

# Submission to the Scrutiny of Acts and Regulation Committee

## Inquiry into the Victorian Charter of Human Rights and Responsibilities Act 2006

June 2011

Submission prepared by  
Western Region Health Centre and Women's Health West on behalf of:



Mr Edward O'Donohue, MLC  
Chairperson  
Scrutiny of Acts and Regulations Committee  
Parliament House  
Spring Street  
Melbourne, VIC 3002

10<sup>th</sup> June 2011

Dear Mr O'Donohue

**Submission to the Scrutiny of Acts and Regulation Committee  
Inquiry into the Victorian Charter of Human Rights and Responsibilities Act 2006**

## **1 Introduction**

1.1 This submission is presented to the Scrutiny of Acts and Regulation Committee *Inquiry into the Charter of Human Rights and Responsibilities* by the following health organisations of the North and West Metropolitan Region of Melbourne:

- Banyule Community Health
- Djerriwarrh Health Services
- Dianella Community Health
- HealthWest Primary Care Partnership
- Nillumbik Community Health Service
- North Yarra Community Health
- Sunbury Community Health Centre
- Western Region Health Centre
- Women's Health In the North
- Women's Health West

1.2 We welcome the opportunity to respond to this important consultation. As providers of a wide range of health services and programs to some of the most marginalised members of the community, we share a vision for a society in which health is understood in its broadest sense, and where individual and community wellbeing are located within a social model of health that accounts for economic, social, environmental and cultural context.

1.3 We are committed to fostering an environment in which all people and communities are empowered to engage with their own health and wellbeing, and where they are enabled to participate in legislative, policy and service environments that proactively consider and respond to this broader social context. We believe human rights frameworks provide a crucial vehicle towards reaching that goal.

1.4 This submission provides a background overview of each of the contributing organisations, and responds to a selection of the SARC Inquiry terms of reference, including reference to case examples

where possible. Given each of the contributing organisations focuses on health and wellbeing within a social determinants model, this submission is framed through a health lens.

- 1.5 We would be pleased to provide further information as required, or to present evidence before the Committee at any future public hearing.

Yours Sincerely,



Ms Lyn Morgain  
Chief Executive Officer  
Western Region Health Centre



Dr Robyn Gregory  
Chief Executive Officer  
Women's Health West



Ms Vera Boston  
Chief Executive Officer  
North Yarra Community Health



Ms Jenny Reimers  
Executive Officer (Acting)  
HealthWest PCP



Mr Jim Pasinis  
Chief Executive Officer  
Banyule Community Health



Mr Bruce Marsh, OAM  
Chief Executive  
Djerriwarrh Health Services



Mr Mark Sullivan  
Chief Executive Officer  
Dianella Community Health



Ms Helen Riseborough  
Executive Director  
Women's Health In the North



Ms Denese Unicomb  
Acting Chief Executive Officer  
Nillumbik Community Health Service



Mr Phillip Ripper  
Chief Executive Officer  
Sunbury Community Health Centre

## 2 About the contributing organisations

### 2.1 Banyule Community Health (BCH)

BCH delivers community health services to the local government area of Banyule and beyond in north-east metropolitan Melbourne. The organisation delivers primary health care and community-based services that include general practice, counselling (drug and alcohol, gambling, financial, general), ambulatory care, chronic disease management, allied health and health promotion.

BCH promotes a multidisciplinary approach to community health through team work and cooperation with other health, welfare and community providers. It aims to empower community members to participate in planning, management and delivery of services, and is responsive to needs through continuing consultation, research, planning and evaluation.

### 2.2 Djerriwarrh Health Services

Djerriwarrh Health Services was formed in 1998 as a result of the amalgamation of the Bacchus Marsh and Melton Memorial Hospital, Grant Lodge, the Bacchus Marsh Community Health Centre and the Melton Community Health Centre. Since amalgamation, the organisation has also opened an ambulatory care service at Melton and a Community Health Centre at Caroline Springs.

Djerriwarrh Health Services provides a fully integrated approach to health care, spanning the primary, ambulatory, acute, and aged sectors. The Organisation services Melton and Moorabool Shires which are located in Melbourne's outer western metropolitan area and the eastern edge of the Grampians Region.

### 2.3 Dianella Community Health (DCH)

DCH has provided community health services in the City of Hume for in excess of 30 years and works with the local community to address health and social disadvantage. It employs a service model which empowers health consumers through prevention and care strategies, integrates care with the consumer's lifestyle and community in which they live, and addresses the social determinants of health through partnership activity with other local providers.

DCH operates in a municipality which experiences significant disadvantage as measured by the Index of Relative Socio-Economic Disadvantage. It is the 4<sup>th</sup> most disadvantaged municipality in metropolitan Melbourne and has three (Dallas, Broadmeadows and Campbellfield) of the 10 lowest ranked suburbs in metro Melbourne. It is also one of the most culturally, linguistically and socio economically diverse communities in Victoria.

DCH is committed to improving life outcomes for the community of Hume and employs a range of health and wellbeing professionals to promote optimum health. These include GPs, dental health services, a range of allied health professionals, specialist paediatricians, programs for children with disabilities, and a range of mental health programs.

### 2.4 HealthWest Primary Partnership

HealthWest Partnership is a strategic alliance between WestBay Alliance and Brimbank Melton Primary Care Partnership and works to support and improve the planning, coordination and delivery of health and wellbeing services across Melbourne's western suburbs. It is a member-based organization that currently has twenty-five members, including:

- Australian Community Centre for Diabetes
- Australian - Multicultural Community Services

- Australian Vietnamese Women's Association
- Baker IDI Heart and Diabetes Institute
- Brimbank City Council
- Carers Victoria
- Djerriwarrh Health Services
- Hobsons Bay City Council
- ISIS Primary Care
- Maribyrnong City Council
- North Western Mental Health (Melbourne Health)
- Melton Shire Council
- Mercy Health
- Migrant Resource Centre North West Region
- MIND
- Multiple Sclerosis Australia
- Norwood Association Inc.
- PivotWest
- Royal District Nursing Service
- Western Health
- Western Region Health Centre Ltd
- Western Suburbs Indigenous Gathering Place Association
- Westgate General Practice Network
- Women's Health West
- Wyndham City Council

#### 2.5 **Nillumbik Community Health Service (NCHS)**

NCHS is a quality accredited, non-profit health service delivering prevention, early intervention, service co-ordination, treatment and support services to improve the physical, psychological and social well being of people in the Nillumbik community and surrounding areas.

The service operates with an independent Board of Directors and is funded from a variety of sources including Federal, State and Local Government.

NCHS provides a wide range of services including maternal and child health, allied health, counselling, planned activity groups, case management services, oral health, community development, health promotion and service co-ordination. It employs over 150 staff operating across numerous locations within the Shire of Nillumbik in Northeast Melbourne.

#### 2.6 **North Yarra Community Health (NYCH)**

NYCH dates back to 1869 when its predecessor operated as Singleton's Free Medical Mission Dispensary to the poor of Collingwood, Fitzroy and rural districts. Today it continues to deliver primary health services in Yarra and Melbourne to those with high and complex needs, particularly those with chronic conditions, mental illnesses, the homeless, newly arrived migrants and refugees, women who experience family violence, those recently released from prison, people whose lives are affected by illicit drug use, the local "Parkie" (Aboriginal) community, residents of the local high rise estates and residents of public and / or social housing in general.

NYCH employs a broad range of practitioners working in multidisciplinary teams with identified populations, including GPs, nurses, physiotherapists, podiatrists, dieticians, occupational therapists, midwives, speech pathologists, social workers, pharmacists, mental health workers, drug & alcohol workers, psychiatric nurses, community development workers, Aboriginal support workers as well as Health Promotion practitioners and project workers of various kinds.

NYCH has a strong and ongoing commitment to community participation, to empowering both individuals and communities, and to promoting social connectedness through a variety of targeted programs.

#### 2.7 **Sunbury Community Health Centre (SCHC)**

SCHC has been providing services to the Sunbury and the surrounding community for over thirty years. It provides a comprehensive and diverse range of programs and health promotion/education opportunities including community health, integrated family services, comprehensive drug and alcohol services, youth counselling and outreach services, home and community care, health promotion, Kids-

life!, family violence, early intervention, emergency relief, financial counselling family day care, specialist children’s services, and adult, school, pre-school and youth dental.

While Sunbury retains a sense of a rural community at 38km northwest of Melbourne, it falls within a designated growth corridor and the population is rapidly increasing, particularly the number of young families.

## 2.8 **Western Region Health Centre (WRHC)**

The WRHC commenced operation in 1964 as the Trade Union Clinic and Research Centre to provide free health services to the working people of the western suburbs. Today WRHC employs over 350 staff to deliver a range of primary care services to the community from fourteen sites across the local government areas of Maribyrnong, Wyndham, Melton, Brimbank and Hume.

Services delivered by WRHC include specialist and general practice medical, dental, allied health (including podiatry, physiotherapy, dietetics, speech and occupational therapy), counselling, chronic disease early intervention, refugee and Aboriginal health, outreach, community mental health, health promotion and alcohol and drug services.

The Centre is committed to improving the health and wellbeing of the people who live and work in the Western Region by providing an accessible range of comprehensive, high quality and integrated health and welfare services.

## 2.9 **Women’s Health In the North (WHIN)**

WHIN is a health promotion organization in the northern suburbs of Melbourne. It aims to strengthen women’s health and wellbeing, with a strategic focus on preventing violence against women, sexual and reproductive rights, economic participation, and more recently, environmental justice and the impact of climate change on women. WHIN offers a range of programs and training, as well as research and advocacy across these four priority areas.

## 2.10 **Women’s Health West**

Women’s Health West is the women’s health service for the western metropolitan subregion of Melbourne, Victoria. Established in 1988, its services include health promotion, research and development and advocacy around women’s health, safety and wellbeing. Since 1994, the agency has also hosted the subregion’s largest family violence support and prevention program.

Women’s Health West is committed to reducing inequities in health that arise from the social, economic and environmental determinants of health. These determinants are experienced differently by women and men. By incorporating a gendered approach to health promotion work that focuses on women, interventions to reduce inequality and improve health outcomes will be more effective and equitable.

