10 June 2011

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

Email: charter.review@parliament.vic.gov.au

Dear Mr O'Donohue, MLC

Thank you for the opportunity to make a submission on the Review of the Victorian Charter of Human Rights and Responsibilities Act 2006 (‘the Charter’).

Who we are

The Top End Women’s Legal Service Inc (TEWLS) is a community legal centre funded by the Commonwealth Attorney-General’s Department to provide referrals, legal advice, casework, law reform and community legal education to women in the Top End of the Northern Territory. TEWLS was established in 1996 following recommendation by the Australian Law Reform Commission for the establishment of a network of women’s legal services to respond to the particular legal needs of women, which were not being met by traditional legal services. TEWLS is an active member of the National Association of Community Legal Centres and Women’s Legal Services Australia.

Our Submission

As a fellow community legal centre and member of the National Association of Community Legal Centres, TEWLS strongly supports the submissions of the Human Rights Law Centre and the Federation of Community Legal Centres. In addition, we have made some further comments below, which reflect our firm view that the Charter has been a positive development in Victoria, providing a foundation for deepening the human rights consciousness and dialogue of the Victorian public service and broader Victorian community. This can only be seen as a positive step in a mature democracy.

In our day to day work with some of the most disadvantaged and marginalised women in Australia, we regularly see violations of internationally recognised human rights, such as the right to the highest attainable standard of health, the right to adequate housing, the right to privacy and family life and the right to liberty and security of the person. Many of these human rights violations arise out of situations of domestic violence, perpetrated by private individuals within the privacy of the home. Other violations that we have witnessed stem from a lack of transparency and accountability within detention facilities or from inadequately resourced Aboriginal and Torres Strait Islander town communities.
TEWLS has an interest in the ongoing successful operation of the Charter in Victoria, as well as the Human Rights Act 2004 in the ACT. It is our view that if a human rights instrument existed in the Northern Territory, a number of the women that we assist would benefit, both from appropriate pathways for action and remedy of individual human rights breaches, as well as from a more rights focused and accountable public service sector. We are also firmly of the view that a comprehensive human rights instrument, in which human rights are contained in a single document, provides the benefit of accessibility to those whose rights are compromised.

Terms of Reference 1 and 2: Inclusion of Additional Rights in the Charter

TEWLS notes that 87% of submissions to the National Human Rights Consultation Committee in 2009 supported the adoption of a Human Rights Act in Australia. This indicates broad community support for more comprehensive human rights protection in Australia.

The Consultation Committee found that economic and social rights were rights that “matter most to Australians”. Economic and social rights include the right to the highest attainable standard of health, the right to adequate housing and the right to education. It is the most marginal and disadvantaged members of society that typically experience violations of such rights.

TEWLS believes that the civil and political rights contained in the Charter cannot be satisfactorily realised by those marginalised and disadvantaged members of the community until social and economic rights are also protected and promoted. This is particularly important for women, whose rights are more often violated within the private realm, for example by domestic violence. Civil and political rights by their nature tend to protect the ability of individuals to participate in the public realm, which does not adequately protect women, and other vulnerable members of the community, who are in need of housing, access to healthcare facilities, welfare benefits or education before they can meaningfully participate in society.

Australia has ratified the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW). CEDAW recognises that other international treaties do not sufficiently advance the rights of women. Whilst the Equal Opportunity Act 2010 (Vic) prohibits discrimination on the basis of sex, we believe that the interests of women could be further advanced with the incorporation of CEDAW rights and obligations into the Charter, particularly those relating to gender stereotypes, reproductive and sexual health, housing, employment, education and domestic violence.

If economic and social rights were to be included in the Charter, rights arising from CEDAW would not all necessarily need to be added as separate rights in a list of rights protected by the Charter. Rather, each right that is included in the Charter should be assessed to determine whether the interests of women, as set out in CEDAW and expanded on by the CEDAW Committee in General Recommendations and Concluding Observations, are being adequately protected and advanced. If gaps are found to exist in the protection of women’s rights, additional rights should be included in the Charter to ensure that women’s differences are respected and their rights protected equal to that of men. For example, the right to the highest attainable standard of health could, and should, incorporate protection of the reproductive and sexual health rights of women.

1 See National Human Rights Consultation Committee, Report of the National Human Rights Consultation (2009)
2 National Human Rights Consultation Committee, Report of the National Human Rights Consultation (2009), 344
3 See CEDAW Committee General Recommendation 19 on Violence Against Women (11th Session, 1992)
We therefore encourage the Victorian Government to incorporate all rights contained in the *International Covenant on Economic, Social and Cultural Rights*, as well as those yet to be included from the *International Covenant on Civil and Political Rights*, particularly the right to self-determination. In adopting these rights, we urge the Government to consider whether each right sufficiently protects the unique interests of women as required by CEDAW and to ensure gaps in the protection and advancement of women are addressed in a manner consistent with CEDAW.

**Term of Reference 4: Access to Effective Remedies Under the Charter**

We believe that the rights contained in the Charter should be freestanding enforceable and justiciable as rights. The current necessity to ‘piggy-back’ a human rights complaint to another cause of action, as required by s 39 of the Charter, is unduly complex and prohibitive. Human rights protections are needed by those most vulnerable and marginalised in community. They should not be further disadvantaged by having to overcome an additional legal barrier to enforcing their basic human rights.

In order to minimise the time and costs associated with court proceedings, and to provide greater accessibility to those whose human rights are being violated, Victorian Equal Opportunity and Human Rights Commission (the Commission) should be empowered to hear complaints arising from a breach of a Charter right, including economic and social rights and rights adopted from CEDAW. The Commission already effectively delivers on this function in relation to the *Equal Opportunity Act 2010* (Vic).

If you would like to further discuss this submission, please do not hesitate to contact Adrianne Walters on (08) 8982 3000 or by email at awalters@lewls.org.au.

Yours Sincerely,

Top End Women’s Legal Service

Nick Petrou
Managing Solicitor