Submission to the Review of the Victorian Charter
by the Scrutiny of Acts and Regulations Committee

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I welcome the review, by the Scrutiny of Acts and Regulations Committee, of the Charter of Human Rights and Responsibilities Act 2006 (the Victorian Charter). This review enables the Parliament, and the community, to reflect on the many benefits that the Victorian Charter delivers to the people of Victoria. I am not equipped to address all of the points outlined in the Terms of Reference released by the Committee, however I would like to make brief submissions based on my experience with the Charter in the area of legal practice. As such, this submission is directed at points 5(d) and 6 of the Terms of Reference.

The Charter protects and advances human rights in Victoria. It situates human rights, and their associated responsibilities, as a prime consideration for the state and public authorities when such entities seek to undertake actions that may affect Victorian citizens. That is, the state or a public authority must consider human rights when it is undertaking its functions. This can only be correct: a government is constituted for its citizens. The rights of those citizens should be the primary consideration when the state seeks to act. While there are checks and balances to ensure that the state acts in accordance with the rights of its people, the Victorian Charter provides another layer of protection for Victorians, above and beyond those checks and balances. This extra layer has the very tangible effect of ensuring that human rights are a permanent issue for consideration by our public authorities, and a prominent element of legal prosecutions and argument in this State.

I have been involved in a number of legal proceedings where the Victorian Charter has been employed to ensure that those prosecuted by the State are prosecuted in accordance with their rights. These include a coronial inquest into the shooting of a teenager by the police, and a prosecution under the reverse onus provisions of the Crimes Act 1958 relating to drug possession. In these cases the Charter has been invaluable in asserting the rights of those who have come into conflict with the State.

In the case of the police shooting, the Charter, through s.9 and 17, has provided a means by which arguments could be made that the police should, in all situations, have human rights at the forefront of their minds and, where relevant, should also have the rights of the child. In the case of the reverse onus provisions to be found in the Crimes Act, the Charter though s.25, has strengthened the argument that such provisions are in direct conflict with the right to be presumed innocent until proven guilty.

These are two clear examples of the benefit of the Charter for upholding and advancing human rights in Victoria. It is my firm belief that the Charter should continue to be supported and strengthened, as it delivers innumerable benefits to the people of Victoria.