Dear Mr Hannigan,

CONCERNS REGARDING LEGAL SYSTEM

I refer to your email of 30 May 2010 to the Attorney-General, the Hon Rob Hulls MP, in which you describe your concerns with the legal system in Victoria. The Attorney-General has asked me to respond on his behalf.

Your correspondence appears to be focused upon your concerns about:

- the view expressed by the Legal Services Commissioner (the Commissioner) in his letter to you dated 14 January 2010 that legal practitioners in private practice are not required to comply with the Victorian Charter of Human Rights and Responsibilities (the Charter);
- the response you have received from the Victorian Ombudsman (the Ombudsman) in relation to your request for a copy of a report mentioned in the Ombudsman's 2009 annual report;
- the response you received from the Commissioner in relation to your freedom of information request.

In relation to your query regarding the Charter, I note that the Charter was established to protect Victorians' human rights against unjustified actions by the Government. Accordingly, it applies to the making of legislation, the interpretation of legislation, and the performance by public authorities of their functions. As the Commissioner correctly noted, the Charter does not impose legal obligations upon private citizens, including legal practitioners in private practice.

Human rights laws are concerned with regulating the relationship between the government and individuals to protect people from injustices and to allow everyone to participate in and contribute to society. Imposing human rights obligations on government does, however, have flow-on benefits for private citizens in their dealings with each other, in a number of respects:

- States assume obligations and duties under international law to respect, protect and fulfil human rights. These obligations are not imposed on private citizens. However, they require States to
take measures to protect private citizens against human rights abuses inflicted by others, and take positive action to facilitate the enjoyment of basic human rights.

- Human rights laws which impose an obligation on government to assess legislation for human rights compatibility ensure that people's dealings with each other pursuant to legislation conform with human rights standards.

- Imposing an obligation on government to protect human rights encourages the creation of a rights-respecting broader community.

In relation to your concerns regarding the Ombudsman's response to you, I advise that the Ombudsman is an independent authority and is not subject to the control or direction of the Attorney-General. As the body responsible for investigating administrative actions taken by public bodies, it is critical that the Ombudsman is able to operate free of any interference by the Government. Accordingly, it would be inappropriate for the Attorney-General to investigate or seek to intervene in any decision taken by the Ombudsman.

Likewise, it would be inappropriate for the Attorney-General to intervene in the functioning of the independent Commissioner, including decisions taken by the Commissioner in relation to freedom of information requests. Victoria's freedom of information legislation seeks to strike the appropriate balance between maintaining privacy and upholding transparency in government. If you are dissatisfied with the way in which the Commissioner has handled your freedom of information request, you may wish to seek legal advice regarding the options available to you.

I trust this information is of assistance.

Yours sincerely

CHRIS HUMPHREYS
Director