City of Port Phillip Submission on the Four Year Review of the Victorian Charter of Human Rights and Responsibilities

June 2011
Contents

Executive Summary ......................................................... 3
Introduction ...................................................................... 4
The people of Port Phillip .................................................. 5
1. Term of Reference One: Whether the Charter should include additional human rights under the Charter, including but not limited to, rights under the: .................................................. 6
   (a) International Covenant on Economic, Social and Cultural Rights (ICESCR) .................................................. 6
   (b) Convention on the Rights of the Child (CRC) ................................................................................. 9
   (c) Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) ....... 10
   (d) Additional recommendation: Inclusion of the rights of people with disabilities in the Charter. 11
2. Term of Reference Two: Whether the right to self-determination should be included in the Charter? ............................................................................................................. 11
3. Term of Reference Five: What have been the effects of the Charter Act on - ............................................. 14
   (a) The development and drafting of statutory provisions ........................................................................ 14
   (c) The provision of services, and the performance of other functions by Council ...................................... 15
      I. To promote Council’s commitment to Human Rights and advocate for human rights ................. 16
      II. Develop Social Justice Charter and actively embrace and implement the Victorian Charter of
          Human Rights and Responsibilities Act 2006 ...................................................................................... 17
      III. Review of Local Laws .................................................................................................................... 18
      IV. Review of Policies ........................................................................................................................... 18
      V. Staff training and engagement ......................................................................................................... 18
4. Term of Reference Six: What if any, have been the overall benefits and costs of the Charter? ... 19
5. Term of Reference Seven: What options are there for reform or improvement of the regime for protecting and upholding rights and responsibilities in Victoria? .................................................. 19
Conclusion .......................................................................... 20
Bibliography ........................................................................ 21

This submission has been prepared by Holly Doel-Mackaway (Human Rights / Child Rights Consultant) in consultation with Council staff members. Michele Leonard (Manager Community Development) and Simon Smith (Co-ordinator Social Policy and Planning) directed the drafting of the submission.

Enquiries regarding this submission can be directed to:

Michele Leonard
Manager Community Development
City of Port Phillip
P: 9209 6507
mileward@portphillip.vic.gov.au
Executive Summary

The City of Port Phillip presents this submission for the Attorney General’s review of the Victorian Charter of Human Rights and Responsibilities (The Charter). This submission highlights Council’s experience of using the Charter currently and during the last four years.

Our submission overviews Council’s high level, as well as grass roots activities, aimed at implementing and reflecting the aims and objectives of the Charter. This report provides examples of how Council’s activities relating to the Charter impact on and enhance the lives of people living in the Port Phillip area. In summary, the Charter is being used to greater and lesser degrees within Council. However, the Charter has only been in force for four years. Despite this short time frame Council has undertaken many policy and grass roots level initiatives related to the implementation of the Charter the amalgamation of which, we believe, has led to better human rights outcomes for the people of Port Phillip.

Overall Council’s experience using the Charter, though varied across respective departments, has been positive. In the Departments where Council officers use the Charter on a regular basis they report it gives them a solid basis upon which to design, implement and review their work. In addition it provides Council officers with a clear legislative framework to justify Council decisions and activities to residents and local community organisations. Council has incorporated training on the Charter as a part of the learning and development calendar for all staff. Council has already delivered training to most Council officers and will soon reach the goal where all Council officers across all departments are trained about the Charter and how to implement the Charter into their everyday work.

The following high level Council policies demonstrate Council’s overarching commitment to enhancing people’s access to a broad range of human rights.

i. Homelessness Strategy
ii. Municipal Early Years Plan
iii. Community Engagement Framework
iv. Draft Social Justice Charter
v. Health and Wellbeing Plan
vi. Housing Strategy

These policies encompass civil and political rights as well as focus on facilitating the fulfilment of the economic, social and cultural rights of the people of Port Phillip. These policies are examples where Council believes the broader rights of residents could be included in an expanded Human Rights Charter.
Introduction

This submission outlines the City of Port Phillip’s (Council’s) perspectives under consideration in the four-year review of the Victorian Charter of Human Rights and Responsibilities Act (2006) (the Charter).

This submission reflects Council’s overall experience of implementing the Charter. The views and experiences of numerous Council officers across several Departments within Council were sought in order to prepare this submission. The views of these officers were obtained by the consultant who prepared this report by telephone interview with the respective officers. Officers were asked questions by the consultant based on the Terms of Reference for the review. Officers were also given the opportunity to provide general comments about the operation of the Charter in their respective area of Council work.

Implementation of the Charter by Council during the past four years has demonstrated the value the Charter has provided to the people of Port Phillip. In addition, the Charter has been useful in providing Council with an additional tool to design, monitor, implement, review and justify Council activities. The Charter, whilst useful in Council work, has not led to radical change in the way Council undertakes its role within the Port Phillip area. Taking a human rights approach to work is ‘business as usual’ within Port Phillip Council. Council activities have long been based on the view that fulfilment of human rights is the foundation of strong, healthy communities where everyone can participate and belong to and feel a part of their local community. As such Council has considered people’s human rights when developing local laws, policies and delivering services for many years prior to the Charter becoming law.