*“Footscray is a big mixed barrel. We’ve got to live next door to people, to connect and understand each other. We are human first. We have value and we have something to give.”*

Service User  
Healthworks Primary NSP  
Western Region Health Centre

### 3 About this submission

- 3.1 The submitting agencies strongly believe that a community in which the basic human rights principles of freedom, respect, equality and dignity are culturally embedded is a community in which all members are able to participate and attain their greatest potential without fear of discrimination, violence, harassment and other forms of unfair treatment.
- 3.2 We recognise that Victoria enjoys a relatively robust democracy that promotes and protects a range of human rights through various means, and that there have been significant advances in the recognition of these rights in recent years.
- 3.3 We believe the *Charter of Human Rights and Responsibilities* (the Charter) has played an important role in contributing to this advancement, by helping to raise awareness of human rights, improve individual access to and enjoyment of rights, increase human rights scrutiny in the development of legislation and policy, and ultimately to improve service delivery practice by government and other bodies, including many in the community sector.
- 3.4 We believe that the vast majority of Victorians value human rights and want to ensure their rights are protected in law.
- 3.5 We recognise however that some people question the need for human rights laws and argue that Victorians have in the main achieved equal protection of their rights.
- 3.6 It is our experience, and we believe there remains significant evidence, that inequality related to personal characteristics (such as age, gender, race and sexual orientation), socio-economic life circumstances, and structural barriers continue to prevent many people from effectively accessing, understanding and/or exercising those rights.<sup>1</sup>
- 3.7 We remain particularly concerned that gaps in human rights protection continue to exist for many of the communities we serve, including in relation to housing, education, employment, access to services, and particularly in relation to health outcomes. Key communities include, but are not limited to:
- Aboriginal Australians
  - Women
  - Children and young people
  - Older people
  - Culturally and linguistically diverse (CALD) people, particularly refugees and other newly arrived community members
  - Homeless people
  - People with mental health and drug and alcohol issues
  - Gay, Lesbian, Bisexual, Transgender and Intersex (GLBTI) people
  - People with disabilities
- 3.8 We further recognise that individuals experience their rights, both positively and negatively, in complex ways. For many of the people we support there is a high degree of intersectionality between civil, political, economic, social and cultural rights, as well as with the multi-dimensional aspects of their personal and life circumstances (for example women with disability, homeless GLBTI young people).

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<sup>1</sup> Charles, N. (2000) *Feminism, the State and Social Policy*. Macmillan, London. p 2

**Case example: Appropriate living arrangements for young people with acquired brain injury**

A rehabilitation centre operating as part of a public hospital was seeking to discharge several young people with acquired brain injuries because their two year contractual period had ended. However, the only alternative care facilities available were aged care facilities, which would not provide the social environment, or support services (such as speech therapy), needed for the young people to continue their recovery. A disability advocate raised the Charter with the rehabilitation centre, which agreed not to move the young people until it had considered its obligations under the Charter.<sup>2</sup>

Human Rights Law Centre

3.9 For these reasons, the submitting agencies regard the twenty currently protected rights as essential to our democracy and community, and strongly support the maintenance of these rights and continuation of the Victorian Charter of Human Rights and Responsibilities overall.

3.10 We further recommend strengthening the Charter by:

- Including all civil and political rights contained in international treaties to which Australia is a signatory, unless those rights relate specifically to federal issues;
- Including rights contained in the International Covenant on Economic, Social and Cultural Rights (ICESCR), with specific reference to those contained in the Convention on the Rights of the Child (CROC), the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW) and the Convention of the Rights of Persons with Disabilities (CRPD);
- Including the right to self-determination, particularly as enshrined in the Declaration of the Rights of Indigenous Persons (DRIP);
- Ensuring stronger accountability of public authorities, whether through compulsory compliance audits and/or other means as detailed;
- Enabling remedies to be sought for breaches of human rights by public authorities; and
- Continuing and expanding support for human rights promotion and community capacity building to ensure Victorians understand and can engage with their rights.

**Recommendation 1**

That the Victorian Charter of Human Rights and Responsibilities be maintained.

**Recommendation 2**

That all civil and political rights contained in international treaties to which Australia is a signatory, be included in the Charter except for those rights exclusively related to federal issues.

<sup>2</sup> Human Rights Law Centre. *How a human rights act can promote dignity and address disadvantage*. Available at: <http://www.hrlrc.org.au/content/topics/national-human-rights-consultation/case-studies/#victoria>



## 4 Response to SARC Terms of Reference

### 4.1 Whether additional rights should be included in the Charter, including economic, social, cultural, children's, women's and self-determination rights.

#### *Economic, social and cultural rights*

- 4.1.1 The submitting agencies support the explicit inclusion in the Charter of all rights contained in the *International Covenant on Economic, Social and Cultural Rights (ICESCR)*.
- 4.1.2 Economic, social and cultural rights include those necessary to meet basic human needs such as the right to food, water and shelter, the right to health, to education, to employment and to social security.
- 4.1.3 Although some people may argue that in most cases, for most Victorians, economic and social rights are more than adequately fulfilled, we believe their inclusion will help to create a fairer and most just society by providing redress to significant inequality and disadvantage where it exists.
- 4.1.4 Economic, social and cultural rights have traditionally been regarded as 'second generation' rights, and as being of lesser importance than civil and political rights. In 1993, the UN Committee for Economic, Social and Cultural Rights stated for example:
- Violations of civil and political rights continue to be treated as though they were far more serious, and more patently intolerable, than massive and direct denials of economic, social and cultural rights.<sup>3</sup>
- 4.1.5 The submitting agencies work across the North and West Metropolitan Region which includes 11 out of the 14 most disadvantaged local government areas on the *Index of Relative Socio-economic Disadvantage (SEIFA)*.<sup>4</sup>
- 4.1.6 The high levels of absolute and relative disadvantage experienced by many of our clients and target population groups means that economic, social and cultural rights are amongst the most important of all rights to them, and are often those rights at greatest risk of breach.
- 4.1.7 Perhaps for these reasons, there is widespread public support for the protection of economic, social and cultural rights. Salvaris notes for example that a number of Australian surveys in which respondents were asked to rank the importance of rights, that the right to education, health, work and a decent standard of living enjoyed consistently high support.<sup>5</sup>
- 4.1.8 Similarly, during consultations that preceded the Victorian Charter in 2005, and for the national human rights consultation in 2009, economic, social and cultural rights were referred to in a high proportion of submissions. In the case of the Victorian consultation approximately 41 percent of all submissions referred to the inclusion of these rights, and/or rights for children and self-

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<sup>3</sup> Statement to the World Conference on Human Rights on behalf of the Committee (seventh session; E/1993/22-E/C.12/1992/2, annex III). Cited in Salvaris, M. 2007. Economic and Social Rights: the Victorian Charter's unfinished business. Just Policy. vol 43: 30-49.

<sup>4</sup> The Index of Relative Socio-economic Disadvantage (SEIFA) is derived from 2006 census data and measures aspects of social and economic conditions in an area such as educational attainment, income, employment and occupation.

<sup>5</sup> Salvaris, M. (2007). *Economic and social rights: The Victorian Charter's unfinished business*. Just Policy. vol 43: 30-49.

determination, even though the terms of reference for that consultation process were limited to civil and political rights.<sup>6</sup>

*“The fact that the current Victorian Charter of Human Rights and Responsibilities excludes economic, social and cultural rights can work to isolate vulnerable communities from accessing other Charter rights. It is essential that every person be allowed to participate in society by having access to the full range of their rights. Without access to economic, social and cultural rights they are unable to access, enforce or participate in many of the other rights listed in the Charter.*

*For example, a young mother who came to Australia from New Zealand with her abusive husband was subsequently abandoned. As a non-citizen, she was ineligible for Centrelink pension payments. She could not afford to return to New Zealand and could barely afford food. Unable to pay her rent, she became homeless leading to a series of traumatizing experiences while she and her child were living in boarding houses and shelters.*

*No person should be forced to live this way. Inclusion of economic, social and cultural rights in the Charter may have better protected her right, enabling her and her child to be safe and to have a life of dignity. We want to prevent vulnerable individuals from ‘falling through the gaps.’”*

Anna Dooland  
Financial Counsellor Good Shepherd Youth and Family Services.  
Women Understanding Money in Australia (Financial Literacy Program)  
in partnership with Women’s Health West

- 4.1.9 As a signatory to ICESCR, Australia has obligations under international law to give the fullest effect to economic, social and cultural rights by taking all necessary steps to ensure their promotion, protection and fulfilment, including through legislation. Explicit inclusion of ICESCR rights in the Victorian Charter will assist Australia meet its international human rights obligations.
- 4.1.10 The Victorian Charter currently protects twenty mostly civil and political rights drawn from the *International Covenant on Civil and Political Rights* (ICCPR).
- 4.1.11 Although civil and political rights and economic, social and cultural rights have historically been regarded differently, or have been given primacy in different societies on largely ideological grounds, since the drafting of the Universal Declaration of Human Rights (UDHR) in 1949, the indivisibility and inter-connectedness of all human rights has been consistently reaffirmed by the United Nations<sup>7</sup>.
- 4.1.12 The submitting agencies believe that inclusion of economic, social and cultural rights in the Victorian Charter will play an important role in affirming the interconnectedness and indivisibility of all human rights.
- 4.1.13 It has been argued that protection of economic, social and cultural rights, such as the right to healthcare or housing can create an unnecessary burden on taxpayers and the free market<sup>8</sup>. The submitting agencies believe this argument ignores that protection of civil and political rights can also come with a cost, or that social, economic and cultural rights may be progressively realised within resource constraints.

<sup>6</sup> Williams, G. (2006). *Critique and comment: The Victorian Charter of Human Rights and Responsibilities origins and scope*. Melbourne University Law Review [MULR] 27

<sup>7</sup> Salvaris, M. (2007). *Economic and social rights: The Victorian Charter’s unfinished business*. Just Policy. vol 43: 30-49.

<sup>8</sup> Ibid.

