Submission to the

Inquiry into the Charter of Human Rights and Responsibilities

June 2011

Attention:

Mr Edward O’Donohue, MLC
Chairperson
Scrutiny of Acts and Regulations Committee (SARC)
Parliament House
EAST MELBOURNE VIC 3002

Submitted by email to:
charter.review@parliament.vic.gov.au
The City of Darebin welcomes the opportunity to participate in the four-year review of the Victorian Charter of Human Rights and Responsibilities ("The Charter").

We make this contribution to the review of the Victorian Charter based on the understanding that human rights are important and worth protecting, and that Victorians have already benefited from the Charter in several ways – in particular from greater understanding of rights within the community and also enhanced protection for individuals and groups from rights breaches.

The City of Darebin was one of the first local councils to respond to the Charter and has been commended for its work and leadership in two reports on the progress of the Charter, prepared for the Victorian Government by the Victorian Equal Opportunity and Human Rights Commission.

Since the beginning of 2008 Council has worked to ensure our systems, policies, decision-making and legislative processes comply with the rights contained in the Charter. While we acknowledge we are only at the start of what will be a long-term process, we agree it has been a worthwhile and valuable one to date. Our experiences in both implementing the Charter organisationally and facilitating community awareness of the Charter, inform many of the recommendations made in this submission.

This submission will address the key Terms of Reference relevant to local government in general, and to the City of Darebin in particular. Council has made ten recommendations in relation to these Terms of Reference.
Terms of Reference 1 & 2: Inclusion of additional human rights in the Victorian Charter

There is strong evidence that legal protection of human rights is an important factor in contributing to their practical realisation. The current Charter is based on key civil and political rights drawn from the International Covenant on Civil and Political Rights. Council acknowledges that an incremental or staged approach to the development of the Charter (via five yearly operational review and update, as per the current legislation) has been a practically sound way to establish human rights thinking in Victoria. However there is scope to now extend the Charter to include economic, social and cultural rights.

Council recognises that human rights are interdependent, indivisible and mutually enforcing. To this end,

Recommendation 1: Council recommends that the Charter include legal protection of the fundamental civil, political, economic, social and cultural rights that are necessary for all people to live with dignity and participate fully and equally in our community.

1. Additional economic, social, political and cultural rights

The Charter rights which have had the most relevance to and impact on Council’s decision-making, policy formulation and service delivery – including examples of how these have shaped our thinking and work - are detailed below.

Recommendation 2: Council recommends that the following rights be retained and – where there is scope to do so – strengthened, in any future versions of the Charter.

Recognition before the law (s 8)
Two key parts of this right have impacted on our decision-making and service delivery - the right of people to effective protection from discrimination and the provision for special measures to be taken to assist groups who are disadvantaged because of discrimination. This has provided an additional checking mechanism to ensure our decisions and delivery do not (as far as possible) have a discriminatory affect on people. It has also provided additional rationale for the provision of specialised
and/or targeted services to higher needs groups in the community. For example, a human rights approach has been integrated into Council's development of a social inclusion framework to guide its work with socially excluded people and groups in the community.

Freedom of movement (s 12)
This right has impacted decisions where Council has had a particular interest in protecting or restoring safe community places and spaces in the municipality. It has also assisted our thinking when one of the impacts of a decision is likely to be the prohibition of individuals or groups from a particular area. For example the decision to establish two Alcohol Restricted Zones in the municipality to restrict anti-social behaviour in these areas had, as one consequence, a limiting affect on some people's right to access all parts of the municipality. Council's Charter Check process which reflects the 'restricting rights' requirements of s 7 of the Act was a useful process to ensure careful assessment of the decision against criterion for lawful restriction of rights.

Freedom of thought, conscience, religion or belief (s 14) and Cultural rights (s 19)
While Council has a long-standing commitment to protecting the rights of all people to choose and practice their religion or belief, culture or language - these rights have been helpful when complaints have arisen in the community as to whether other fellow community members have these rights. Darebin is home to many cultures, faiths, religions, beliefs and languages. Achieving community harmony across these areas is extremely important to Council. The notion that community members can enjoy protection of these rights but at the same time have a responsibility to afford others the same right has formed an important and integral part of our communiqués with the community on this topic. It also forms part of the work we have done with multi-faith groups on respectful relationships within their congregations and faith communities. For example a workshop on human rights was held for local faith leaders drawing on the Charter and other United Nations documents to highlight the basis of respectful relationships between men and women.