Prior to the Charter becoming statute Council already adhered to the implementation of human rights principles and undertook human rights based approaches in its day-to day work. Never the less, the Charter has provided a legal basis upon which Council can now continue to undertake activities consistent with human rights and as such the people of Port Phillip have access to enhanced and better services.

This submission highlights that whilst experiences and uptake of the Charter within Council has been positive there is still work to be done on mainstreaming this across the whole of Council. Council officers will over the coming months and years be trained to better understand the connections between their work and the Charter and be further supported to apply the principles of the Charter to their work.

Council as a whole has demonstrated a strong commitment to meeting its Charter responsibilities through sophisticated use and application of the Charter. Council has trained the majority of Council officers on the Charter as well as used the Charter to enhance Council decision-making processes, raise service standards and foster greater accountability. As a result Council is achieving “fairer, more inclusive and better services” for the people of Port Phillip.

1 Council officers from the following departments were interviewed in order to prepare this Submission: Community Development; Family Youth and Children; Local Laws; Governance and Engagement; Strategic Planning, as well as an external respondent, a member of the St Kilda Human Rights Working Group, of which Council also has membership on.

The people of Port Phillip

A following overview of the people of Port Phillip is provided below to provide a context for Council’s submission on the review of the Charter.

Port Phillip is a diverse community and has experienced many changes over time. Over 90,000 people now live in the City of Port Phillip. St Kilda is the largest of Port Phillip’s neighbourhoods and South Melbourne is the smallest.

Port Phillip has gentrified significantly in the last 30 years. The largest age group living in the municipality are 25-34 year olds (28.1%), who are often professionals working in the CBD. This is reflected in the fact that Port Phillip is one of the most highly educated communities compared to other metropolitan Councils. These young professionals are also often private renters, leading to strong demand and high private rental prices in the area. About 40% of households rent privately.

While the average household size is very small at approximately two people, Port Phillip still has over 18,000 families with children. The number of young people from the 5-17 age group has declined slightly in recent years; however, the 0-4 age group has remained constant representing over 4% of the population.

While there are a number of wealthy households, more than one in five (or 21.5%) of households are low income earners, earning less than $30,000 a year. This includes residents who live in a number of public and community housing estates, several of which are amongst the lowest socio-economic areas in Australia.

People from a non-English speaking background have remained fairly constant, making up 16.6% of the population. While there has been a decline in the population made up of traditional post-war countries of migration (i.e. Greece, Poland, and Italy) there has been an increase in the number of residents born in India, China and Malaysia.

The area is a hub for a number of community services including several homeless and drug and alcohol services.

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1. Term of Reference One: Whether the Charter should include additional human rights under the Charter, including but not limited to, rights under the:
   (a) International Covenant on Economic, Social and Cultural Rights
   (b) Convention on the Rights of the Child
   (c) Convention on the Elimination of All Forms of Discrimination against Women

Council advocates that the Charter should reflect Australia's ratification of the broad range of human rights instruments. Council believes the most effective, long term, and cost efficient way to ensure the human rights of all people is to work towards fulfilling all human rights progressively. Council believes in the interconnectedness of human rights. For example, in order to actively participate in community life a person must have access to adequate housing. Further, children and young people can best participate in decisions affecting them when they have access to education, good health care and a safe family and community life. For these reasons, Council submits that the Charter must include a broader range of human rights. This is necessary in order to provide for the interconnectedness of human rights, as well as to reflect and underpin the work of Council and the work Council aims to do in the future.

The Victorian Human Rights Charter should reflect the following Human Rights instruments.

(a) International Covenant on Economic, Social and Cultural Rights (ICESCR)

Council advocates for the Charter to be expanded to include economic and social rights. This is appropriate given Australia’s ratification of the International Covenant on Economic, Social and Cultural Rights (ICESCR). Furthermore, Council’s experience indicates that economic and social rights to health, adequate housing and education are of utmost concern to the people of Port Phillip. The Port Phillip community has undergone, and continues to undergo, significant demographic and economic shifts. The rapid gentrification of the area means that economic and social rights are being experienced very differently by people within the area. Council’s experience reflects the finding of the National Human Rights Consultation on economic and social rights that these are the rights that:

"Matter most to Australians, and they matter most because they are the rights at greatest risk, especially for vulnerable groups in the community."

Many of Council’s activities seek the realisation of people’s economic, social and cultural rights within the Port Phillip area. For example, Council submits that expansion of the human rights contained within the Charter is significant to all citizens, particularly identified groups within the community who have lower socio-economic status, greater needs and therefore generally greater vulnerability.

Council welcomes the significant step of having a set of rights in Victorian based on International Covenant on Civil and Political Rights. However, the scope of the Victorian

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Human Rights Charter has to be broader in the range of human rights it articulates. For example, the Charter needs to include the right to housing and the right to a minimum income. From a social justice perspective women and children are people who can experience discrimination in the community and need greater support to access services, and for women to secure employment. Council would see this as a vital area to expand the Victorian Human Rights Charter.

