9 June 2011

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

Dear Mr O’Donohue

Submission to the Inquiry into the Charter of Human Rights and Responsibilities

The Council to Homeless Persons (CHP) welcomes the opportunity to make a submission to the Scrutiny and Acts of Regulations Committee (SARC) into the review of Victoria’s Charter of Human Rights and Responsibilities (Charter).

CHP is the peak body representing individuals and organisations with an interest or stake in homelessness in Victoria. Our mission is to work toward ending homelessness through leadership in policy, advocacy and sector development. This submission provides an organisational response to the following Terms of Reference for the Review:

- the effects of the Charter on the provision of services by public authorities;
- the effects of the Charter on statutory provisions and the role of courts and tribunals;
- the overall benefits and costs of the Charter; and
- options for reform or improvement of the regime for protecting and upholding rights and responsibilities in Victoria.

Please contact Sarah Kahn, CHP’s Manager of Policy and Communications, if you have any queries about our submission or would like more information about our work with the Charter. Sarah Kahn be contact by email at sarah@chp.org.au or by phone at 0400 177 486.

Yours sincerely

[Signature]

Natalie Savin  
Interim Chief Executive Officer
Submission to the Inquiry into the Victorian Charter of Human Rights and Responsibilities

10 June 2011
Introduction
The Council to Homeless Persons (CHP) welcomes the opportunity to make a submission to the Scrutiny and Acts of Regulations Committee (SARC) into Victoria’s Charter of Human Rights and Responsibilities (Charter).

CHP is the peak body representing individuals and organisations with an interest or stake in homelessness in Victoria. Our mission is to work towards ending homelessness through leadership in policy, advocacy and sector development.

Thank you for the opportunity to contribute to the inquiry to review the Charter’s operation and impact over its first four years of operation. This submission provides an organisational response to the following Terms of Reference for the Review:

- the effects of the Charter on the provision of services by public authorities;
- the effects of the Charter on statutory provisions and the role of courts and tribunals;
- the overall benefits and costs of the Charter; and
- options for reform or improvement of the regime for protecting and upholding rights and responsibilities in Victoria.

Appendix one provides a response to the review from CHP’s Peer Education Support Program.

Homelessness and the Charter
On Census night in 2006, over 20,000 people were recorded as being homeless in Victoria. While this includes people literally living on the streets, most people experiencing homelessness are moving between inappropriate and unsustainable forms of short-term and crisis accommodation, staying temporarily with friends and relatives, or in rooming houses, caravan parks or cars.

The key drivers of homelessness are varied, complex and often interrelated. They include systemic causes such as discrimination, persistent poverty and lack of affordable housing; as well personal triggers like family violence, unemployment, physical and mental health issues as well as the experience of exiting the criminal justice or the child protection system.

It is well documented that the longer people remain homeless the harder it is to exit. The experience itself often exacerbates and leads to an increase in a range of health and wellbeing issues that compound existing barriers for people in getting the support and housing they need.

People experiencing homelessness are not a homogenous group. They include people with disabilities, young people and families who have escaped family violence. Homelessness services are also reporting a growing number of families with children and older people presenting for assistance after being evicted from private rental.

One thing that people who are homeless often do have in common is that they are bearing the brunt of entrenched social exclusion. They are extremely vulnerable to being denied from the universal services that we all need and have a right to, and are necessary to remaining in a safe and stable
home. This includes access to employment, adequate health services, education and affordable housing.

Groups who experience the most disadvantage often need the law to ensure they are not denied from full community participation. In many cases this is the only way to break the cycle of exclusion and allow this group to enjoy the rights we are all entitled to.

Unfortunately, people who are homeless are not always protected from anti-discrimination law. The Human Rights and Equal Opportunity Act 1986 does not expressly prohibit discrimination on the basis of social status, such as homelessness.

As a result CHP has received reports from its members about people who are denied housing by landlords or denied support from clinical services because they are homeless. CHP also received a report from one of its Peer Education Support Program (PESP) participants that a friend’s children were denied enrolment in school because of their housing situation.