Freedom of Expression (s 15) and Peaceful assembly and freedom of association (s 16)
These rights have had particular relevance in relation to community events. Council receives many requests to facilitate and support individuals and groups to come together, exchange ideas and information, publicly express their views and/or hold a peaceful protest. Council notes that S 15 of the Act provides that freedom of expression may be lawfully restricted where necessary to protect public order, public
health, public morality or national security. This is an important exemption, as from time to time Council may find that a group or individual’s desire to express their views has the potential to impact negatively on community harmony, safety, wellbeing and so on – and must therefore act promptly to restrict this right.

**Take part in public life (s18)**
Protection of this right has provided additional grounds for Council’s commitment to community engagement, active citizenship and democratic processes at the local level. Council has a wide range of programs in place to facilitate the engagement and participation of groups who require additional support to participate, such as younger, people, older people and people from recently arrived communities. One of the commitments in the current Council Plan is to active and genuine engagement of the community in governance, policy formulation and decision-making. In addition, “Darebin City Council commits to explore all options in coming to decisions which are in the interests of the entire community, not just the most vocal.” [Council Plan 2010-13]. Council’s proposed Community Engagement Framework will be underpinned by its obligation to protect residents’ right to take part in public life.

**Liberty and security of person (s 21), Humane treatment when deprived of liberty (s 22), Fair hearing (s 24) and Rights in criminal proceedings (s 25)**
Council has also drawn on this range of rights protections relating to people in criminal proceedings to shape and enhance its existing complaints, appeal and review procedures. For example by integrating some of the key principles in these rights, Council’s General Local Law was amended to provide for a clearer path to community members who wished to appeal against a fine or penalty issued under the local law.

2. Additional rights for women and children

As can be surmised from the above examples, the protection of these rights in the Charter has had an undeniable impact on their practical realisation at a local level. Council acknowledges that the current review of the Charter affords an opportunity to create a more powerful tool – in particular the inclusion of additional rights to boost protection of vulnerable groups.

a. Women

For the past four years Council has been a sector leader in its preventing violence against women initiatives at local and state levels. This has
involved community campaigns, workplace initiatives and advocacy for policy and legislative change. Council recognises that one of the broader causes of family violence is unequal power relationships between men and women across broader society. The protection of rights relating to equality of women to men has potential to strengthen efforts to deal with the root causes of violence against women and their children.

In addition, Council has worked to bring the voices of women in the municipality closer to the decision-making power of Council by the establishment of a Darebin Women's Committee to "... support the right of women to fully and equally engage and participate in the life of the community." (Darebin Council Plan 2009 – 2013). Council is committed to enhancing the health, wellbeing and social inclusion of Darebin women. The protection of rights which relate to women's full and active civic participation would strengthen and promote work in this area.

Recommendation 3: Council recommends that additional rights drawn from the Convention on the Elimination of All Forms of Discrimination against Women be included in the Charter to strengthen its protection of the rights of women particularly in relation to equal and active participation in the community.

b. Children

Council is a key provider of community services to babies and children in the municipality through provision of maternal and child health services, immunisation services, library services, family counselling and so on. Council also delivers and/or supports early childhood education via childcare and kindergarten services. Council has significant experience and expertise in understanding and meeting the needs of children in the municipality.

The active participation of children is community life is as important as that of women, as outlined above – and the protection of this right is critical to its realisation.

Recommendation 4: Council recommends that additional rights drawn from the Convention on the Rights of the Child be included in the Charter to strengthen its protection of the rights of children, particularly in relation to equal and active participation in the community.
3. Right to self-determination

Council notes the right to self-determination - which can include a guarantee of full, free and effective participation in all aspects of public life, particularly government decision-making - has relevance to all communities but particularly for the Aboriginal people of Victoria.

Council acknowledges that there are clear differences between the experiences of Indigenous and non-Indigenous people in Australia across all indicators of quality of life. Further, Indigenous peoples have also suffered from the limited recognition and protection of their culture, languages and rights and ownership of land and resources.