- 4.1.14 We believe the protection of economic, social and cultural rights in South Africa and India demonstrates it is possible, even in significantly poorer societies than Victoria, to protect these rights.
- 4.1.15 The submitting agencies believe that economic, social and cultural rights should be subject to the same limitations test as currently applied to protected civil and political rights as contained in section 7 of the Charter.<sup>9</sup> Just as the current rights have not imposed blanket constraints on government decision-making, neither would protections of economic, social and cultural rights impose such constraints.
- 4.1.16 Just as the protection of civil and political rights in the Charter have led to improved decision-making, practices and processes in relation to those rights, protections of the rights to, for example, adequate housing, health care and education would lead to better practice in these areas.
- 4.1.17 The submitting agencies believe that public authorities should be subject to the same obligations in relation to economic, social and cultural rights as they are in relation to civil and political rights, as contained in section 38 of the Charter.<sup>10</sup>
- 4.1.18 Section 32 of the Charter requires that all laws be interpreted consistently with human rights as far as possible consistent with their purpose, and that international law and judgements are relevant.<sup>11</sup> The submitting agencies contend that explicit inclusion of economic, social and cultural rights in the Charter will strengthen our democracy and ensure the participation and empowerment of Victorians, by requiring courts and tribunals to explicitly consider the security of the base from which people may participate.
- 4.1.19 The submitting agencies do not support the argument that economic, social and cultural rights are purely matters of policy and therefore outside of the proper jurisdiction of courts and tribunals. We further contend that courts and tribunals are routinely engaged in matters of social policy, and that a balance between the judiciary, parliament and executive through a human rights dialogue is appropriate and workable in a modern democracy.
- 4.1.20 As the United Nations Committee on Economic, Social and Cultural Rights has clearly stated:
- to prevent judges from deciding on these issues is to ‘drastically curtail the capacity of courts to protect the rights of the most vulnerable and disadvantaged groups in society’.<sup>12</sup>
- 4.1.21 The submitting agencies also do not accept the view that economic, social and cultural rights are non-justiciable. Overseas experience, such as the Inter-American Court on Human Rights, demonstrates that the ‘justiciability of rights is about reinstating rights’. Feria Tinta for example notes:
- the reality of international law has shown that artificial separations of the two sets of rights do not occur in real cases...rights are intertwined and interwoven.<sup>13</sup>
- 4.1.22 Notwithstanding that human rights belong to all people without discrimination, given the overwhelming evidence of poorer economic, social and cultural access and outcomes for certain

<sup>9</sup> *Charter of Human Rights and Responsibilities Act 2006* (Vic) s 7.

<sup>10</sup> *Charter of Human Rights and Responsibilities Act 2006* (Vic) s 38.

<sup>11</sup> *Charter of Human Rights and Responsibilities Act 2006* (Vic) s 32.

<sup>12</sup> OHCHR (1998). *General comment number 9: The domestic application of the Covenant*. Available at [http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/E.C.12.1998.24,+CESCR+General+comment+9.En?Opendocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/E.C.12.1998.24,+CESCR+General+comment+9.En?Opendocument).

<sup>13</sup> Feria Tinta, M. (2007). *Justiciability of economic, social and cultural rights in the Inter-American system of protection of human rights: Beyond traditional paradigms and notions*. *Human Rights Quarterly*. vol 29. 431-459.

groups, consideration of these rights should include provision similar to section 8(4) of the Charter, such that special measures may be required to address entrenched disadvantage and marginalisation.<sup>14</sup>

- 4.1.23 The submitting agencies note that as with the *Declaration on the Rights of Indigenous Peoples* discussed below, the *Convention on the Rights of Persons with Disabilities* (CRPD) was adopted subsequent to the enactment of the Charter, and so is not included as a specific area of focus within the SARC terms of reference.
- 4.1.24 Given the frequency with which people with disabilities are subjected to violations of their human rights, for example in relation to discrimination, medical and other treatment without consent, seclusion and restraint, violence and abuse, poverty, poor access to services, and lack of opportunities for participation, the submitting agencies strongly support the inclusion of reference to all CRPD rights contained within the Charter.
- 4.1.25 While it is the submitting agencies view that the indivisibility of human rights should be respected and afforded equal protection in Victorian law, we believe that from the perspective of our own work, the right to the highest attainable standard of mental and physical health requires specific attention.

**Recommendation 3**

That rights contained in the *International Covenant on Economic, Social and Cultural Rights* (ICESCR) be explicitly included in the Charter.

**Recommendation 4**

That the economic, social cultural rights included in the Charter be subject to the same application of obligations contained in ss. 7, 32, and 38 as currently protected civil and political rights.

**Recommendation 5**

That the economic, social and cultural rights included in the Charter be subject to a similar provision as Section 8(4) in recognition that special measures may be required to address entrenched disadvantage.

**Recommendation 6**

That rights contained in the *Convention on the Rights of Persons with Disabilities* be explicitly referenced in the Charter.

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<sup>14</sup> *Charter of Human Rights and Responsibilities Act 2006* (Vic) s 8(4).

## ***The enjoyment of the highest attainable standard of mental and physical health***

Every single person...comes into contact with...[health services] at some point in their lives, usually when they are at their most vulnerable. Therefore it is essential that human rights are taken into account when delivering services to ensure quality care.

*“Human rights are not an add-on, they are an inherent part of care...Healthcare that isn’t sensitive to human rights probably doesn’t deliver its goals.”<sup>15</sup>*

Equality and Healthcare Group  
United Kingdom

- 4.1.26 The right to health is not explicitly protected in the Charter, although it has a strong relationship to other currently protected rights, most notably section 9 *Right to life*.<sup>16</sup>
- 4.1.27 The most immediate reference to health exists in section 10(c), which states a person must not be subjected to medical or scientific experimentation or treatment without his or her full, free and informed consent.<sup>17</sup>
- 4.1.28 The submitting agencies believe that reduction of the right to health to informed medical treatment alone is too narrow, and regard the right to health as encompassing a far broader right to ‘have opportunities to be healthy’.<sup>18</sup>
- 4.1.29 The World Health Organisation Commission on Social Determinants of Health recommends an approach to health that addresses the social determinants of health, including poverty, gender, race, early life experiences, social exclusion and conditions of work.<sup>19</sup>
- 4.1.30 This social determinants approach to health was reiterated by the former United Nations Special Rapporteur on the Right to Health, Paul Hunt, who stated that the right to health encompasses not only access to healthcare, but also the underlying determinants of health.
- 4.1.31 The technical paper that accompanies the *Victorian Health Proprieties Framework 2012-22* provides a stark illustration of the relationship between low socioeconomic status and poorer health outcomes, both of which have high prevalence in the Inner and Outer West geographic areas defined by the framework.<sup>20</sup>
- 4.1.32 The technical paper highlights that the Inner West (Maribyrnong and Hobsons Bay) is notable for its relatively disadvantaged population, high unemployment and low income:

<sup>15</sup> Equality and Human Rights Group (2008). *Human rights in healthcare: A short introduction*. UK Department of Health and British Institute of Human Rights, p.6.

<sup>16</sup> *Charter of Human Rights and Responsibilities Act 2006* (Vic) s 9.

<sup>17</sup> *Charter of Human Rights and Responsibilities Act 2006* (Vic) s 10(c).

<sup>18</sup> Calma, T. (2007). *What does a human rights approach offer in improving the health of Indigenous Australians?* Menzies School of Health Research 2007 Oration: Darwin.

<sup>19</sup> World Health Organisation (2008). *Closing the gap in a generation: Health equity through action on the social determinants of health*. Geneva: WHO. Available at [http://www.who.int/social\\_determinants/thecommission/finalreport/en/index.html](http://www.who.int/social_determinants/thecommission/finalreport/en/index.html).

<sup>20</sup> Victorian Department of Health (2011). *Victorian metropolitan health plan technical paper*.

- Maribyrnong has the third highest proportion of social housing dwellings and higher unemployment than the state average; obesity and low life expectancy are the main health status issues in this planning area.
  - Hobsons Bay ranks fifth in Victoria for overweight/obese males and is in the top ten LGAs for proportion of people who do not meet physical activity guidelines. It has a high rate of presentations to emergency departments, over half of which were avoidable.<sup>21</sup>
- 4.1.33 The Outer West (Brimbank, Melton, Moorabool and Wyndham) is notable for its relatively disadvantaged population, high unemployment and low English proficiency:
- Brimbank has the fourth highest unemployment rate in Victoria and the highest proportion of people self-reporting poor health. It ranks third for percentage of population with high levels of distress, seventh for type 2 diabetes, and sixth for population that does not meet physical activity guidelines.
  - Melton has low life expectancy for females and is in the top ten LGAs for self-reported poor health, percentage of current smokers, population that is overweight or obese and does not meet physical activity guidelines. It has the highest proportion of people with type 2 diabetes in Victoria.<sup>22</sup>
- 4.1.34 The North East (Banyule, Darebin and Nillumbik) is, by comparison, notable for its relatively advantaged population, however it has a high proportion of residents born overseas and ranks fourth in the State for the percentage of population with low English proficiency. It also ranks tenth for the percentage of people that have a 'core activity need for assistance'.<sup>23</sup>
- 4.1.35 The Outer Northwest (Hume, Mitchell and Whittlesea) is notable for its relatively disadvantaged population and high unemployment. Hume has a high proportion of residents with low English proficiency, is in the top ten LGAs for self-reported poor health, ranks sixth for the percentage of current smokers, fourth for not meeting physical activity levels, second for people with type 2 diabetes, and has the highest levels of distress in the State.<sup>24</sup>
- 4.1.36 The submitting agencies fully support explicit Charter reference to the right to health supported by a fuller appreciation of the economic, social, cultural, and environmental determinants of health.
- 4.1.37 At a minimum, the right to health should encompass principles of participation, choice, control, accessibility, empowerment, and timeliness.
- 4.1.38 These are key principles contained in a range of existing standards, guidelines and government policy documents, including for example the *Australian Charter of Healthcare Rights*<sup>25</sup>, in relation to national health reform, and state government policy documents such as *Doing it with us not for us*<sup>26</sup>, and the *Victorian health priorities framework 2012-2022*.<sup>27</sup>

<sup>21</sup> Victorian Department of Health (2011). *Victorian metropolitan health plan technical paper*.

<sup>22</sup> Ibid.

<sup>23</sup> Ibid.

<sup>24</sup> Ibid.