This points to how critical the Charter is for people experiencing disadvantage. It is the major instrument for intervention when personal rights have been violated on the basis of housing status.

Already, the Charter has had a clear and positive impact on delivery of public services and the operation of public authorities. In our work much of this impact has been achieved through the negotiation and education by advocates to public authorities.

We feel strongly that if protections are not set out in enforceable legislation, with obligations on Parliament, public authorities and the courts, we will not continue to have the positive results that the Charter has achieved, and it is likely that homelessness will increase. See ‘Appendix One’ for additional reports from people who have experienced homelessness about the importance of the Charter.

The effects of the Charter on the provision of services by public authorities
The requirement on public authorities to act in a way that is compatible with human rights is particularly relevant to CHP’s Homelessness Advocacy Service (HAS). We can say first-hand that the Charter has had a positive effect on the provision of services and the performance of public authorities.

The HAS was developed in 2005. It aims to secure and protect the rights of people experiencing homelessness by providing state-wide advocacy to people who have a complaint with any of the Office of Housing (OoH) services in Victoria. This includes specialist homelessness services, transitional housing providers, government-funded rooming houses and other homelessness services. These public authorities are obligated to comply with human rights under the Charter.

Advocacy involves individual support to people seeking to make complaints regarding service provision. Recurring issues by people accessing the HAS included:

- Lack of support and appropriate referral
- Unfair eviction with no exit options
- Disempowerment over choices and decision making
- Discrimination
- Breach of privacy and confidentiality
- Not being treated with dignity and respect
- Service exclusion
- Feeling unsafe in accommodation
- Inappropriate accommodation
- Sexual and other forms of harassment

The HAS assists people by providing information and advice regarding client’s rights, as well as about how to raise complaints and negotiate complaint mechanisms. The HAS also assists people to raise formal complaints through attending meetings, writing letters and accessing and keeping records in relation to complaints. The HAS can help clarify issues and present complaints in appropriate formats.

The Charter’s obligation on public authorities to comply with human rights and to give proper consideration to human rights in decision-making processes is the best tool for successfully advocating on behalf of homelessness service system users.

CHP has strong evidence that this provision of the Charter has had a positive impact on public services delivery by providing a tool to negotiate better outcomes for service users who are homeless. In addition the Charter has forced many services to engage in dialogue about human rights, which has resulted in more person-centred service delivery and improved policies and procedures.

Below are three important case studies to demonstrate how the Charter has been used to improve outcomes for the HAS service users.

**Service user with acquired brain injury, issued notice to vacate**

*In 2009 the HAS used the Charter to seek reconsideration of an immediate notice to vacate issued by a community run rooming house*

Bob was a 55 year old man with a history of mental health and behavioural issues that resulted from his acquired brain injury. He had been living in and out of rooming houses for the past twenty years.

Bob was issued a notice to immediately vacate the community run rooming house he had been staying at due to allegations of violence and assault. Both Bob and his support worker were shocked by the eviction notice, as no tenancy worker had investigated the allegations. Bob’s support worker tried to negotiate an outcome that would prevent Bob from being evicted, but this was unsuccessful.

The support worker contacted the HAS to raise a complaint about the impending eviction and the denial of natural justice. The support worker also thought Bob was being treated unfairly because of his disability.

...Continued
The HAS sent a letter to the rooming housing agency requesting that the notice be withdrawn, as there had not been a proper investigation undertaken. The letter included a complaint on behalf of the tenant and also referred to the Charter obligation to give proper consideration to Bob’s right not to have his home arbitrarily interfered with. This provided a framework with which to raise Bob’s hardship and the human rights implications of the notice to vacate. After negotiations with the rooming house agency, the notice to vacate was withdrawn. The HAS, rooming house agency and support worker were then able to transfer Bob’s tenancy to another rooming house that was linked with additional supports so he could remain stably housed.