Recommendation 5: Council recommends that the right to self-determination, one of the rights contained in the International Covenant on Civil and Political Rights (ICCPR) be included in the Victorian Charter. Such protection would contribute to the conditions necessary for all people to live with dignity and participate fully in our community. Council acknowledges the particular relevance of this right to the Aboriginal people of Victoria.

Terms of Reference 3: Whether there should be mandatory auditing of public authorities to assess compliance with human rights?

Council acknowledges that reporting and auditing frameworks are important to identify systemic and structural issues, and also to monitor and evaluate the effectiveness of actions taken to address such issues. Such reporting and auditing frameworks already exist in the areas of occupational health and safety, freedom of information and other significant Council programs. They would be entirely appropriate to monitor work and progress in the area of Charter rights and provide a level of transparency.

The current regime of annual self-auditing and reporting to the Victorian Human Rights and Equal Opportunity Commission (VEOHRC) has been useful to Council in assessing and monitoring its own performance in human rights. It has also provided a level of accountability through the organisation and an impetus for action when required.
The provision of substantial resources such as the document Civil and Political Rights Explained has been of great assistance to Council in meeting the requirements of the Charter. The educative and resourcing functions of the Commission are important adjuncts to its auditing and monitoring roles and this multiplicity of roles should be preserved.

The Victorian Charter should also provide the VEOHRC with extended authority and mandate to inquire into and audit the compliance of public authorities’ policies, programs and practices with regards to human rights, particularly in settings where there is evidence of ongoing and/or extreme human rights violations.

The VEOHRC is the most appropriate State Government body to provide this monitoring function.

Recommendation 6: Council recommends that the Victorian Charter mandate regular reporting by public authorities on the steps they have taken to monitor and evaluate their processes for ensuring their decisions and actions are compatible with human rights.

Recommendation 7: Council recommends that the VEOHRC be vested with the authority to provide this critical monitoring function and continue to provide its educative and resourcing functions to support compliance.

Terms of Reference 4: Should the Charter include further provisions with respect to legal proceedings that may be brought or remedies that may be awarded in relation to acts or decisions of public authorities made unlawful by the Charter?

Council acknowledges that the community wants good legal protection of human rights that this protection is generally perceived to include grounds for complaint and remedy. Council has lead community engagement and consultation on human rights with various groups and agencies over the past four years. In public meetings held to gather ideas and opinions for Council’s submission to the National Consultation on Human Rights for example, many people spoke of their desire for established proceedings and/or remedies if their protected human rights are restricted or denied by public authorities. Many community members referred to the Charter as a ‘toothless tiger’ while it does not include these provisions.
Council acknowledges that there is scope for the Charter to allow for conciliation of complaints using a model similar to that utilised for equal opportunity matters. The VEOHRC is the obvious state government authority to deal with Charter complaints from the community and could assist those people whose rights are not being observed to achieve quick resolution of their problems.

The positive duty placed on public authorities to act compatibly with the Charter has provided a ‘carrot’ to implement the Charter without, importantly, the threat of the ‘stick’. The benefit of this approach has, in Council’s experience, allowed for a positive, steady and incremental integration of the Charter into Councils’ decision making. It has allowed for the possibility of a human rights culture to bud and grow within the organisation over time.

As outlined above, it is Council’s experience that the community wants timely, accessible and effective ways to raise its concerns about breaches of the charter with the government. However it is also Council’s experience that the community needs to better understand the Charter and become more aware of their rights. Many people, including those who have regular contact with public authorities such as Office of Housing have told Council that they are unaware of the Charter. There is a need for continued and extended education and advocacy work so that the community can extract maximum value from the Charter.

Council does work to promote the Charter in many facets of its operations. For example, information brochures on the Charter are available in Customer Service Centres and at major Council festivals and events; staff are trained on the Charter so that they are able to explain it confidently to community members; Council funds an officer position with responsibility for advising on and promoting the Charter both within the organisation and the community.

Recommendation 8: Council recommends that a conciliation of complaints model, similar to that used for equal opportunity matters, be introduced to deal with complaints from the community, and that this process become the responsibility of the VEOHRC.

