a dispersed collection of disadvantaged communities or a minority group with special needs. The unique status of Indigenous peoples should be recognised in the *Constitution* as a prerequisite for a genuine process of reconciliation and the promotion of a human rights culture. In addition, and at the same time, constitutional change will be necessary to ensure that recognition, once it comes, is not whittled back in the eternal swings and roundabouts of politics.

I have called on the federal government to consider the Canadian constitutional precedent of recognising and affirming Aboriginal rights in section 35 of the Canadian Constitution. Such a provision in the Australian *Constitution* might read as follows: 'The pre-existing rights of Aboriginal peoples in Australia are hereby recognised and affirmed, consistent with international human rights standards'.

I strongly support the introduction of an Australian Charter of Rights because it provides protection to all Australians. I also think a Charter of Rights would provide a convivial environment to progress the struggle of Indigenous people towards the more substantive rights pertaining to our status as a people.

The issues I raise may appear to some to be essentially 'Australian'. One of the great benefits of bringing people like our esteemed guest, Gay McDougall, to Australia is that we are provided with a broader perspective that sees these domestic issues as part of global trends and patterns. A few years ago many of us turned on the evening news to become spectators of a race riot that was taking place in a local municipality of Sydney but could have been taking place in London, Paris or anywhere in Europe. The underlying forces of discontent and conflict being played out in Cronulla in 2005 were not that different to those present in the social discontent manifesting throughout the world then and today.

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LAW REFORM

Family violence in Victoria: a recent history

RENATA ALEXANDER

After a fairly slow start compared with some other states, Victoria tackled family violence with the enactment of the *Crimes (Family Violence) Act 1987* (Vic) in 1987. The last two decades have seen significant changes to that statute and the last five to six years have reflected a commitment to an integrated approach to family violence, adopting various strategies and reforms at different levels within the government, public and community sectors.[1]

Family violence was one of the main platforms in the *Women's Safety Strategy 2002–2007*, leading to Victorian government initiated reforms aimed at providing safety measures for women and children and making men accountable for their violence. An initial amount of $35.1 million over four years was allocated in 2005 towards that strategy.

In August 2004, Victoria Police released a new code of practice for the investigation of family violence. A new model of police procedures for dealing with family violence has been introduced that includes:

- police initiating far more complaints on behalf of victims or aggrieved family members;
- greater use of the complaint and warrant procedure;
- referrals to community-based services; and
- the creation of new police roles such as Family Violence Advisers and Family Violence Liaison Officers.

In 2006, the *Crimes (Family Violence) Act 1987* (Vic) was amended to give police holding powers in addition to their other powers to enter and search premises.[2]

The Family Violence Court Division (FVCD) was established under the *Magistrates Court (Family Violence) Act 2004* (Vic) in 2004. In June 2005, a two-year pilot program commenced with specialist Family Violence Courts in Heidelberg and Ballarat. That pilot has continued. In addition, the Specialist Family Violence Service (SFVS) commenced late in 2005 and now operates at Melbourne, Sunshine and Frankston with staff and resources specifically catering to family violence cases.

There have been other campaigns and reforms away from the courts and police. Victorian Health Promotion Foundation and the AFL have run high-profile education and awareness-raising campaigns. Victoria Legal Aid and community legal centres have provided more lawyers and resources to court work and education and outreach services. And the Departments of Justice, Human Services, and Planning and Community Development have each released various protocols and programs aimed at victims and perpetrators.

Also in 2004 — it was a big year — the Victorian Law Reform Commission (VLRC) announced a detailed review of family violence laws. Its final report, *Review of*

REFERENCES

1. For a detailed history, see Australian Domestic & Family Violence Clearinghouse, *Newsletter*, No 3 (April, 2008), 4-7, <www.adfvc.unsw.edu.au/PDF%20files/Newsletter_32.pdf> at 6 June 2008.

2. Amended by the *Crimes (Family Violence) (Holding Powers) Act 2006* (Vic).

Family Violence Laws[3] was published in March 2006, and focused on the intervention order system. The report made over 150 recommendations about the safety of victims, court orders, safe and accessible courts and improved responses and outcomes for victims.