Two examples below highlight Council’s experience of supporting the rights of Port Phillip residents to adequate housing and health care. These rights are not included in the Charter Rights as the rights included in the Charter focus on civil and political rights. Council presents the following two examples to demonstrate the need for the Charter to be expanded to include provision for economic and social rights in line with the International Covenant on Economic, Social and Cultural Rights.

The Right to Adequate Housing
Of particular concern to Council is our experience of the rising problem of homelessness in the Port Phillip area. Gentrification and redevelopment are making it harder for residents on low to medium incomes to find affordable, accessible and suitable housing in the City of Port Phillip. We are aware that the rapidly increasing cost of housing locally is placing great stress on local residents living on less than $300 per week. This affects local households who receive incomes in the lowest 40% of the population and spend more than 30 per cent of the household income on housing costs.

Council has adopted the City of Port Phillip Homelessness Action Strategy 2008-2013. A wide range of activities have been undertaken over the last twelve months which have helped to increase community understanding of homelessness and build and enhance linkages across homelessness services operating in the Port Phillip and neighbouring areas.

Council had also adopted the City of Port Phillip Housing Strategy 2007-17. This strategy aims to increase the level and type of affordable housing models and affordable, built housing available to residents who are low income, marginalised and disadvantaged or otherwise unable to access market rate rental or home ownership housing. The Strategy recognises the direct link between access to affordable housing and the maintenance of personal well-being and health.

The Strategy seeks to address the lack of affordable housing through establishing the necessary policy settings, providing direct project funding, undertaking partnerships with affordable housing providers, undertaking research and development and through the facilitation of affordable housing projects.

In particular the City of Port Phillip had been a direct developer of community housing (in the form of affordable rental housing) between 1985 and 2006 through the Port Phillip Housing Program. After 2006 Council has continued to be a financial supporter of the Port Phillip Housing Trust that develops new community housing by its Trustee, Port Phillip Housing Association Ltd. The Housing Program had resulted in 389 units of affordable housing located in Port Phillip for low income families, older persons, singles and persons with a disability; and the partnership with PPHA has delivered an additional 257 new units in Port Phillip.
However, despite the City of Port Phillip being the leading Australian municipality supporting affordable housing, the proportion of housing that is affordable to low to moderate income residents has continued to reduce to an alarming level.

Council submits that the Charter should be amended to include economic and social rights in accordance with Article 11 of the International Covenant on Economic, Social and Cultural Rights which provides for the right to an adequate standard of living including food, clothing and housing.

Homelessness and housing affordability is a stark example of the interconnectedness of rights and clearly demonstrates Councils view that the Charter should be amended to include economic and social rights. People experiencing homelessness or unaffordable housing have reduced ability to participate in their local community as they are often stigmatised and rejected by the community as well not having access to basic needs such as shelter, food and clothing.

The Right to Health
Council engages in a wide range of health promotion activities such as addressing women’s health. This is addressed in many ways including providing support to women experiencing domestic violence and safety initiatives for women who undertake street sex work.

The focus of these programs is on the fulfilment of the broad range of residents human rights with a focus on the right to health. The effect of unequal access to or lack of access to, health care can have significant health outcomes.

Vulnerability to ill health can be reduced significantly by taking steps to respect, protect and fulfil Charter Rights. For example, Council’s Domestic Violence Program works with women who have experienced domestic violence through education and promotion of self-care. This initiative upholds the Charter Right to protection from torture and cruel, inhuman or degrading treatment (Section 10) whilst concurrently promoting women’s right to health, both physically and mentally.

Another example of Council’s implementation of the Charter at the grass roots level is Council’s provision of support to community organisations promoting the right to safety and access to health for street sex workers. Again, this initiative upholds the Charter Right to protection from torture and cruel, inhuman or degrading treatment (Section 10) whilst simultaneously facilitating better access to health for street sex workers.

Furthermore, Council’s harm minimisation approach to street sex work addresses the issues from a health and wellbeing perspective rather than legal perspective. The Living Next to Street Sex Work Project was one of the first of its kind to examine the impact of street sex work on the health and wellbeing of the local community.

The City of Port Phillip won the Federal Government’s 2009 National Awards for Local Government in the Health & Wellbeing category. Council’s Health and Wellbeing Program has recruited over 1100 community members to form coalitions that plan, implement and evaluate dozens of creative, pragmatic projects designed to improve the community’s health and wellbeing - psychologically, socially, culturally, environmentally, politically, and economically. Council trained and employed a team of residents who ventured deep into their
neighbourhoods to interview people about their ideas for a healthier community. Interviews included many from marginalised backgrounds in their homes, parks and shopping strips.

In line with Section 18 of the Charter (the right to take part in public life) the implementation of the Health and Wellbeing Program has provided many new opportunities for people to improve their connections to the places and people around them and increase their level of participation in the issues that affect their lives.