Recommendation 9: Council recommends that additional resources be committed to informing Victorians about the Charter, in particular the
rights it protects and how the Charter can provide support to those struggling to have these rights recognised.

**Terms of Reference 5C: What have been the effects of the Charter Act on the provision of services, and the performance of other functions, by public authorities?**

The ‘dialogue’ model of the Charter’s human rights protections ensures that human rights are given proper consideration at the initial stages of policy formulation, law making and so on. This has been a particular strength of the Charter, in Council’s experience.

Council notes and concurs with the VEOHRC’s comments in its 2010 report on the Charter that “there is cultural change taking place within government and that for many agencies, taking human rights into considerations into their work is becoming business as usual.”

Through the inclusion of the Charter Check process in Council’s template for Reports and Briefings to Council, the Charter has played an important role in ensuring that Council’s decision-making is assessed against some fundamental human rights standards – and before a final decision or conclusion is reached. This process has also lead to better informed debate within Council about the role and extent of human rights protections at the local level.

The gathering of evidence as part of the Charter Check and the requirement to capture this evidence as well as record thinking and discussions within Council’s corporate information management processes, has also lead to more transparent and accountable decision making when Charter rights are involved.

There is little evidence of the community actively using the Charter when dealing with Council including as a tool for advocacy and change. This is likely due to the minimal understanding of the Charter by many people as noted in an earlier section of this submission. There is tremendous scope to boost this understanding by supporting small scale, local level community initiatives which are lead by established groups.

Council notes that the Charter has been a catalyst for a number of major law reform enquiries and amendments to legislation at the state government level, including the review of the Mental Health Act 1986 and the Victorian Law Reform Commission’s Inquiry into Surveillance in Public Places.
The recent release of the Victorian Local Government Association’s *From Compliance to Culture* resource has provided an outstanding and long-awaited opportunity for Councils and Shires across Victoria to build the Charter more consistently and effectively into their operations, thereby impacting on their decision making, law making and service provision. It also provides a process for local governments to better monitor, assess and review the impact of the Charter on their operations. The full potential of this resource will be realised by the provision of ongoing coordination between Councils and Shires to share ideas and experiences of implementing human rights considerations.

Recommendation 10: Council recommends that a State Government-funded community grants program be established with appropriate criteria to support small-scale, community level projects which support human rights promotion and understanding. Alternatively, this funding could be released to Councils to administer under their existing community grants schemes.

Recommendation 11: Council recommends that the Victorian Local Government Association's resource *From Culture to Compliance* be supported with additional funding, particularly to provide centralised support and resourcing to Councils and Shires as they implement the framework.
Submission to the Inquiry into the Charter of Human Rights and Responsibilities June 2011

Terms of Reference 6: What, if any, have been the overall benefits and costs of the Charter?

Council’s views on the benefits of the Charter have already been captured in this submission.

At an organisational level they include:

- Consideration of human rights at the ‘front end’ of decision making, law making and service delivery
- More transparent and accountable decision making
- A robust process for supporting the complex work of balancing competing rights, or restricting rights
- Enhanced rationale for initiatives which seek to support and protect the rights of disadvantaged and marginalised people
- A basis for fostering and growing a human rights-respecting culture, where human rights considerations are seen as everyday business

At a community level they include:

- Individual and community rights enjoy better protection
- A powerful tool for advocacy and change at the individual and systemic levels when rights are being unlawfully restricted
- Concepts and language for supporting community harmony are based on human rights concepts of rights and responsibilities, or entitlements and obligations
- Some limited access to legal recourse when human rights violations occur

Terms of Reference 7: Further options for reform and improvement of the Charter

Council’s views on options for improvement of the Charter have already been captured in this submission. They include:

- Retention and strengthening of existing Charter rights in any new version of the Charter
- Inclusion of additional rights to support the civic participation and social equality of women and children
- Mandated reporting by public authorities on their implementation of Charter
- Extended resourcing to better inform and educate Victorians about the Charter
• Development of a conciliation of complaints model to deal efficiently and cost-effectively with Charter-related complaints from the community
• Dedicated resourcing to support utilisation and sector coordination of the Victorian Local Government Association’s resource *From Culture to Compliance*