<sup>25</sup> Australian Commission on Safety and Quality in Healthcare (2009). *Australian charter of healthcare rights*. Available at: <http://www.health.vic.gov.au/patientcharter/charter.htm>

<sup>26</sup> Victorian Department of Health (2009). *Doing it with us not for us: Strategic direction 2010-13*

<sup>27</sup> Victorian Department of Health (2011). *Victorian health priorities framework 2012-2022: Metropolitan health plan*.

### **Case example: Access to health care for asylum seekers**

On the same day as receiving advocacy training on how to use the Victorian Charter of Rights, a community nurse who had been trying to assist an asylum seeker with pressing health needs to gain health care raised the Charter with a hospital. The hospital had indicated that they would refuse health services if the patient could not pay. As an asylum seeker, the patient had no access to Medicare. On questioning the hospital as to whether refusing access in this way 'contravened the Charter', the relevant staff member said she did not know. The community nurse then sent an email to senior staff at the hospital raising Charter rights and obligations. Subsequently, a directive was sent to hospital staff advising all staff to implement a DHS directive stating all asylum seekers and refugees were to receive free services. Although this directive was in place prior to the Charter, the Charter did serve as a catalyst to ensure the directive was implemented.<sup>28</sup>

**West Heidelberg Community Legal Service**

- 4.1.39 Explicit protection of the right to health would provide more clearly articulated guidance to how health services and government can fulfil their existing human rights obligations, as well as bring additional legislative strength to ensuring the principles of these documents are fulfilled.
- 4.1.40 The submitting agencies believe inclusion of the right to health in the Charter would assist to ensure legislation, policies and service models are more accessible, consumer-directed, and cognisant of the structural and social determinants impacting on health status and outcomes.
- 4.1.41 An explicit Charter right to health should be framed to ensure that health impacts within a broad social determinants model be a required consideration in the drafting and reviewing of legislation and policy.
- 4.1.42 The submitting agencies believe such a requirement for explicit consideration has the potential to deliver a powerful and transformative framework for promoting and addressing the intersections between health, inequality and injustice.<sup>29</sup>

### **Sexual and reproductive health**

Sexual and reproductive health forms part of the right to health that should be included in the Charter. The UN Committee on Economic, Social and Cultural Rights has stated in its General Comments on the Right to the Highest Attainable Standard of Health that women's health must be promoted throughout their lifespan in an effort to eliminate discrimination against women. Sexual and reproductive health forms part of that goal<sup>30</sup>.

The UN Factsheet on the Right to Health asserts that States should enable women to have control over and decide freely and responsibly on matters related to their sexuality, including their sexual and reproductive health, free from coercion, lack of information, discrimination and violence<sup>31</sup>.

Women must be free to make decisions regarding their fertility, including decisions about when and whether to have children, based on their own life situations, personal views and beliefs.

<sup>28</sup> West Heidelberg Community Legal Service, cited in Human Rights Law Centre. *How a human rights act can promote dignity and address disadvantage*. Available at: <http://www.hrlrc.org.au/content/topics/national-human-rights-consultation/case-studies/#victoria>

<sup>29</sup> VanderPlaar, M & Teles, N. (2005). *Mainstreaming social justice: Human rights and public health*. Canadian Journal of Public Health. vol 96: 1. 34-36.

<sup>30</sup> OHCHR. (2000). *General comments on the right to the highest attainable standard of health* 11/08/2000. E/C 12/2000/4. Available at [http://www.unhchr.ch/tbs/doc.nsf/\(symbol\)/E.C.12.2000.4.En](http://www.unhchr.ch/tbs/doc.nsf/(symbol)/E.C.12.2000.4.En).

<sup>31</sup> OHCHR. factsheet number 31: The right to health. Available at <http://www.ohchr.org/Documents/Publications/Factsheet31.pdf>.

The Convention on the Elimination of All Forms of Discrimination Against Women Article 12 requires that measures be taken to ensure 'on a basis of equality of men and women, access to health care services, including those related to family planning'<sup>32</sup>.

Access to accurate, timely and unbiased information about sexual and reproductive health, sexual relationships and contraception is critical in supporting both women and men to make informed decisions. Evidence demonstrates that comprehensive sexual and reproductive health education, and access to a variety of effective contraceptive choices, helps to lower the rate of unplanned pregnancies<sup>33</sup>.

For these reasons we recommend that sexual and reproductive health rights be included among the broader range of ICESCR and CEDAW rights in the Charter and further, that the Victorian Government move towards instituting a Statewide Sexual and Reproductive Health Strategy that:

- Is informed by current research, best-practice sexual and reproductive health promotion and consultations with sector services and the community;
- Focussed on primary prevention and population health interventions that work to redress the social determinants of sexual and reproductive health;
- Works to achieve a coordinated and integrated approach to sexual and reproductive health service and program delivery; and
- Ensures that sexual and reproductive health rights are protected and upheld through public policy and legislative frameworks.

**Recommendation 7**

That an expansively defined right to health be explicitly referenced in the Charter encompassing principles of participation, choice, control, accessibility, empowerment, and timeliness.

**Recommendation 8**

That explicit consideration of the right to health be required in the drafting and review of legislation and policy.

<sup>32</sup> OHCHR. (1979). *Convention on the Elimination of All Forms of Discrimination Against Women*. Geneva: OHCHR. Available at <http://www2.ohchr.org/english/law/cedaw.htm>.

<sup>33</sup> Australian Reproductive Health Alliance. (2004). *Reducing the abortion rate information brief*. ACT: Australian Reproductive Health Alliance. Available at <http://www.arha.org.au/factSheets/reducingabortionnew.pdf>.



### ***The rights of children***

- 4.1.43 The submitting agencies acknowledge that all rights in the Charter apply equally to children, and that two sections in particular specifically identify children - section 17 *Protection of families and children*<sup>34</sup>, and section 23 *Children in the criminal process*<sup>35</sup>.
- 4.1.44 We note that the *Convention of the Rights of the Child* (CROC) does not create any new rights for children not already included in the ICCPR or ICESCR, and that inclusion of these rights in the Charter would also apply to children and young people.
- 4.1.45 However, the submitting agencies recommend explicit reference to CROC within the Charter for the following reasons:
- 4.1.46 As a signatory to CROC, Australia has obligations under international law to give the fullest effect to those rights by taking all necessary steps to ensure their promotion, protection and fulfilment, including through legislation. Explicit inclusion of CROC rights in the Victorian Charter will assist Australia to meet its international human rights obligations.
- 4.1.47 We regard the current framing of specific children's rights in the context of the criminal justice system or their need for protection as too narrow and insufficient.
- 4.1.48 The Committee on the Rights of the Child has identified four defining elements of CROC as the core principles underpinning a human rights based approach in relation to children and young people. These are non-discrimination, best interests of the child, survival and development, and participation.<sup>36</sup>
- 4.1.49 Although section 32(2) of the Charter provides a potential avenue between CROC and Charter rights (whether specific to children or universal), the link is neither direct, apparent nor simple. Explicit reference to CROC rights would simplify and guide, as well as require the application of current civil and political rights, and future economic, social and cultural rights to children and young people.
- 4.1.50 The submitting agencies believe this is particularly important given children and young people are not only among the most vulnerable, but also among the most voiceless members of the community. The significant risk of human rights breaches experienced by many children and young people exists not only within the context of their individually-lived experience, but also in relation to the policy and legislative environment.
- 4.1.51 As with the inclusion of economic, social and cultural rights more broadly, the submitting agencies believe all operational sections of the Charter, including ss. 7, 32 and 38, should apply to the CROC rights.

#### ***Recommendation 9***

That rights contained in the *Convention on the Rights of the Child* be explicitly referenced in the Charter with a particular focus on non-discrimination, best interests, survival and development and participation.

#### ***Recommendation 10***

That the rights of children included in the Charter be subject to the same application of obligations contained in ss. 7, 32, and 38 as currently protected civil and political rights.

<sup>34</sup> *Charter of Human Rights and Responsibilities Act 2006* (Vic) s 17.

<sup>35</sup> *Charter of Human Rights and Responsibilities Act 2006* (Vic) s 23.

<sup>36</sup> Victorian Equal Opportunity and Human Rights Commission (2008). *2008 report on the operation of the Charter of Human Rights and Responsibilities: Emerging change.*

## ***The rights of women***

- 4.1.52 The submitting agencies acknowledge that all rights in the Charter apply equally to women, and further that the *Convention on the Elimination of all Forms of Discrimination Against Women* (CEDAW) does not create any new rights not already included in the ICCPR or ICESCR.
- 4.1.53 However, the submitting agencies recommend explicit reference to CEDAW rights within the Charter for the following reasons:
- 4.1.54 As a signatory to CEDAW, Australia has obligations under international law to give the fullest effect to those rights by taking all necessary steps to ensure their promotion, protection and fulfilment, including through legislation. Explicit reference to CEDAW rights in the Victorian Charter will assist Australia meet its international human rights obligations.
- 4.1.55 The Convention defines discrimination against women as “any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.”<sup>37</sup>
- 4.1.56 The Victorian Equal Opportunity and Human Rights Commission noted in a 2010 Occasional Paper that the Charter had not brought about a widespread gender analysis to the development of policies and laws in Victoria, and that the absence of this “gender lens” made the Charter less effective than it could be in promoting and protecting women’s rights.<sup>38</sup>
- 4.1.57 Although the existence of section 32(2) in the Charter provides a potential avenue for considering CEDAW rights, the link is neither direct, apparent nor simple. Explicit reference to CEDAW rights would simplify and guide, as well as require the application of current civil and political rights, and future economic, social and cultural rights to women.
- 4.1.58 The submitting agencies believe this is particularly important given women and girls are among the most vulnerable members of the community, and are often at risk of, or experience, significant breaches of their human rights including in relation to:
- Gender-based discrimination, harassment and stereotyping
  - Physical, sexual and other forms of violence, including family and domestic violence
  - Sexual and reproductive health
  - Inequalities in education, employment, income and wealth
  - Access to social, economic and political security, influence and power
  - Access to services including in relation to health and housing

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<sup>37</sup> UNCEDAW, cited in VEOHRC (2010) *Occasional paper advancing women’s rights: Exploring the relationship between the Charter of Human Rights and Responsibilities and the Convention on the Elimination of all Forms of Discrimination Against Women*.