**Woman and child fleeing violence and facing eviction**

_The HAS used the Charter to assist a woman fleeing violence to remain in safe accommodation and to improve the public authority’s overall policies and procedures._

Theresa is a 38 year old woman and a mother of a six year old girl. Last year she fled to Ecuador to escape a violent ex-husband. After she left her ex-husband contacted the Federal Police and accused Theresa of kidnapping his daughter.

The police issued a court order that Theresa return with her daughter to Australia. Theresa did not obey the order and was arrested in Ecuador and sent back to Australia, where she faced a family court hearing and charges of kidnapping.

Because Theresa did not have any family or friends in Australia who could support her, she ended up living in a women’s family violence refuge.

The court order stated that Theresa’s daughter needed to be placed in a school close to the father, but unfortunately he lived very far from the refuge. As a result Theresa had to travel extremely long distances to and from school each day.

The stress of traveling each day, along with the experience of becoming homeless was very traumatic for Theresa. Her mental and physical well being started to deteriorate. Theresa believed no one was assisting her and feared that she would lose custody of her child because she was homeless.

Theresa eventually asked her case worker for assistance in driving her daughter to school. The case worker described her apprehension to assist Theresa, because of fear that her ex-husband could identify the car and follow them back to the refuge. Theresa stated that the worker said the refuge’s only duty of care to her was to provide temporary accommodation until permanent housing was found.

Next the worker told Theresa that she may be evicted from the refuge, because there were allegations that she disclosed the address of the refuge to a friend. Theresa spoke little English and had trouble communicating with the worker. She told the workers that, after seeking permission from a staff member at the refuge, she had called a friend to discuss her situation.

...Continued
Theresa became very fearful that she and her daughter would be evicted without anywhere else to go. They contacted the HAS for assistance. The HAS contacted the refuge. The refuge reiterated the rules around disclosing the address of the refuge and threatened eviction.

The HAS advocated on behalf of Theresa by discussing with the refuge, their obligations under the Charter to protect families and children and not arbitrarily interfere with a client’s housing.

The complaint was resolved through negotiation under the refuge’s internal grievance procedures. As a result, Theresa was not evicted, and the refuge assisted Theresa and her daughter to move to a family violence service closer to her daughter’s school.

Because the HAS raised the Charter in advocating for Theresa, the refuge was forced to consider human rights in their decision-making process. This also led to more general considerations of the organisation’s policies and procedures, which resulted in implementing the regular use of interpreters and improving intake processes and guidelines around exit planning.

**Mother of four children facing homelessness**

In April 2011, the HAS prevented a family from being placed in a rooming house by negotiating a better outcome on the basis of the obligation under the Charter to protect families with children.

Tanya and her four children were issued with a 90 day notice to vacate after their private landlord sold the property.

They were unable to access private rental and out of desperation Tanya contacted a local church group in her area for housing assistance. The church group provided Tanya and her family with temporary accommodation, and it was Tanya’s belief that she could remain in the property until she accessed alternative accommodation.

After six weeks, the church group advised Tanya that she had to leave because they needed the property for another family. Not knowing what to do, Tanya contacted her local community housing agency who informed her, the only accommodation they can offer was a rooming house. Tanya became upset and distressed by the thought of living in a dangerous rooming house with her children. She contacted the HAS to see if there were any other options.

The HAS made numerous attempts to contact the church group, and then proceeded to contact the local community housing agency.

The housing worker stated that they could only offer rooming house accommodation. The HAS contacted the manager of the community housing agency to argue that it was inappropriate to refer a family with four children to a rooming house.

In negotiations, the HAS raised both the Charter and the Rooming House Taskforce recommendations to remind the agency of their obligation to protect families with children. After several conversations about the housing agency’s obligations as public authority, the HAS was advised that a transitional housing property was becoming available within two days.
Tanya and her family were offered the property and moved in shortly after.