Council is pleased to report the initiatives where the Charter has been implemented. However, Council’s experience demonstrates that the limited scope of Charter Rights restricts the operation of the Charter as a tool for the implementation of the broad body of human rights. Council’s work would be better assisted if the Charter was amended to reflect economic and social human rights, such as the right to health. There is a strong argument for its inclusion in the Charter. Health is an overarching issue.

Council has provided the above examples to demonstrate how we have implemented the Charter in our work to address homelessness, housing affordability and health issues. We hope we have highlighted the need for the Charter to be expanded to include economic and social rights due to the interconnectedness of these rights with civil and political rights.
Council’s experience demonstrates the inextricable links between people’s health and housing status with their ability to meaningfully participate in community and public life. Council submits that providing for some human rights in the Charter and not other human rights artificially fragments the body of human rights and in turn hampers the realisation of human rights.

Council submits that the Charter should be amended to include the right to the highest attainable standard of health care in accordance with Australia’s responsibilities under Article 12 of the International Covenant on Economic, Social and Cultural Rights. Council submits that separating human rights into two categories firstly - civil and political rights, and secondly - economic and social rights, is not an effective nor efficient means by which to facilitate the realisation of human rights. Council submits that the Charter would be improved and better serve the people of Port Phillip, and Victoria generally, if it referenced a broader range of human rights contained in current human rights instruments particularly economic, social and cultural rights.

(b) Convention on the Rights of the Child (CRC)
Port Phillip is a city where childhood is honoured and all children are cherished and supported as active citizens with a voice of their own, secure in their identity and culture; where they are able to play, learn and contribute to their environments, surrounded by nurturing adults and supportive communities.

Council has designed an Early Years Plan for Port Phillip that provides a strategic approach to the promotion of new ways of thinking about children and new ways of developing policies and services that give more attention to their rights, interests and needs.

Council’s believes that we need to:
- recognise and respond to children as active citizens of Port Phillip
- increase opportunities for children's participation in council and community decisions-making processes that affect them and
• seek the views and contributions of all children

Council has been committed to advancing children’s rights for a long time. In line with the Council Plan 2009-13 many initiatives have been undertaken to advance children’s rights including the:

• *Children as Active Citizens Project*
• *Protocol for Involving Children in Community Consultation*
• *Kid’s Plan- Port Phillip Kid’s have their say*
• Ensuring the quality and accessibility of children’s and family services (Council Plan, Section 3.1.6) – such as completing the redevelopment of the St Kilda and Liardet St Family and Children’s Centres and providing a diverse range of play opportunities across the city for children and youth.
• *The Draft Social Justice Charter* (Council Plan, Section 3.1.9) which promotes and respect understanding in the community regarding the needs and contributions and activities of different age groups - including young people.
• The Development of a *Communications and Engagement Strategy* – to improve the provision of information relating to services for families, youth and children in the City of Port Phillip

Council invests heavily in promoting and facilitating the participation of children and young people in Council processes and activities. Council actively implements Article 12 of the CRC which calls for active participation of children and young people in matters affecting them. Council’s experience of involving children and young people in Council decision making has highlighted the positive contribution children and young people can and do make to our local government area. It is for these reasons that Council submits that the Charter should include reference to children’s rights.

The Charter does not refer to children other than to provide some protections for children engaged in the criminal process. Thus, the Charter does not reflect Australia’s ratification of the *Convention on the Rights of the Child* (1989) (CRC), nor does the Charter reflect the activities Council has engaged in for a long time to work toward the progressive realisation of children’s rights under the CRC.

Council advocates the Charter be reviewed to include provision for children’s human rights in accordance with the CRC. Council submits this amendment to the Charter would then better underpin the work Council already does, and could do in the future. The CRC is easier to read and interpret and talk to people about. The title is accessible and easy to understand.

For the above reasons Council strongly supports the amendment of the Charter to specifically refer to the rights of children in accordance with Australia’s obligations under the CRC.

**c) Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)**

The Charter does not reference women’s rights. Thus, the Charter does not reflect Australia’s ratification of the *Convention on the Elimination of All Forms of Discrimination against Women* (1979) (CEDAW). In this respect the Charter does not support or reflect the work Council does, and could do in the future, with respect to advancing the rights of women. Council has a longstanding history of undertaking activities that aim to fulfil women’s human rights such as:
• The promotion of women’s safety (Council Plan, Section 4.1.6)
• The Homelessness Action Strategy and Housing Strategy and Council’s role in increasing social and affordable housing – an issue that disproportionately effects women (Council Plan, Section 3.1.1)
• Supporting ageing well in Port Phillip (Council Plan, 3.1.2)
• The Disability Action Plan

Women and girls constitute a large proportion of the Port Phillip Council area. Council believes it is appropriate to specifically reference women’s rights in the Charter in order to counter entrenched discrimination against women. Council’s experience is that women are overrepresented in homelessness statistics, and can often have fewer financial resources than men. Given this reality it is appropriate that women’s rights be referenced in the Charter as a means by which to better achieve the rights of women.