<sup>38</sup> Victorian Equal Opportunity and Human Rights Commission (2010) *Occasional paper advancing women’s rights: Exploring the relationship between the Charter of Human Rights and Responsibilities and the Convention on the Elimination of all Forms of Discrimination Against Women*.

*“We frequently refer to the Charter to educate clients about their rights and responsibilities, such as the right to live free from violence, the right to be safe. Often, women are surprised to hear this and respond that this is the first time they’ve had their experiences framed in this way. At times workers will refer back to legislative changes that reflect these rights, such as police powers to temporarily remove suspected perpetrators of family violence from the house, issue safety notices and apply for intervention orders on behalf of the affected family member, and requirement to make relevant referrals to regional FV services, men’s referral services and DHS. So the rights are backed up by actions that actually make a difference.”*

**Family Violence Worker  
Women’s Health West**

- 4.1.59 The submitting agencies note that women are affected by a range of intersecting socio-cultural and economic factors, and often experience compounded discrimination. This means that women with a disability or who are carers; who are Indigenous, non-English-speaking, asylum seekers, refugees and migrants; are lesbian, bisexual, transgender or intersex; who are in/have been in prison; are socially and geographically isolated; or are on a low income, are at relatively greater risk of human rights breach.
- 4.1.60 As with the inclusion of economic, social and cultural rights more broadly, the submitting agencies believe all operational sections of the Charter, including ss. 7, 32 and 38, should apply to the CEDAW rights.

### ***Violence against women: legislative and policy responses that make a difference on the ground***

The right to be safe and to live free from violence is a fundamental human right. The Charter compels us to ensure violence is prevented, and when it occurs to ensure victims/survivors are able to access compassionate, just and effective legal and service responses.

According to Victoria Police reported crime data, women in the western region of Melbourne experience violence at a rate of 6.23 per 1000<sup>39</sup>, and the economic, health, and social consequences are significant:

- For women aged 15-44 in Victoria, violence is the leading cause of illness, death, and disability – greater than any other factor including tobacco, alcohol-related harm, and physical inactivity combined<sup>40</sup>;
- Violence against women cost Victoria \$3.4 billion in 2009. According to a KPMG report, if ignored, this figure will increase to \$3.9 billion by 2021<sup>41</sup>; and
- Preventing the experience of violence for just one Australian woman would mean avoiding over \$20,766 in costs<sup>42</sup>.

While violence against women affects all communities, evidence shows that certain groups of women are particularly vulnerable to violence, including women with disabilities, Aboriginal and Torres Strait Islander women, women in communities affected by socio-economic disadvantage (including rural communities

<sup>39</sup> Women’s Health West (2010) *Preventing violence together: Western region action plan to prevent violence against women*, Women’s Health West, Melbourne.

<sup>40</sup> VicHealth (2004) *The health costs of violence: Measuring the burden of disease caused by intimate partner violence*, Victorian Health Promotion Foundation, Melbourne.

<sup>41</sup> Victorian Government (2009) *A right to respect: Victoria’s plan to prevent violence against women 2010-2020*, State of Victoria, Melbourne.

<sup>42</sup> Victorian Government (2009) *A right to respect: Victoria’s plan to prevent violence against women 2010-2020*, State of Victoria, Melbourne.

affected by economic downturn or drought), women from culturally and linguistically diverse (CALD) backgrounds, and women who are newly-arrived migrants or refugees<sup>43</sup>.

Since the Charter's inception, the Victorian family violence sector has embarked upon a period of unprecedented reform. The Statewide family violence reform initiative aimed to provide multi-agency, integrated approaches to family violence in order to secure women's and children's safety and hold those who perpetrate violence accountable for their behaviour.

#### **Safe at home**

The Western Integrated Family Violence Partnership runs the *Safe at Home* program in the western region of Melbourne, assessing women's safety and support needs and providing brokerage funds to enhance the security of their homes. This assists them to be able to stay and significantly minimises the disruption and disconnection often experienced by women and children escaping violence.

#### **Preventing violence before it occurs**

In 2009, the Victorian State Government launched *A right to respect: Victoria's plan to prevent violence against women 2010-2020*, which aims to prevent violence against women before it occurs and to build Victorian communities, cultures and organisations that are non-violent and gender equitable.

In 2010 the *Western region action plan for the prevention of violence against women: Preventing violence together* was launched. The aim of the plan is to work across local government and community and women's health services to provide a coordinated action-based approach in the primary prevention of violence against women.

The Charter has contributed to these significant actions by creating a culture of accountability for human rights protection and promotion.

#### **Recommendation 11**

That rights contained in the *Convention on the Elimination of all Forms of Discrimination Against Women* be explicitly referenced in the Charter with a particular focus on non-discrimination, best interests, survival and development and participation.

#### **Recommendation 12**

That the rights of women included in the Charter be subject to the same application of obligations contained in ss. 7, 32, and 38 as currently protected civil and political rights.

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<sup>43</sup> Women's Health West (2010) *Preventing violence together: Western region action plan to prevent violence against women*, Women's Health West, Melbourne.

### ***Self-determination rights***

- 4.1.61 The submitting agencies acknowledge the traditional owners of the land upon which our services are located. We acknowledge the unique position of Indigenous Australians as the first custodians of this land, and observe with respect the resilience, survival and continuing contribution Indigenous Australians make as the oldest surviving culture.
- 4.1.62 We also recognise the appalling levels of disadvantage experienced by Indigenous communities and individuals throughout Victoria and nationally, noting the relationship to historical and continuing dispossession, disenfranchisement, dislocation and exclusion, which are firmly grounded in economic, social and cultural disadvantage, and denial of the right to self-determination.
- 4.1.63 We acknowledge that Indigenous rights to self-determination and other Indigenous rights are interdependent, and that the right to self-determination is inextricably linked to economic, social and fully defined cultural rights, including those related to participation, development, recognition of land, culture, heritage, kinship and language.
- 4.1.64 The submitting agencies note the consultation findings of the Victorian Equal Opportunity and Human Rights Commission, as documented in *Talking rights: Consulting with Victoria's Indigenous community about the right to self-determination and the Charter*.<sup>44</sup>
- 4.1.65 We acknowledge the significant range of human rights issues and priorities raised by participants relating to healing; access to services; appropriate housing; economic, employment and education rights; culture; strong families; and leadership and capacity building.
- 4.1.66 We further acknowledge the broad support expressed by consultation participants for the inclusion of the right to self-determination in the Charter, but that there are a range of views as to how this might best be achieved.
- 4.1.67 We note that the *Declaration on the Rights of Indigenous Persons* (DRIP) came into effect after the enactment of the Charter, and that it was regarded by consultation participants as being the most appropriate mechanism through which the right to self-determination might be recognised.
- 4.1.68 While recognising that the Charter's Preamble reference to the importance of human rights to Aboriginal people<sup>45</sup> and Section 19 Cultural rights<sup>46</sup> may be read in conjunction with section 32(2) to provide a potential avenue to DRIP, the submitting agencies view the link as neither direct, apparent nor simple.
- 4.1.69 An explicit Charter reference to DRIP, and particularly to self-determination, would simplify and guide, as well as explicitly require the application of current civil and political rights, and future economic, social and cultural rights to all Indigenous people living in Victoria.
- 4.1.70 As with the inclusion of economic, social and cultural rights more broadly, the submitting agencies believe all operational sections of the Charter, including ss. 7, 32 and 38, should apply to all DRIP rights, including the right to self determination.

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<sup>44</sup> Victorian Equal Opportunity and Human Rights Commission (2011). *Talking rights: Consulting with Victoria's Indigenous community about the right to self-determination and the Charter*.

<sup>45</sup> *Charter of Human Rights and Responsibilities Act 2006* (Vic) Preamble.

<sup>46</sup> *Charter of Human Rights and Responsibilities Act 2006* (Vic) s 19.

**Recommendation 13**

That rights contained in the *Declaration on the Rights of Indigenous Persons*, particularly the right to self-determination be explicitly referenced in the Charter.

**Recommendation 14**

That consistent with the principles underpinning the Declaration, Aboriginal people be further consulted to identify their preferred mechanism for including the right to self-determination.

**Recommendation 15**

That the rights of Indigenous people included in the Charter be subject to the same application of obligations contained in ss. 7, 32, and 38 as currently protected civil and political rights.

## **4.2 Whether further provisions should be made regarding public authorities' compliance with the Charter, including regular auditing and further provision for remedies**

- 4.2.1 The submitting agencies support in principle the 'dialogue model' of human rights as an effective means of ensuring human rights considerations are appropriately balanced between the role of the courts and tribunals, the Parliament, and the Executive.
- 4.2.2 A key strength of the dialogue model of human rights is that it seeks to ensure human rights considerations are built into the earliest stages of policy and legislative development, and in the planning of services, as a means to preventing breaches of human rights and improving government accountability and transparency.
- 4.2.3 One of the limitations of the dialogue model however, is that when breaches of human rights inevitably do occur, avenues of redress are both limited and complex.
- 4.2.4 A key but often disregarded contributor to the human rights dialogue is the community itself. In a modern democracy, the community plays an important role in shaping and directing community standards and expectations, and in holding government accountable to those expectations. The submitting agencies believe there are a range of ways community can be better engaged as an integral part of the human rights dialogue model, and the first of these is through a free-standing complaints mechanism.
- 4.2.5 The submitting agencies believe that the lack of a free standing and enforceable complaints mechanism severely undermines the credibility and effectiveness of the Charter. We are of the view that the protection of rights is only as strong as the capacity to enforce those rights, and for individuals and groups to seek redress when their rights are breached.
- 4.2.6 We support the maintenance of Section 32 of the Charter that requires courts and tribunals to interpret all Victorian law compatibly with the rights protected in the Charter to the fullest extent possible, consistent with their purpose.
- 4.2.7 We support the view that court and tribunal enforcement of human rights obligations on a case-by-case basis should not be the primary means of redress<sup>47</sup>, however we believe it is none-the-less an important component to ensuring appropriate access to and enjoyment of rights. We therefore recommend the inclusion of improved provisions for remedy guided by those adopted in similar jurisdictions, including the United Kingdom and Australian Capital Territory.
- 4.2.8 Other key components of the human rights dialogue are the functions undertaken by the Victorian Equal Opportunity and Human Rights Commission (VEOHRC) in relation to court interventions, human rights reviews and annual reporting<sup>48</sup>. We believe all functions should be retained, but that the review and reporting functions should be expanded as follows.
- 4.2.9 The submitting agencies believe annual reporting and review of public authorities by the VEOHRC are critical to improving government accountability and transparency, and in assisting to identify systemic human rights issues.
- 4.2.10 Annual reporting by public authorities should be mandatory, and should extend well beyond compliance reporting towards an evidence-based demonstration of how human rights are being embedded in culture and practice.

