14 June 2011

Mr Edward O'Donohue MLC
Chairperson
Scrutiny of Acts and Regulations Committee
Parliament of Victoria
Melbourne, 3000.

Dear Sir,

I write to you in relation to the Scrutiny of Acts and Regulations Committee enquiry into the operation of the Victorian Charter of Human Rights and Responsibilities Act 2006. The following submission primarily deals with the second and third term of reference points.

My name is Hugh Crosthwaite and I am a research associate at the Australian Catholic University Institute of Legal Studies. I am also a tutor of law at La Trobe University. Over the last decade I have enjoyed taking part in a number of projects and organisations that have social justice at their heart. In recognition of some of these activities I was awarded the 2010 Victorian Law Foundation "Chief Justice's Medal for Excellence and Community Service."

Firstly it must be said that human rights embody core values that underpin harmonious society. They are the legal articulation of threshold standards of conduct foundational to a fair and just community. As the committee will be well aware, the modern human rights language is the product of the cooperation of many nation states in their attempt to ensure that the conduct that led to the suffering of the Jews during the holocaust would never again be repeated. It must be remembered that the conduct sought to be eradicated from the world was not only the eventual murder of millions, but that discriminatory conduct which led to, and allowed, the murders to occur.

The Victorian Charter is a remarkable legal document. It embraces all the arms of government and does so in a way that detracts nothing but adds much. Parliamentary sovereignty is retained. The Summary Offences and Control of Weapons Amendment Act 2009 and the decision of the Court of Appeal in the Mawelovic case prove as much. Meanwhile the vulnerable in our community have been given greater consideration where new laws and policies have been created that affect them, leading to better legislation and better outcomes for all. I note with particular enthusiasm the decision of DHS, referred to in the Victorian Equal Opportunity and Human Rights Commission (VEOHRC) 2010 Charter Report, to change a policy that would have otherwise excluded a young boy with Aspergers syndrome from appropriate government support. That the case never went to trial is a testament to the Department of Human Services' capacity for reflection on human right issues. I note with equal enthusiasm the decision of VCAT to permit a widower and his child to remain in public housing after his mother, the tenant, passed away.

The types of decisions that government makes in relation to vulnerable individuals and communities define our standards as a community. Are we willing to do the necessary reflection and consideration on a case by case basis to ensure that people get a fair go? The path of efficiency has its advantages surely, but only where efficiency is a characteristic of government that affords better services to the people who must live under that government. The governments of the former USSR were highly
efficient, but at great personal expense. The Charter, on the other hand, promotes the right kind of efficiency. The kind of efficiency that leads a department to change its policy regarding the provision of services to a boy with Aspergers before going to trial. The kind of efficiency that prevents a man and his child from being evicted into homelessness and undoubted reliance on further government and community services.

My own experience has certainly informed my views. I am one of the many Victorians that live with a chronic illness. The disease is called Charcot Marie Tooth disease. It is the type of illness that, whilst having a profound impact on the lives of people who have it, does not generally stand in the way of intellectual participation. It is not a well known illness and for that reason it is often something that people do not take account of. I can understand how it feels to be discriminated against because I have experienced it myself. I can understand how it feels to be marginalised because I have experienced it myself. The Charter gives me a great deal of faith that I may, proactively and with the force of law, protect my own dignity when faced with discrimination. It is, of course, not a cure for another’s prejudices, but where used properly, the Charter ensures that any personal failings of a bureaucrat do not affect important decisions likely to have an impact on my own, or anyone else’s, life. For people like me government services can mean the difference between an active, meaningful life and a life without opportunity. The Charter has shown itself, as evidenced in the VEOHRC 2010 Report, to be a document that can be used by citizens and their advocates to ensure that government decisions do not limit the potential of people like myself but open up the opportunities available to most Victorians.

The holistic approach to values recognition which underpins the Charter is found nowhere else in the statute books with the same clarity and historical legitimacy. With the Charter at the fore, Victoria leads the way nationally on issues of political transparency and accountability. No other State Parliament devotes time and resources to the consideration of the effect of new laws on its citizens in the same way the Victorian Parliament does. It is something to be proud of and something to cherish.

With the centralisation of power in this country, it is easy to forget the divergence of politics that exist between the states and the benefit in comparison that federation affords. But, from the Parliament to the Executive to the Courts, the Charter, in its own quiet way makes Victoria’s democracy a superior democracy, a more open democracy and a fairer democracy. Put simply, where government action is concerned, a fair go in Victoria is a fairer go than you’ll find in any other State in the country. The Charter protects those values to the core of government work.

I would like to finally add that I encourage the committee to recommend extension of the Charter rights to include economic, social and cultural rights. I further endorse the submissions of Liberty Victoria and the Human Rights Law Centre. I am available and happy to attend any public hearing to expand on the above submission.

Yours Sincerely

Hugh Crosthwaite