(d) Additional recommendation: Inclusion of the rights of people with disabilities in the Charter

In addition to extension of the Charter to include economic and social rights as well as children’s and women’s rights Council submits that it is appropriate that the Charter include reference to the rights of people with a disability consistent with the Convention on the Rights of Persons with a Disability. Council is committed to creating a fairer city by promoting diversity, supporting community interaction, and ensuring that our services are accessible, inclusive and equitable. Under the Council Plan, Section 3.1.4, in 2011/2012 Council will implement and review the Disability Action Plan and advocate for universal housing that is accessible to persons with a physical disability. Council submits that this undertaking by Council would be further supported by the inclusion of the rights of people with disabilities in the Charter.

2. Term of Reference Two: Whether the right to self-determination should be included in the Charter?

The work of Council is predicated on a respect for and an acknowledgment of the rich Indigenous history of the land on which the Port Phillip area now sits. Council values the respect with which the land has been treated and cared for by the Indigenous custodians over thousands of years. In partnership, we seek to continue to honour the traditional lands that are now encapsulated by the City of Port Phillip.

We acknowledge the Indigenous community’s right to self-determination and in doing so recognise the key roles of the Indigenous community in participating in and informing Council activities.

We recognise the irredeemable debt all who now live in this land owe to the First People. Council knows that many Indigenous people suffer systemic disadvantage and we are committed to redressing this through advocating with, and alongside, the Indigenous community. Council takes seriously our duty to include and engage the Indigenous community in decision-making and consultative forums.

Council is committed to and guided by the City of Port Phillip’s Reconciliation Action Plan which aims to embed Indigenous issues into the policy structures of the City of Port Phillip.
The goal of the Reconciliation Action Plan is to:

- implement measurable actions that support Aboriginal and Torres Strait Islander residents of Port Phillip to achieve equality in all aspects of life – a goal which benefits all Australians
- contribute towards the national effort to close the 17-year life expectancy gap between Indigenous and non-Indigenous Australians
- help build the capacity of the local Aboriginal Torres Strait Islander community to manage their own development
- build on the commitment to reconciliation amongst Port Phillip residents, including through supporting Port Phillip Citizens for Reconciliation.  

Council is committed to continuing to strengthen our relationship with Aboriginal and Torres Strait Islanders and actively support reconciliation as expressed in our Council Plan. This includes:

- Exploring employment opportunities for Aboriginal and Torres Strait Islanders
- Working with local organisations to build awareness, support and understanding for Aboriginal and Torres Strait Islanders and
- Enhance cultural and economic development for local Aboriginal and Torres Strait Islanders.  

Council is actively engaged with advocating for Indigenous people's human rights. In order to better support us to continue to do this work Council seeks the inclusion of the right of indigenous people to self-determination to be included in the Charter. Council believes this is appropriate given both the State and Federal Government's obligation to comply with and implement the United Nations Declaration on the Rights of Indigenous Peoples (The Declaration) which Australia endorsed in 2009. In addition to the Declaration the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the International Covenant on Civil and Political Rights (ICCPR) affirm the fundamental importance of the right of self-determination of all peoples, by virtue of which they freely determine their political status and freely pursue their economic, social and cultural development.

Council asserts that the right to self-determination is fundamental to achieving Indigenous empowerment and this right is of such importance that it requires legislative protection. Articles 3 and 4 of the Declaration set out the obligation of States to uphold the right of Indigenous people to self-determination. The Declaration states:

**Article 3:** Indigenous peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

**Article 4:** Indigenous peoples, in exercising their right to self-determination, have the right to autonomy or self-government in matters relating to their internal and local affairs, as well as ways and means for financing their autonomous functions.

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5 Draft Social Justice Charter, pg 3.
6 Council Plan, Section 3.1.8.
The *Declaration* sets out the individual and collective rights of indigenous peoples, as well as their rights to culture, identity, language, employment, health, education and other issues. The *Declaration* emphasises the rights of indigenous peoples to maintain and strengthen their own institutions, cultures and traditions and to pursue their development in keeping with their own needs and aspirations. It also prohibits discrimination against indigenous peoples and promotes their full and effective participation in all matters that concern them, and their right to remain distinct and to pursue their own visions of economic and social development.

"The rights recognised in the Declaration constitute the minimum standards for the survival, dignity and well-being of the indigenous peoples of the world."^8

The above-mentioned principles contained within the *Declaration* encapsulate the basis upon which Council undertakes activities aimed at enhancing Indigenous people’s access to human rights. For these reasons Council advocates the importance of including the right to indigenous self-determination in the Charter. Council supports the State Government to take this opportunity to include this provision in Victorian legislation. The effects of doing so are numerous, not only to reflect the *Declaration* in State law, but as a mechanism to redress long-standing structural discrimination against Aboriginal and Torres Strait Islander people and better facilitate the realisation of Indigenous human rights.

The right to self-determination by indigenous peoples is fundamental to community participation, sense of belonging and access to services. Council has undertaken many activities to promote the rights of indigenous peoples and believes it is vitally important that the Charter reflect this imperative by enshrining into state law the right of self-determination of indigenous people.

Incorporation of the right to self-determination for Indigenous people would positively enhance the work we are already doing with Indigenous groups in the Port Phillip area by setting up a stronger policy and legal framework upon which to base our work.