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<sup>47</sup> Williams, G. (2006). *The Victorian Charter of Human Rights and Responsibilities: Origins and scope*. Melbourne University Law Review. vol. 30. 880-905.

<sup>48</sup> *Charter of Human Rights and Responsibilities Act 2006 (Vic) Part 4*.

- 4.2.11 The VEOHRC's powers in relation to reviews should be expanded beyond its current role to assist the Attorney-General, or respond to requests from public authorities, to enable it to undertake independent audits and own-motion inquiries into the activities of public authorities.
- 4.2.12 The experience in the ACT has shown that human rights auditing by its Human Rights Commission can help find solutions to day-to-day practice issues, for example in relation to the operation of its correctional facilities<sup>49</sup> and Quamby Youth Detention Centre<sup>50</sup>. Extending similar powers to the Victorian Commission would strengthen its capacity to identify and resolve potential problems before they escalate to a case before the courts.
- 4.2.13 Consistent with our views about the importance of community engagement with the human rights dialogue, the submitting agencies support the development of stronger mechanisms for community participation in and contribution to the expanded VEOHRC inquiry, audit and annual reporting functions. We recommend increased funding to the VEOHRC and other key agencies to enable direct and devolved engagement to occur.

**Recommendation 16**

That the Section 32 obligation on courts and tribunals to interpret laws compatibly with human rights to the maximum extent possible consistent with their purpose, be retained and expanded to include any newly protected rights.

**Recommendation 17**

That a free standing right to legal proceedings and other remedies for breach of human rights be included in the Charter, drawing on provisions and experience from other similar jurisdictions.

**Recommendation 18**

That the Victorian Equal Opportunity and Human Rights Commission retain its court intervention, review and annual reporting functions.

**Recommendation 19**

That annual reporting by public authorities be made mandatory and include an evidence-based demonstration of how human rights are being embedded in culture and practice.

**Recommendation 20**

That the Victorian Equal Opportunity and Human Rights Commission's powers be expanded to include independent audits and own-motion inquiries into the activities of public authorities.

**Recommendation 21**

That additional resources be provided to the Victorian Equal Opportunity and Human Rights Commission and other key agencies to support direct and devolved community participation in inquiry, audit and annual reporting functions.

<sup>49</sup> ACT Human Rights Commission (2007). *Human rights audit on the operation of ACT correctional facilities under Corrections legislation*.

<sup>50</sup> ACT Human Rights Commission (2005). *Human rights audit of Quamby Youth Detention Centre*.



**Project example: *Our Community, Our Rights***

*Our Community, Our Rights* is a project being developed and led by Women's Health West that aims to deliver human rights and advocacy training to women from newly-arrived communities to strengthen their capacity to exercise leadership and facilitate change. It is supported by an Expert Advisory Group comprising representatives from the Victorian Equal Opportunity and Human Rights Commission, Multicultural Centre for Women's Health, Moonee Valley City Council, Western Region Health Centre, Youth Law, Victorian Department of Health, Migrant Resource Centre North West, Sudanese Women on the Move, and the Eritrean community.

At its centre, *Our Community, Our Rights* is concerned with translating human rights into practical and accessible knowledge and skills for vulnerable migrant and refugee communities of women in the west of Melbourne. It will provide them with tools and skills so that they may advocate individually or as community leaders to enable the realisation of their rights.

Migrants and refugees from the Horn of Africa and Burma, the initial participant communities, often come to Australia from conflict zones, with experiences of human rights violations and discrimination, and limited protection of human rights in their countries of origin<sup>51</sup>. Indeed, many arrive in Australia with little experience of legal protection of their human rights, to an unfamiliar system that offers stronger protection via domestic laws that implement international treaty obligations<sup>52</sup>.

A series of six workshops are in development, in consultation with communities and key experts, which are specifically designed to enhance understanding of and engagement with the rights and freedoms of the UN human rights treaties that Australia is party to, as well as the Victorian Charter of Human Rights.

Pairing human rights education with advocacy training is the key strength of the project. It promotes the understanding that human rights have practical implications in Australia, and that the capacity to exercise rights and advocate for positive social change through civic participation is a cornerstone of Australian democracy. Further, supporting women to plan and implement projects within their communities will strengthen women's sense of agency and their capacity to exercise leadership.

The existence of the Victorian Charter of Human Rights and Responsibilities, the culture it is fostering, and the precedent of effective human rights projects education and capacity building projects such as Everyday People, Everyday Rights (VEOHRC) and Sharing Our Stories (Multicultural Centre for Women's Health), have helped to enable an environment where projects such as *Our Community, Our Rights* can flourish.

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- 4.2.14 The submitting agencies support expanded application of Section 38 obligations to public authorities. After four years of the Charter's operation, we believe all public authorities have had time to ensure they comply with the Charter and can respect the human rights of Victorians. We believe the Charter should therefore no longer exempt certain public authorities, such as the Parole Board, from the Charter's operation.

<sup>51</sup> Bond, S. (2010). *Women on the move: Evaluating a refugee mentoring pilot project*, Brotherhood of St Laurence, Melbourne

<sup>52</sup> Rice, S. (2010). *Background paper for African Australians: A review of human rights and social inclusion issues*, Australian Human Rights Commission, Canberra.

- 4.2.15 Further, we regard the current definition of public authority as being confusing and failing to provide certainty for so-called 'functional' public authorities, including government-funded agencies in the community and non-government sectors.
- 4.2.16 We recommend that all agencies receiving government funding be regarded as public authorities for the purposes of the Charter, when they are fulfilling functions for which they have received government funding.
- 4.2.17 'Functional' public authorities should be exempted from any reporting and auditing requirements to the VEOHRC and be provided with appropriate resources to assist them understand and appropriately implement their more clearly defined obligations.
- 4.2.18 The review of the Charter after eight years of operation, as described in Section 45 of the Charter, should be amended to specifically inquire into how 'functional' public authorities' compliance with the Charter can be assisted and improved.

***Recommendation 22***

That Section 38 obligations on public authorities to act compatibly with human rights and give proper consideration to rights be retained, and restored to currently exempted agencies including the Parole Board.

***Recommendation 23***

That the definition of public authority be reviewed and simplified to include all government-funded agencies as 'functional' public authorities when they are fulfilling functions for which they have received government funding.

***Recommendation 24***

That resources be made available to assist 'functional' public authorities to understand and appropriately implement their human rights obligations.

***Recommendation 25***

That 'functional' public authorities be temporarily exempted from reporting requirements to the Victorian Equal Opportunity and Human Rights Commission but that the review of the Charter after eight years of operation specifically inquire into how their compliance with the Charter can be assisted and improved.

### 4.3 The effects of the Charter on the development, drafting and consideration of statutory provisions by Parliament

#### ***Review of the Mental Health Act 1986***

Overwhelmingly mental health clients experience a range of challenges arising out of poor access to information, limited capacity to participate in decisions that affect their lives and for self-directed care, and few safeguards in relation to consumer advocates and review of decisions. These experiences lead to increased isolation and disempowerment and have a significant compounding effect on the frequency, intensity and duration of their illness.

The Mental Health Act review, as well as its processes and outcomes, provide good examples of the ways in which the Charter has impacted, but not dictated the development and review of legislation since the its inception.

The Review terms of reference stated that the Review's aims included to ensure the Act appropriately protects human rights in light of the Charter's development, and reference to international human rights law.<sup>53</sup>

Similarly, human rights and the Charter featured heavily in feedback received through the Review's community consultation process, where it was noted that:

"In light of developments in human rights and mental health legislation in Australia and internationally, the overwhelming community view is that the rights protections in the current Act are insufficient. Many submissions state that human rights considerations should inform a complete overhaul of Victoria's approach to mental health."<sup>54</sup>

Through the human rights dialogue, the review led to an Exposure Draft that included a range of rights-based principles; considered issues of informed decision-making and participation; empowerment through nominated persons and advance statements; and tighter controls around the use of restrictive practices and treatment orders.

Many of these measures if enacted, have the potential to improve the access to basic rights for many mental health consumers, as well as to improve the accountability of mental health providers.

However, the human rights dialogue has not remedied all of the concerns of mental health consumers or their advocates, with the issue of involuntary treatment remaining as a key issue of contention.

Whether agreeable or not, this unfolding discussion has also identified the role the courts have played in attempting to appropriately balance competing rights<sup>55</sup>, none of which can be regarded as absolute.

To this extent, the Mental Health Act review provides a useful illustration of how the Charter has helped to advance and improve human rights protections and promote debate, but equally how it has not provided a panacea for the concerns of those it engages.

<sup>53</sup> Mental Health Act 1986, *Terms of reference*. Available at <http://www.health.vic.gov.au/mentalhealth/mhactreview/termsoref.pdf>

<sup>54</sup> Victorian Department of Human Services (2009). *Review of the Mental Health Act 1986: Community consultation report July 2009*.

<sup>55</sup> *Kracke v Mental Health Review Board & Ors (General)* [2009] VCAT 646.

