

# PUBLIC LAW REVIEW

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ARTICLES

**Federal treaty jurisdiction: A belated reply to Mark Leeming SC** – *Oliver Jones*

This article revisits the 1999 comment by Mark Leeming SC on federal treaty jurisdiction. By s 75(i) of the *Constitution*, the jurisdiction consists of matters arising under any treaty. Where those matters do so directly, s 38(a) of the *Judiciary Act 1903* (Cth) makes the jurisdiction largely exclusive to the High Court. Mr Leeming concluded that s 38(a) took its content from the handful of treaties that apply without implementing legislation. The author disagrees with this conclusion. Although they take effect without implementing legislation, Mr Leeming's treaties do not independently bring rights and obligations to the domestic plane. They are instead adopted by a domestic legal instrument or rule. Accordingly, they fall short of the directness that s 38(a) requires. The author proposes that s 75(i) and s 38(a) instead enable the High Court to make declarations on whether, in the particular circumstances of an individual or entity, the Commonwealth has breached its obligations under an unincorporated treaty regarding the rights of persons within Australian territory. .... 94

**Avoiding tragedy: Would the decision of the High Court in *Al-Kateb* have been any different if Australia had a Bill of Rights like Victoria?** – *Alice Rolls*

From 1 January 2008, courts and tribunals in Victoria will be required by s 32 of the *Charter of Human Rights and Responsibilities 2006* (Vic) to interpret legislation in a way that is compatible with human rights, so far as it is possible to do so consistently with the legislation's purpose. This article considers how similar interpretative provisions have been applied in the United Kingdom, New Zealand and the Australian Capital Territory, and the extent to which this comparative jurisprudence might be relevant to the Victorian legislation. The article draws on the High Court decision in *Al-Kateb v Godwin* (2004) 219 CLR 562 to help demonstrate the potentially significant effect the Charter may have on judicial decision making in Victoria. .... 119

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Editorial inquiries:  
**Tel: (02) 8587 7000**

**HEAD OFFICE**  
100 Harris Street PYRMONT NSW 2009  
Tel: (02) 8587 7000 Fax: (02) 8587 7100



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