3. Term of Reference Five: What have been the effects of the Charter Act on -

(a) The development and drafting of statutory provisions
Council would like to respond to this section by reference to our role in developing and drafting Local Laws pursuant to the *Local Government Act* (1989). Section 38 of the Charter provides that Council must act compatibly with the 20 human rights the Charter recognises by giving "proper consideration" to these rights when making decisions including making or amending local laws. Council is aware that if a Local Law infringes a Charter Right and Council cannot demonstrably justify the infringement under section 7(2) of the Charter, the Local Law would be unlawful.

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Council has responded to section 38 of the Charter seriously by undertaking a review of all Local Laws\(^9\) to assess their compatibility with the Charter which in turn builds a stronger human rights framework within Council. In response to this review the Meetings Procedure Local Law was changed to ensure avenues for community participation.\(^\text{10}\)

Furthermore, the requirements for Council outlined in section 38 of the Charter directly led to the review of existing Local Laws. Future reviews of Local Laws will also be the direct result of the requirements set out for public authorities in the Charter. Undertaking reviews directly analysing the compatibility of Local Laws to the specific Charter Rights is not something that Council would have formally undertaken prior to the Charter becoming law. In this respect Council officers reported that the Charter has had a significant effect on the review of existing Local Laws and on the development and drafting of new Local Laws. Officers reported this requirement is positive because of the wide ranging scope and subject matter of Local Laws which affects residents of the area greatly. The requirement of ensuring Local Laws compatibility with Charter Rights enhances Council’s ability to advance the human rights of the people of Port Phillip.

Whilst the Charter has led to some significant changes in the development and drafting of local laws, as mentioned above, Council has a long standing history of using a human rights based approach as a part of its day to day mode of operation. Thus, the requirement in the Charter to act compatibly with human rights and give proper consideration to human rights was already entrenched in Council’s approach to governance prior to the Charter becoming law. The Charter has however, provided a useful framework to formalise and report activities, initiatives and local laws that support human rights.

The requirement in the Charter to ensure new local laws comply with Charter Rights has been readily integrated into Council practice. All new local laws are assessed for their compliance with the Charter, with an upcoming review scheduled for the new financial year. A review of pre-existing local laws compliance with Charter Rights has already been carried out. Council officers envisage that in the next financial year the Charter will have a significant and deeper influence on the development and drafting of new local laws.

In summary the compliance measures set out in the Charter directing Council to ensure that local laws are not incompatible (unless there justifiable cause) with Charter Rights has altered the way Council develops and drafts new local laws. The Charter has provided a single, clear legal framework for the human rights based approach that Council has practiced for many years. Council is pleased to report that the Charter is a highly useful tool to ensure that human rights are given proper consideration at the ‘front end’ of Council decision making.

(c) The provision of services, and the performance of other functions by Council

It is difficult to isolate what effect the Charter has had on the provision of services by Council because, as mentioned previously, Council has a long standing commitment to operating from a perspective that values and upholds human rights. However, the most recent Council Plan (2009-2013) is consistent with the fundamental tenants of the Charter with a strong emphasis on people’s right to participate in and inform local decision making processes, as well as be actively involved in community life.

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Whilst it is difficult to isolate the effects the Charter on Council services and other Council functions what is clear is that Council is wholly in support of the Charter and has taken comprehensive measures to ensure compliance with the provisions of the Charter. One of the ways Council has done this is through our involvement in the Victorian Local Governance Association (VLGA) Working Group. This Working Group promotes and supports the incorporation of the Charter into Council’s business. The Working Group is comprised of members from five Councils (Port Phillip, Boorondara, Hume, Latrobe, and Wodonga). A Human Rights Toolkit called ‘From Compliance to Culture’ is the culmination of the VLGA’s Human Rights Matter Locally Project, which explored the challenges facing local governments, as well as the opportunities and strategies available, in implementing the Charter. Port Phillip Council’s active participation on this Working Group is further evidence of how the Charter has impacted on the provision of services and the operations of Council.

In addition to Council’s participation on the VLGA Working Group Council’s own internal Human Rights Charter Working Group guides and ensures Council’s adherence to the Charter Implementation Plan. Council’s internal Human Rights Charter Working group demonstrates the effect the Charter has had on the operations of Council in that this group was established solely to ensure Charter compliance and provides a mechanism within Council to monitor, review and progress implementation of the Charter.

Adding to Council’s external and internal mechanisms to ensure compliance with the Charter our own Council Plan provides detailed direction on what measures to take to implement the Charter. The Council Plan stipulates Four Strategic Directions which outline Councils adherence and commitment to providing services and undertaking activities in a manner consistent with people’s human rights, and thus the Charter, with a strong emphasis on community participation:

1. Engaging and Governing the City – including the development and implementation of the Community Engagement Strategy.
2. Taking Action on Climate Change
3. Strengthening Our Diverse and Inclusive Community and
4. Enhancing Liveability

Council has a deep commitment Council to people’s participation in Council processes and decisions making. Further to this in March 2009 Council adopted 16 principles for good governance called ‘Our Governance Statement’. These principles aim to ensure good decision making. Operating under these principles has led to significant developments in the provision of Council services and other Council activities.