- 4.3.1 The submitting agencies support the continued requirement that Parliament consider the human rights implications of all new legislation presented to it, through the accompanying statement of compatibility outlined in Section 28 of the Charter.<sup>56</sup>
- 4.3.2 We regard it as critical to the integrity of the parliamentary Charter process that statements of compatibility continue to include a detailed assessment of how, why and to what extent a bill is compatible or incompatible with the rights in the Charter and how this view was formed. Statements of compatibility should remain sufficiently detailed and considered to ensure this occurs.
- 4.3.3 With the inclusion of additional Charter rights, the statement of compatibility should present a detailed assessment of the bill against both civil and political rights, and economic, social and cultural rights, with particular attention paid to the right to health and the rights of women, children, people with disabilities and Indigenous people in Victoria.
- 4.3.4 The Charter should recognise that some rights under international law, such as the right to life and freedom from torture are absolute, and should therefore be exempted from the application of the section 7 limitations clause and section 31 override declaration.
- 4.3.5 When an override declaration is made, the Government should be required to report back to Parliament at least every twelve months on the impact of the override, and reasons for its continuation.
- 4.3.6 Notwithstanding support for the basic premise of parliamentary sovereignty, the submitting agencies retain concern about the number of laws that have passed through Parliament in the first four years of the Charter's operation, where overrides have not been employed, but statements of compatibility have clearly indicated incompatibility with rights and/or bills have been debated before the Scrutiny of Acts and Regulations Committee (SARC) has delivered its own assessment.
- 4.3.7 The submitting agencies strongly support recommendations made in the VEOHRC's most recent Charter report regarding tighter procedures governing the relationship between the Scrutiny of Acts and Regulations Committee (SARC) and the Parliament, to ensure greater parliamentary accountability and transparency.<sup>57</sup>
- 4.3.8 SARC must be adequately resourced to fulfil its mandate of providing robust, transparent and comprehensive human rights assessments, and consideration should be given to establishing a specialist human rights sub-committee.

**Recommendation 26**

That the Section 28 requirement that statements of compatibility accompany all new bills presented to Parliament be retained and expanded, to ensure all newly included rights are properly considered.

**Recommendation 27**

That the right to life and right to freedom from torture be recognised as absolute, and exempted from the Section 7 limitations clause and Section 31 override declaration.

**Recommendation 28**

That reporting processes and requirements between the Scrutiny of Acts and Regulations Committee and Parliament be strengthened to ensure SARC recommendations are made available on all bills before debate, particularly where statements of compatibility identify incompatibility with rights.

<sup>56</sup> *Charter of Human Rights and Responsibilities Act 2006 (Vic)* s 28.

<sup>57</sup> Victorian Equal Opportunity and Human Rights Commission (2011). *Talking rights: 2010 report on the operation of the Charter of Human Rights and Responsibilities*.

***Recommendation 29***

That the Scrutiny of Acts and Regulations Committee be adequately resourced to fulfil its role.

#### 4.4 The effects of the Charter on the provision of services and the performance of other functions by public authorities

##### ***Principle to practice: Implementing a human rights based approach***

Since the delivery of its second annual report into the operation of the Charter of Human Rights and Responsibilities, the Victorian Equal Opportunity and Human Rights Commission has emphasised the need for government and other organisations to move from a culture of compliance to a culture of good practice, through the implementation of rights-based approaches to in all domains of their activity.<sup>58</sup>

Increasingly, adoption of this approach has been reflected in sector-specific settings, demonstrating a commitment to embedded change and improved performance through the application of rights-based approaches. Four such examples include work by:

Victorian Equal Opportunity and Human Rights Commission

*Principle to practice: Implementing the human rights based approach in community organisations*<sup>59</sup>

Victorian Local Governance Association

*From compliance to culture: A toolkit for local governments to implement the Victorian Charter of Human Rights and Responsibilities*<sup>60</sup>

Department of Planning and Community Development

*Victorian Government Aboriginal inclusion framework and matrix*<sup>61</sup>

Health Issues Centre

*How does the Victorian public hospital charter meet the challenges of the new Victorian Charter of Human Rights and Responsibilities?*<sup>62</sup>

- 4.4.1 The submitting agencies are of the view that the Charter has provided significant impetus for improved processes and decision-making within government and non-government agencies alike, but equally recognises that the development of a culture of human rights is a process of incremental change that will take many more years to evolve and embed.
- 4.4.2 Many of our services are underpinned by a range of service standards and guidelines, including for example the broad range of principles outlined in the *Australian Charter of Healthcare Rights*<sup>63</sup> as discussed in 4.1.31 above, as well as other professional codes relevant codes and service standards including QICSA, AGPAL, HACC and HASS.
- 4.4.3 Many of our clients have multiple and complex needs, necessitating interaction with a vast range of different services and sectors (for example, health, housing, family violence and/or mental health care) each of which are guided by sector-specific standards that can be complex and inaccessible, are generally aspirational, and are unenforceable.

<sup>58</sup> Victorian Equal Opportunity and Human Rights Commission (2009). *Emerging change: 2008 report on the operation of the Charter of Human Rights and Responsibilities*.

<sup>59</sup> Victorian Equal Opportunity and Human Rights Commission (2008). *Principle to practice: Implementing the human rights based approach in community organisations*.

<sup>60</sup> Victorian Local Governance Association (2010). *From compliance to culture: A toolkit for local governments to implement the Victorian Charter of Human Rights and Responsibilities*.

<sup>61</sup> Department of Planning and Community Development (2010). *Victorian Government Aboriginal inclusion framework*.

<sup>62</sup> Health Issues Centre (2008). *How does the Victorian public hospital charter meet the challenges of the new Victorian Charter of Human Rights and Responsibilities? Final report*.

<sup>63</sup> Australian Commission on Safety and Quality in Healthcare (2009). *Australian charter of healthcare rights*. Available at: <http://www.health.vic.gov.au/patientcharter/charter.htm>

- 4.4.4 The Charter provides one clear instrument that can assist services and their clients to better understand the range of obligations and rights attached to service design and delivery.
- 4.4.5 Even within the context of our own services however, where our underlying guiding principles are entirely consistent with human rights, a great deal of work remains to be done to align our language and understanding, develop our own human rights practice, and better build our capacity and that of our services users to utilise the Charter as a vehicle for change.
- 4.4.6 We note that after the first year of the Charter's operation the VEOHRC acknowledged movement towards a human rights culture would be a gradual process, but that even after that short period of time significant steps had already been taken towards that goal:

Already we are seeing improvements in the responsiveness of state and local government services, in the quality of public sector decision-making and in the protection of vulnerable people and groups<sup>64</sup>.

#### **Case example: Human rights in local government**

The Charter's obligations on public authorities extend to local councils and within the western region of Melbourne, many local councils have undertaken a range of activities directly related to human rights and social justice action, to embed human rights practice within their work, to engage communities in the human rights dialogue, and/or to provide improved services to communities of need.

One such example is the Brimbank Social Justice Charter and Coalition.

Adopted in 2008, Brimbank's Social Justice Charter aims to build a just and inclusive community where human rights are upheld and structural disadvantage is recognised and changed. It comprises commitments to access, equity, participation and human rights in Council policy, programs and projects especially for our most disadvantaged and vulnerable population groups.<sup>65</sup>

A range of activities have been undertaken including the establishment of the Brimbank Social Justice Coalition, an annual Social Justice Summit and development of a human rights culture through promotion of the Victorian Charter of Human Rights and Responsibilities.

Current priorities for the Social Justice Coalition that could be supported through the inclusion of economic, social and cultural rights in the Charter include:

- Accessible public transport;
- Affordable and accessible housing; and
- Industry, employment and education.

- 4.4.7 By its most recent report of 2010, the VEOHRC noted that when well used, there was evidence of the Charter preventing breaches of human rights, but that continued implementation required leadership and commitment.<sup>66</sup>

<sup>64</sup> Victorian Equal Opportunity and Human Rights Commission. (2009). *Emerging change: 2008 report on the operation of the Charter of Human Rights and Responsibilities*.

<sup>65</sup> Brimbank Social Justice Coalition and Charter. Available at [http://www.brimbank.vic.gov.au/Page/page.asp?Page\\_Id=2572&h=1](http://www.brimbank.vic.gov.au/Page/page.asp?Page_Id=2572&h=1)

<sup>66</sup> Victorian Equal Opportunity and Human Rights Commission (2011). *Talking rights: 2010 report on the operation of the Charter of Human Rights and Responsibilities*.

- 4.4.8 To a greater or lesser extent, in our experience the Charter has offered and delivered a range of useful benefits, including:
- Giving decision-makers a helpful framework for making tough decisions leading to improved decision-making processes and practices within government, public authorities and community organisations
  - Encouraging negotiated outcomes through shared language and a set of clear principles that can be used to advocate for our clients
  - Providing an impetus for training and education focusing on best practice
- 4.4.9 For the community and individuals, we believe the Charter provides a foundation for the development of a human rights culture by increasing awareness of human rights, as well as increasing capacity for asserting and accessing those rights.
- 4.4.10 We believe the Charter provides a powerful advocacy tool for professionals and service users to obtain better and more just services from public authorities without recourse to the courts<sup>67</sup> but that these outcomes could be further strengthened with the inclusion of ICESCR, CROC, CEDAW and DRIP rights.
- 4.4.11 Critically, we believe the Charter has enabled greatly expanded focus on the development and implementation of rights-based frameworks within many organisations, as a way of analysing inequalities, providing redress to discriminatory practices, and improving the overall quality of service delivery.<sup>68</sup>

#### **Human rights implementation: Women's Health West**

Women's Health West's Strategic Plan (2009-2012) articulates a vision for equity and justice for women in the west that is guided by a human rights approach. Our work encompasses not only the protection and realisation of civil and political rights for women but also the economic, social and cultural rights that impact directly on women's health, safety and wellbeing.

This translates into the delivery of client-centred family violence services that promote human rights including self-determination, the right to live free from violence and discrimination, to achieve equal protection before the law, and the right to shelter. Recognition that particular groups of women are more vulnerable to human rights violations gives impetus to programs that focus on housing for CALD women and intensive case management for women with a disability.

Our health promotion, research and development team uses gender equity, community development, and human rights frameworks as a lens to plan actions that promote and protect the human rights of women in the west of Melbourne, including those related to health, education, and participation in the cultural life of the community. Some initiatives include:

- Delivering the Financial Literacy Program to Sudanese, Karen and Vietnamese groups of women in the west, strengthening their understanding of and capacity to exercise their social and economic rights.
- Implementing the Family and Reproductive Rights Education Program (FARREP) to work with women affected by female genital mutilation (FGM), addressing the right that 'no-one should be subjected to torture or cruel, inhumane or degrading treatment'.
- Delivering Girls Talk Guys Talk - a whole-school sexual health education and policy development project that facilitates young people's informed decision-making about their health and sexual wellbeing.