In our experience the obligations on public authorities under the Charter:

- **lead to better** decision making, which leads to better practice by public authorities and improved outcomes for homelessness service system users;

- encourage negotiated outcomes – they give a framework and set clear principles with which to advocate for the people we assist. When a complaint has been made to the HAS, it is often immediately resolved when advocates explain to the public authority that there are specific rights that must be taken into consideration. As a result the Charter has led to positive and more timely resolutions for HAS clients; and

- provide an impetus for training and education focusing on best practice. For example, to ensure rights are considered, public authorities are forced to scrutinize the way in which they deliver services. In many cases this process strengthens service delivery and improves access to housing and support for service users who are homeless or at risk of becoming homeless.

The effects of the Charter on statutory provisions and the roles of courts and tribunals

CHP is not a legal service and does not wish to comment in detail on the effects of the Charter on statutory provisions and litigation. However we understand how critical the three-pronged obligation under the Charter (on parliament, public authorities and the courts) is in providing adequate protection of rights in Victoria.

This model formalises the dialogue between the three tiers of government, ensuring human rights are considered throughout the legislative and service delivery process:

- from the outset in preparing laws;
- forcing public authorities to build human rights into the review of practices and decision-making processes; and, as a last resort,
- there is recourse to courts and tribunals.

If any of these elements are removed, it will leave an inefficient and ineffective gap in the system. In particular, while much of the benefit CHP sees from the Charter stems from the obligations on public authorities, this provision would not be effective in the absence of:

- the requirement that parliament considers human rights when making new laws; and
- the ability of courts and tribunals to consider human rights violations— if rights are not enforceable, there is no genuine motivation for public authorities to consider human rights and negotiated outcomes become less likely.

This view is informed by our experience with different service standards, which do not always have the benefit of the three arms of the Charter model.
CHP is committed to continuously improving the quality of the services delivered to people who are experiencing homelessness. We have partnered with the Department of Human Services (DHS) to make a significant investment in assisting the sector to implement the Homelessness Assistance Service Standards (HASS).

This work shows us that service standards are critical to continuous quality improvement. However service standards alone will not produce the best outcome for services users. They do not do enough to protect human rights because they:

- **are process-focused and do not always result in direct or positive outcomes for the service user.** For example if a service was de-funded for non-compliance, that result does not necessarily help the service user, and in fact it could worsen their situation by further minimising the support available;

- **are sector-specific and service users often find them complex and inaccessible?** People receiving assistance from homelessness services are often accessing a range of other supports including mental health, disability and health services. These supports all come with a set of standards, which have various levels of accountability. In addition our sector is subject to approximately 19 service delivery standards, codes of conduct as per the individual service requirements and a multitude of regulations. This can make it extremely confusing for someone to successfully lodge a rights violation;

- **are generally subject to the accreditation system in Victoria that uses continuous quality improvement to undertake its work as opposed to a compliance system.** This means that organisation’s are always working towards a quality goal or improvement rather working within an authoritarian system that is legally binding.

When it comes to individuals’ human rights, those rights to which we are all entitled, people deserve an instrument that is legally binding and can deliver adequate protections. This is particularly important for people who are homeless and not necessarily protected under anti-discrimination law.

A key feature of the way in which the sector works is to refer clients to services outside of the homelessness services system. It is the expectation of DHS that homelessness services will be more integrated with other mainstream services in order to provide a more holistic response to clients. The Charter facilitates service integration by creating a common rights-based framework under which all services operate.

We welcome the Attorney General’s support for service standards and commitment to high quality public services for Victorians. For the above reasons however, we do not believe that non-legislative service standards would be sufficient enough to fully consider the human rights of homelessness service users.

**Overall benefits and costs of the Charter**
While the Victorian Charter has only been in operation for four years, it is beginning to have a positive impact in terms of improved delivery of public services, particularly for people experiencing homelessness and often excluded from fully participating in our communities.
It provides very clear guidelines for services, such as CHP’s Homelessness Advocacy Service, to successfully advocate for improved access to housing and support for people. In the same respect it provides public authorities with a helpful framework for making decisions about policy and practice. By driving these improvements, there are two very important benefits of the Charter that are also directly enjoyed by Governments.

