensure that such human rights are properly restored and preserved. ■

Richard Faulks is president of the Australian Lawyers Alliance and managing partner of Stacks with Snedden Hall and Gallop in Canberra. **PHONE** (02) 6201 8900
EMAIL rfaulks@stackshg.com.au