<sup>67</sup> Williams, G. (2007). *Victoria's new Charter: Human rights and the community*. Just Policy. vol 43. 6-10.

<sup>68</sup> Victorian Equal Opportunity and Human Rights Commission (2008). *Principle to practice: Implementing the human rights based approach in community organisations*.



- 4.4.12 Perhaps most tellingly however, is the gap between organisational and community member perceptions of the Charter's impact, as outlined in the VEOHRC's 2010 Charter report.<sup>69</sup> While there was agreement about the Charter's potential to create a positive cultural shift within government, on almost every indicator of its perceived success, community members agreed less and disagreed more than service providers.
- 4.4.13 Clearly, a great deal more work is required to engage community members in a meaningful way with the human rights dialogue, and to empower and build their capacity to contribute meaningfully to human rights improvements in their own lives and that of their communities.
- 4.4.14 The submitting agencies therefore recommend that the implementation of the Victorian Charter continue to be strengthened via increased support for awareness raising campaigns, human rights education, and capacity building initiatives across all sectors of our community. We believe these factors are crucial in ensuring that a human rights culture continues to take hold and grow.

#### ***Human rights implementation: Western Region Health Centre***

The Western Region Health Centre has undertaken a range of activities since the Charter's inception to ensure improved accessibility of its services, greater participation by consumers and community members, and to improve its responsiveness to the cultural needs of the communities it serves.

Examples of this work include a whole-of organisation cultural competence review, establishment of an Indigenous working group and bilingual staff support group, a language services review, and establishment of a mental health consumer participation framework.

In late May 2011, this work progressed significantly with the adoption of the Centre's new strategic plan for the four years to 2015. Framed within a human rights based approach, the new plan is underpinned by human rights principles that include Participation, Accountability, Non-discrimination and attention to vulnerable groups, Empowerment and Linkage to human rights standards.

The framing of the Centre's strategic direction through a human rights lens will provide a platform for the Centre to build upon its existing work, in part through the development of a human rights implementation plan that incorporates policy review, staff training and education, community capacity building, and rights-based advocacy.

#### ***Recommendation 30***

That Charter implementation be strengthened through greater resources for community awareness raising and engagement, human rights education, and capacity building initiatives across all sectors of our community.

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<sup>69</sup> Victorian Equal Opportunity and Human Rights Commission (2011). *Talking rights: 2010 report on the operation of the Charter of Human Rights and Responsibilities*.

#### **4.5 The effects of the Charter on litigation and the roles and functioning of courts and tribunals**

- 4.5.1 The submitting agencies believe that as with other areas of law, the Courts have an essential role in developing Charter jurisprudence and interpreting legislation by hearing and determining matters that raise Charter issues, and deciding when government authorities have breached a person's human rights.
- 4.5.2 We support continuation of the role of courts and tribunals as discussed in part 4.2, and extension of their role to include a free-standing right of action for breaches of human rights.

#### **4.6 The effects of the Charter on the availability to Victorians of accessible, just and timely remedies for infringements of rights**

- 4.6.1 While the submitting agencies strongly support the continuation of the Charter with the addition of further rights, we believe one of the key limitations of the Charter at present is the absence of clear and simple remedies for the infringement of rights.
- 4.6.2 We are firmly of the view that the protection of rights is only as strong as an individual's capacity to access those rights, and that the current limitation on a person's ability to commence legal proceedings for non-compliance with the Charter creates unnecessary confusion and complexity.
- 4.6.3 The absence of a clear remedy provision has also led some public authorities to question the need for their compliance, with little concern of sanction.
- 4.6.4 It is our experience that our service users and the community more broadly want timely, accessible and effective ways to raise their concerns about breaches of human rights with Government, and to have those concerns addressed.
- 4.6.5 To this end, the submitting agencies support the VEOHRC's position that it should be empowered to conciliate complaints about alleged breaches of the Charter as the leading human rights authority with expertise in the Charter and an established dispute resolution service for equal opportunity matters; that the conciliation role should provide coverage for all public authorities (including those as defined by the submitting agencies at 4.2.16); and that the conciliation function should be as simple and timely as possible.
- 4.6.6 We support the view that development of human rights accreditation schemes and specific inclusion of human rights standards within existing schema would support organisations to understand their human rights obligations in particular contexts.
- 4.6.7 Finally, we agree that courts should have the power to award damages for breaches of human rights, including financial compensation, that match the seriousness and impact of the breach.

#### ***Recommendation 31***

That the Victorian Equal Opportunity and Human Rights Commission be empowered to conciliate complaints about alleged breaches of human rights by public authorities, including 'functional' public authorities as defined in Recommendation 23.

#### ***Recommendation 32***

That human rights accreditation schemes and explicit inclusion of human rights principles within existing quality standards become a focus for developing improved human rights practice.

**Recommendation 33**

That the creation of a free standing right to legal proceedings empower the courts to award damages for breaches of human rights, including financial compensation, that match the seriousness and impact of the breach.

**4.7 Concluding comments**

- 4.7.1 The submitting agencies are clear that proper promotion, protection and fulfilment of human rights are critical to ensuring all people are able to live a life of freedom, respect, equality and dignity.
- 4.7.2 The Charter has made a significant contribution to the development of a culture of rights in Victoria, and has had a positive impact on the functioning, accountability and transparency of government and non-government agencies.
- 4.7.3 We recognise that the development of a culture of rights is a gradual process that requires significant change, and will take time to become embedded within our institutions, service and communities.
- 4.7.4 For these reasons we support the continuation of the Charter, and the current mechanisms for its operation, as an investment in the long-term social and economic wellbeing of Victoria and Victorians.
- 4.7.5 We have also recommended throughout this submission a range of improvements that can be made to the Charter's scope and operation, the role of the Commission and relationship between the various arms of government and the community.
- 4.7.6 These changes will help Victoria further its leadership nationally, and progress towards its aim of ensuring all people can access and enjoy their fundamental rights to the fullest extent possible.

## 5 List of Recommendations

### **Recommendation 1**

That the Victorian Charter of Human Rights and Responsibilities be maintained.

### **Recommendation 2**

That all civil and political rights contained in international treaties to which Australia is a signatory, be included in the Charter except for those rights exclusively related to federal issues.

### **Recommendation 3**

That rights contained in the *International Covenant on Economic, Social and Cultural Rights* (ICESCR) be explicitly included in the Charter.

### **Recommendation 4**

That the economic, social cultural rights included in the Charter be subject to the same application of obligations contained in ss. 7, 32, and 38 as currently protected civil and political rights.

### **Recommendation 5**

That the economic, social and cultural rights included in the Charter be subject to a similar provision as Section 8(4) in recognition that special measures may be required to address entrenched disadvantage.

### **Recommendation 6**

That rights contained in the *Convention on the Rights of Persons with Disabilities* be explicitly referenced in the Charter.

### **Recommendation 7**

That an expansively defined right to health be explicitly referenced in the Charter encompassing principles of participation, choice, control, accessibility, empowerment, and timeliness.

### **Recommendation 8**

That explicit consideration of the right to health be required in the drafting and review of legislation and policy.

### **Recommendation 9**

That rights contained in the *Convention on the Rights of the Child* be explicitly referenced in the Charter with a particular focus on non-discrimination, best interests, survival, and development and participation.

### **Recommendation 10**

That the rights of children included in the Charter be subject to the same application of obligations contained in ss. 7, 32, and 38 as currently protected civil and political rights.

### **Recommendation 11**

That rights contained in the *Convention on the Elimination of all Forms of Discrimination Against Women* be explicitly referenced in the Charter with a particular focus on non-discrimination, best interests, survival and development and participation.

### **Recommendation 12**

That the rights of women included in the Charter be subject to the same application of obligations contained in ss. 7, 32, and 38 as currently protected civil and political rights.

**Recommendation 13**

That rights contained in the *Declaration on the Rights of Indigenous Persons*, particularly the right to self-determination be explicitly referenced in the Charter.

**Recommendation 14**

That consistent with the principles underpinning the Declaration, Aboriginal people be further consulted to identify their preferred mechanism for including the right to self-determination.

**Recommendation 15**

That the rights of Indigenous people included in the Charter be subject to the same application of obligations contained in ss. 7, 32, and 38 as currently protected civil and political rights.

**Recommendation 16**

That the Section 32 obligation on courts and tribunals to interpret laws compatibly with human rights to the maximum extent possible consistent with their purpose, be retained and expanded to include any newly protected rights.

**Recommendation 17**

That a free standing right to legal proceedings and other remedies for breach of human rights be included in the Charter, drawing on provisions and experience from other similar jurisdictions.

**Recommendation 18**

That the Victorian Equal Opportunity and Human Rights Commission retain its court intervention, review and annual reporting functions.

**Recommendation 19**

That annual reporting by public authorities be made mandatory and include an evidence-based demonstration of how human rights are being embedded in culture and practice.

**Recommendation 20**

That the Victorian Equal Opportunity and Human Rights Commission's powers be expanded to include independent audits and own-motion inquiries into the activities of public authorities.

**Recommendation 21**

That additional resources be provided to the Victorian Equal Opportunity and Human Rights Commission and other key agencies to support direct and devolved community participation in inquiry, audit and annual reporting functions.

**Recommendation 22**

That Section 38 obligations on public authorities to act compatibly with human rights and give proper consideration to rights be retained, and restored to currently exempted agencies including the Parole Board.

**Recommendation 23**

That the definition of public authority be reviewed and simplified to include all government-funded agencies as 'functional' public authorities when they are fulfilling functions for which they have received government funding.

**Recommendation 24**

That resources be made available to assist 'functional' public authorities to understand and appropriately implement their human rights obligations.

**Recommendation 25**

That 'functional' public authorities be temporarily exempted from reporting requirements to the Victorian Equal Opportunity and Human Rights Commission but that the review of the Charter after eight years of operation specifically inquire into how their compliance with the Charter can be assisted and improved.

**Recommendation 26**

That the Section 28 requirement that statements of compatibility accompany all new bills presented to Parliament be retained and expanded, to ensure all newly included rights are properly considered.

**Recommendation 27**

That the right to life and right to freedom from torture be recognised as absolute, and exempted from the Section 7 limitations clause and Section 31 override declaration.

**Recommendation 28**

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