First, the Charter is a tool for improving the efficiency and effectiveness of Government-funded programs. The Charter drives ongoing training and education in best practice and human rights. This ensures government funds are being used to provide person-centered interventions that can improve outcomes and prevent and end homelessness. In effect, the Charter is building the foundation for future Government reforms that are more focused on outcome-driven approaches to public service delivery.

Secondly, by preventing and ending homelessness, the Charter saves on costs to individuals and to the tax-payer. The experience of homelessness often exacerbates, or even causes, a range of significant physical, social and psychological hardships that have a traumatic impact of people’s lives.

These issues often cause people who are homeless, particularly those sleeping rough, to cycle in and out of very expensive public services such as homelessness, health, emergency and justice services. The use of services, some of which are documented below, can be quite costly:

- The Victorian Women’s Housing Association recently undertook a Social Return on Investment analysis to measure the impact, over 20 years, of 17 housing properties that house 63 women, children and family members. They found that by keeping families in stable affordable housing there was a total of over $9 million in savings resulting from the avoidance of homelessness and incarceration, as well as from decreased welfare expenditure. This includes savings of around $3.7 million in government funds just on transitional housing costs.
- There is a significant amount of US research into the extremely high costs of homelessness:
  - A study into a supportive housing program in Seattle Washington found that, when taking into account all costs (including housing), the participants in the program cost $2,449 less per person per month than those who were in local crisis accommodation.
  - A study in Los Angeles found that by placing four chronically homeless people sleeping rough into permanent supportive housing taxpayers saved more than $80,000 per year.
  - A recent study by the US Department of Housing and Urban Development (HUD) found that crisis accommodation is a costly alternative to permanent housing. The cost of

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2 Mary E. Laminar, PhD; Daniel K. Maldonado, MPH; Michelle D. Garner, MSW; David C. Atkins, PhD; Bonnolo Burlingham, MPH; Heather S. Loncarek, PhD; Kenneth Tanzer, BA; Joshua Girzalis, PhD; Seema L. Cliffasef, PhD; William G. Hobson, MPA; G. Alan Marlatt, PhD (2009) Health Care and Public Service Use and Costs Before and After Provision of Housing for Chronically Homeless Persons With Severe Alcohol Problems, the Journal of the American Medical Association: http://jama.ama-assn.org/content/302/13/1349.abstract
3 Dr. Michael R. Cousins, Heather Lamdor at the University of Southern California’s Center for Community Health Studies at the Keck School of Medicine, and Mollie Lovery at Housing Works (2009), Homeless Cost Study. United Way of Greater Los Angeles: http://www.ourpathways.org/assets/files/8964690527.pdf.
providing emergency shelter to families can be significantly more than the cost of placing them in permanent housing\(^4\).

- In Portland, Maine there was a 57 per cent reduction in the cost of mental health services over a six month period after placing someone in supportive housing\(^5\).

- A research study examining the Michael Project, which provides support and accommodation to men experiencing homelessness, found that more than a quarter of the participants had an overnight stay in corrections facilities and on average spent over 20 nights in a health care facility in the 12 months before the baseline survey. The specific cost reductions resulting from this public service use will be explored in future reports. However a snapshot of the Project after three months shows that, after receiving support and accommodation, participants’ contact with publicly-funded health and justice services generally declined\(^6\).

- In a survey of service-users in Western Australia, the Australian Housing and Urban Research Institute (AHURI) found that it costs over $20,000 in government funds to provide transitional accommodation to someone who becomes homeless\(^7\).

The costs of homelessness, both personal and financial, are well documented and should be avoided. The Charter has proven to be an important tool for preventing and ending homelessness and improving the effectiveness of public services. This will undoubtedly result in a more efficient use of government funds and points to the incredible benefits that will continue to be delivered under the Charter.