In 2007, in response to the VLRC report, the Victorian government released a draft Family Violence Bill 2007 (Vic) (over 150 pages) and an accompanying Discussion Paper (98 pages).[4] There was, unfortunately, little time for responses.[5] The final (12th) draft, called the Family Violence Bill 2008 (Vic) (of 188 pages), was released in April 2008 and contains 284 sections. This compares with the current *Crimes (Family Violence) Act 1987* (Vic) with 29 sections. Another shorter Discussion Paper accompanies the revised draft.[6] The Bill is expected to be passed by Parliament in the next few months and take effect, perhaps, from November 2008. Introduced in the last week of June 2008 and second read, it has been re-named the Family Violence Protection Bill and is now publicly available on the Parliamentary website. There are numerous changes including:

- that the 'intervention order' will be replaced by the 'family violence intervention order';
- a preamble stating that family violence is mainly perpetrated by men against women;
- stated purpose and principles underlying the new statute;
- broader definitions of 'family member' and 'family violence' (and examples of such behaviour);
- expanded conditions and restrictions including specific 'exclusion from residence' orders;
- new provisions regarding counselling for respondents/perpetrators;
- procedures preventing self-represented respondents from personally cross-examining their alleged victims in court;
- new sections on vexatious litigants; and
- new police-issued 'family violence safety notices' pending court-ordered intervention orders.

Part 22 of the Bill incorporates a separate Act providing for stalking intervention orders.[7]

Most recently, in April 2008 the Attorney-General wrote to the Sentencing Advisory Council (SAC) asking for independent, expert advice on the appropriate penalties for three offences contained in the Family Violence Bill 2008 (Vic) — breach of a family violence intervention order, breach of a stalking intervention order and breach of a family violence safety notice. The SAC released a consultation paper, and called for responses; their final report was due to be published in late June 2008.

As stated at the outset, there have been numerous changes in family violence over the past few years at state level. Changes at federal level move far more slowly.

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3. Victorian Law Reform Commission, *Review of Family Violence Laws*, Report (2006), <http://www.lawreform.vic.gov.au/wps/wcm/connect/Law+Reform/resources/file/eb920d475ed43ad/Review%20of%20Family%20Violence%20Laws%20Report.pdf> at 1 June 2008.

4. Victoria, *Family Violence Bill 2007: Discussion Paper* (September, 2007).

5. A detailed collaborative response was submitted by the Victorian Family Justice Reform Campaign which comprised the Federation of Community Legal Centres and Domestic Violence Victoria as well as other human rights, welfare and women's agencies and networks, established in 2006.

6. Victoria, *Family Violence Bill 2008: Revised Draft Discussion Paper* (April, 2008).

7. See *Stalking Intervention Order Act 2008* (Vic).

'*Interpreting Vicarious Liability* ...' continued from page 79

by the way in which the investigation into her complaints showed 'an indifference and even a disinclination on the part of all those involved'.[51]

The interpretation in *Lee's case* is indicative of an increasingly broad approach by the Federal Court and Federal Magistrates Court in assigning vicarious liability. As Table 1 shows, of the 26 Commonwealth cases which included vicarious liability, the complaint against the employer was upheld in 16. In seven of the 10 in which the employer was not found liable, it was held that sexual harassment had not taken place. In only two of the 26 vicarious liability cases were there findings that there was no liability by an employer for harassment that had taken place (*McAlister v SEQ Aboriginal Corporation* and *Wattle v Kirkland*[52]). Thus, although the Department of Defence may appeal in *Lee's case*, that decision seems to be a solid application of a series of decisions made in this country and overseas. It is therefore apparent that, for the purpose of s 106(1) of the SDA, the connection between the act of harassment and the employee's employment will be evaluated widely and in a common sense way.[53]

It is also clear from this survey that despite some variation in interpretation of 'reasonable steps', the case law does show that employers should have a comprehensive sexual harassment policy with a complaints process in place. Employees need to be made aware of the procedure and which behaviours in the workplace are not acceptable and will be considered sexual harassment. It is clear that in the absence of such steps, the courts will be more likely to make substantial awards in favour of complainants. As Ronalds and Pepper observe:

> Usually it is in the complainant's interests to pursue their complaint against the employer instead of, or as well as, an individual employee as the employer is more likely to have funds available to meet any damages award made.[54]

Aside from broadening 'in connection with employment', *Lee's case* also sets a new benchmark for compensation. This case may act as a catalyst for employers to work towards promoting harassment-free workplaces. Through the judgment in that case and in others discussed above, the courts have recognised that whether in the workplace, on a business trip or socialising with colleagues, the victims of harassment and other sexual abuse were simply not 'asking for it'. It is time for employers to take heed and recognise this too. It is likely that the decisions made by our state and territory discrimination commissions and appropriate Commonwealth courts, culminating in *Lee's case*, will serve as a strong warning to employers that they must be vigilant in taking all 'reasonable steps' to discourage acts of sexual harassment in the workplace.

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51. Ibid [158].

52. [2001] FMCA 66.

53. In *March v Stramare* (1991) 171 CLR 506, 515 (Mason CJ) it was held that in most cases the issue of whether one event caused another to happen is 'one of fact and, as such, to be resolved by the application of commonsense'.

54. Ronalds and Pepper, above n 3, 146.