In the context of the Council Plan and the Four Strategic Directions, combined with our 16 principles for good practice, the Charter added to this already robust system of operation by formalising Council’s framework for working from a human rights perspective. The Charter led Council to develop a Charter Implementation Plan to guide and monitor activities relating to the Charter. The following is a summary of Council services and activities as outlined in Councils Charter Implementation Plan.

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11 City of Port Phillip, Charter of Human Rights and Responsibilities Implementation Plan, as at May 2010.
13 City of Port Phillip, Charter of Human Rights and Responsibilities Implementation Plan, as at May 2010.
I. To promote Council’s commitment to Human Rights and advocate for human rights
These long term strategic actions require involvement and cooperation by all departments across Council. These actions reflect this Council’s commitment and leadership in relation to developing and maintaining a diverse and inclusive community. These actions are indicative of ongoing projects that have been in place for some time prior to the enactment of the Charter.

The Council Plan 2009-13 includes many actions to advance human rights including:
- Taking a leadership role in advocating and promoting social justice and human rights (3.1.9)
- Increasing social and affordable housing (3.1.1)
- Supporting ageing well in Port Phillip (3.1.2)
- Ensuring equitable access to services (3.1.4)
- Valuing and celebrating diversity (3.1.5)
- Facilitating and promoting positive youth activity and engagement (3.1.7)
- Supporting activities to improve the community’s physical, mental, spiritual health and wellbeing (4.1.5)

In addition Council currently has many activities in place which promote human rights (including children’s rights and indigenous rights) for instance:
- Early Year’s Plan
- Protocol for Involving Children in Community Consultation
- Indigenous Recognition and Action
- Homelessness Action Strategy
- Housing Strategy
- Port Phillip Housing Trust- partnership with Port Phillip Housing Association Ltd
- Health and Wellbeing Plan
- Disability Action Plan
- Human Rights Forum (October 2008)
- Pride March and many others.

The Charter has had effect on the performance of Council’s activities. For example, a local dispute arose recently regarding a Muslim prayer group with approximately 50 people being held in a Council community centre where the planning permit allowed for no more than ten people to occupy the building per activity session. Many groups using the centre, including the prayer group, had outgrown the original conditions of the permit.

Addressing and resolving this issue was a very difficult process. There were many community members who objected to the prayer meeting taking place in the centre. These people expressed and openly incited racist views and fear within the community about the people involved in the prayer group.

Council resolved in March 2011 to grant a new planning permit to ensure the centre can continue to provide a range of important services and spaces for community groups allowing up to 100 people to gather in the building. When making this decision Council relied on, and referenced sections 14 and 19 of the Charter which gives every person the right to freedom of thought, conscience, religion and belief. This means people have the freedom to think and believe what they want and they can do this in public or private, as part of a group or alone.
The Charter heavily influenced Council’s decision making process in this matter and demonstrates Council’s commitment to implementing the Charter.

A draft Social Justice Charter has been developed by Council in accordance with the Council Plan 2009-2013 (section 3.1.9).

The Social Justice Charter is a significant move by Council, with only two other Councils in Victoria having a social justice charter, to advance the human rights of the people of Port Phillip. As outlined above, within the Council area there are many complex social issues including high rates of poverty and disadvantage, homelessness, financial and gambling issues, indigenous inequity and discrimination, domestic violence, community violence and mental health issues just to name a few. The draft Social Justice Charter focuses on the promotion and fulfilment of people’s economic, social and cultural rights. Broadly speaking the draft Social Justice Charter is about how the residents of Port Phillip relate to and respect each other in the community. Council provides services with reference to people’s human rights to a minimum standard of living, to adequate housing, to freedom from discrimination and to equity of access to Government services.

The draft Social Justice Charter will use 6 principles inform the way in which Council will act to advancing social justice in the municipality:

- Participation in decision making and Council processes
- Partnership with our Indigenous community
- Access: equality of access to information, facilities and services
- Respect: valuing diversity
- Addressing the rising cost of living: reducing disadvantage
- Enjoying the City: being connected.

III. Review of Local Laws
The effect of the Charter on the review of Local Laws has not been extensive to this point however in the new financial year the effect of the Charter on the way Council drafts and develops new Local Laws will be significant.

As stated above in 3(a) a review of all existing Local Laws has been undertaken for compatibility with Charter Rights.\(^4\) Also as stated above in 3(a), it is envisaged that the effect of the Charter on the future development and drafting of Local Laws will deepen during the course of the new financial year as more Local Laws are developed and Local Laws officers are trained in the content and application of the Charter.