**Options for reform or improvement**

CHP is of the view that the Charter could be strengthened and improved through:

- **Including protections of economic and social rights**—CHP shares the views that were put forth in the National Human Rights Consultation which found that economic and social rights – such as the rights to adequate housing, health care and education – “matter most to Australians” because these are the rights at greatest risk, particularly among vulnerable groups\(^8\). People who are homeless must have these rights protected. Just as the enforceable protections of some rights under the Charter have led to improved practice, protections of these economic and social rights would lead to greater improvements in these areas for struggling families and individuals.

Despite common misconceptions, inclusions of these rights would not impose blanket constraints on government, or mandate fiscal obligations in these universal service areas (housing, education and health). They would however encourage governments to take reasonable steps to ensure the “progressive realisation” of those rights.

This means that if these rights were included, the Charter could become an important instrument by which governments set out benchmarks and targets for addressing issues such as the systemic

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\(^2\) National Alliance to End Homelessness (2008), *Cost Savings with Permanent Supportive Housing*: [http://www.endhomelessness.org/content/article/hed/2666](http://www.endhomelessness.org/content/article/hed/2666)


affordable housing shortfall. For example, this could inform the state Government's state-wide housing strategy.

For most Victorians economic and social rights are more than adequately fulfilled. However, to create a fair and just society and to improve transparency and strengthen democracy, economic and social rights should be given formal legal protection.

- **Ongoing education and training**—In CHP’s work with services throughout metropolitan and Regional Victoria it has become evident that many services are still learning about, and getting comfortable with using the Charter. Consequently we are committed to assisting with ongoing training and education to front line staff within our sector in order to promote understanding and compliance. CHP would urge governments to match our investment through joining our effort to ‘skill up’ the sector. In the end this will strengthen the Charter’s ability to do its best work.

In conclusion, CHP would again like to thank you for the opportunity to contribute to this critical review of Victoria’s Human Rights Charter. People experiencing homelessness are one of the most excluded groups in our communities, and it is critical that this Charter remains in place to ensure that people have access to the universal services to which we are all entitled. These are the services that some of us take for granted—including health care, education and housing—but that all of us require to live stably in safe and permanent accommodation.

The Charter is effectively working to improve the protection of human rights for Victorians. We are seeing the results through our work and we feel confident that further improvements are certain.

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**APPENDIX One**

**Council to Homeless Persons submission**

**Victorian Human Rights Charter**

**Peer Education Support Program member responses**

**Background**

Council to Homeless Persons (CHP) has a Peer Education Support Program (PESP) which is a volunteer program that provides people who have experienced homelessness an opportunity to have a powerful voice in decisions about policy, advocacy and community education on issues related to homelessness.

PESP members contribute to all of CHP’s submissions to government, as well as several presentations, media interviews, consultations and focus groups with people experiencing homelessness.

As part of the submission process we consulted this group on their perceptions of the effectiveness of the Human Rights Charter to date.

Questions asked of this group.

- Is the Human rights Charter an effective way to protect the rights of Victorians?
• What are the benefits of the Human Rights Charter?

Some of the comments from PESP members are included below:

*If you remove the Charter, what have you got to protect you from the interpretation of laws, where every word can be interpreted differently by people? We need a body to argue for what laws are really supposed to mean.

*People with money are considered more important, so the disadvantaged get most from the Charter.

*The Charter needs to stay in place and be strengthened to avoid the terrible injustices experienced by the disadvantaged in our community, especially those in the prison and mental health systems and those experiencing domestic violence.

*We need to uphold the charter to advocate for people experiencing homelessness, which is what our program does by advocating for peoples’ rights. If the Charter is diluted or removed, people will discriminate against people who are homeless even more than they do now.

* We need the Charter to maintain public housing standards. People should have secure tenancy and not fear that they will be moved on all of the time. This Charter is our only tool in protecting the rights of people who are excluded from the community.