IV. Review of Policies
During 2009-2010 Council conducted a Policy Review. The effect of the Charter was visible in this regard as the Charter was considered during this review. As a result of the Charter several Council policies have been amended to comply with the Charter.\(^{15}\) These policies were:

- Respect for Others (Equal Opportunity) Policy
- Staff Code of Conduct
- Staff Discipline Policy
- Child Care Policies

V. Staff training and engagement
The Council’s Charter Implementation Plan budgets and plans for all Council officers to be trained on the content and application of the Charter and human rights more broadly in their day to day work. Council has incorporated training on the Charter as a part of the learning and development calendar for all staff and most Council officers have already received this training, in particular Family and Children’s Services staff, Councillors\(^ {16}\) and Local Laws officers. Council will soon reach the goal where all Council officers across all departments are trained about the Charter and how to implement the Charter into the operations of Council.\(^ {17}\)

Given many Council officers’ increased understanding of and application of the Charter in their everyday work the Charter has had a significant effect on the provision of services and performance of other functions by Council.

In summary the Charter has had a substantial effect on the development and drafting of Local Laws as well as the provision of services and other functions by Council. Council processes and policies, in addition to Council’s long term culture of operating from a human rights perspective, means that human rights are given proper consideration at the ‘front end’ of Council decision making and the provision of services. This is the primary effect of the Charter on Council’s provision of services and the performance of other Council functions. The Charter has assisted Council to be more conscious and systematic about how we place human rights at the centre of all of our work.

4. Term of Reference Six: What if any, have been the overall benefits and costs of the Charter?
Many Council officers report that the Charter provides a clearer framework, as well as a legal framework, for Council to fulfil its mandate to promote and provide for the human rights of the people of Port Phillip. Many respondents said that since the commencement of the Charter the work that they had been doing for many years now has a legal underpinning which enables officers to better justify human rights based services and activities.

Council officers reported that there have been no costs related to implementing the Charter. Council wide training about the Charter has and is being undertaken in a cost efficient way by

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\(^{16}\) Councillors were trained on human rights on 8 April 2011.

incorporating it into the existing learning and development calendar for all staff, along with
general training about human rights.

Whilst the Charter is better understood in some Council departments more than others, all
Council officers interviewed reported that the Charter encouraged greater adherence to
human rights principles and practices, extending beyond the 20 nominated Charter Rights.

For the reasons outlined in this submission, Council summarises the overall benefit of the
Charter as positive. We believe the Charter has been a significant contributing factor in
advancing the civil and political human rights of people in the Port Phillip area.

5. Term of Reference Seven: What options are there for reform or
improvement of the regime for protecting and upholding rights and
responsibilities in Victoria?

As mentioned above\(^\text{18}\) Council advocates that the Charter Rights should be expanded to
include economic, social, women’s, children’s and indigenous rights. This is consistent with
Australia’s responsibilities under international law. Our experience at the grass roots of
community life in Port Phillip, as outlined throughout this submission, indicates that whilst
civil and political rights are of fundamental importance to our constituents so too are
economic and social rights. In fact, it is these rights – the rights to a fair wage, and the right
to adequate housing amongst many others - that Australian’s are most concerned about.\(^\text{19}\)

Furthermore, the application of the Charter in Council work is curtailed by the narrow range
of predominantly civil and political rights outlined in the Charter. Council supports the
expansion of the body of rights contained within the Charter the effect of which would be
positive within the workings of Council and for the people of Port Phillip and Victoria as a
whole.

Conclusion
Thank you for the opportunity to provide this submission against the Terms of Reference for the
Review of the Victorian Charter of Human Rights and Responsibilities. We value the opportunity to
openly and freely express our views on, and our experience of, facilitating and promoting human
rights within the Port Phillip area. We also appreciate the opportunity to provide our suggested
options for the improvement of the regime for protecting and upholding rights and responsibilities in
Victoria.

We look forward to receiving information about the outcome of the Review.

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\(^{18}\) In response to Terms of Reference 1 and 2
\(^{19}\) National Human Rights Consultation Committee, *Report of the National Human Rights Consultation* (2009),
344.
Bibliography

2011


Talking rights: Consulting with Victoria's Indigenous community about self-determination and the Charter, VEOHRC, Mar 2011

Talking rights: Consulting with Victorians about economic, social and cultural rights and the Charter, VEOHRC, Mar 2011

Human Rights Law Centre position paper: Charter review, May 2011


2010


2009 Summary report on the operation of the Charter of Human Rights and Responsibilities, VEOHRC, Apr 2010

Economic, social & cultural rights and the Charter of Human Rights and Responsibilities, A framework for discussion, VEOHRC, Mar 2010


Advancing women’s rights – exploring the relationship between the Charter of Human Rights and Responsibilities and the Convention on the Elimination of All Forms of Discrimination Against Women, VEOHRC, Mar 2010


Council Documents

- Council Plan 2009-2013
- Charter of Human Rights and Responsibilities Implementation Plan, as at May 2010.
- Disability Action Plan
- Draft Social Justice Charter 2009
- Homelessness Fact Sheet, June 2010
- Homelessness Strategy Action Strategy 2008-2013
- Housing Strategy 2007-17
- Municipal Early Years Plan for Port Phillip
Websites
- Human Rights Law Centre: http://www.hrle.org.au
- Law Institute of Victoria