Municipal Association of Victoria


June 2011
While this submission aims to broadly reflect the views of local government in Victoria, it does not purport to reflect the exact views of individual councils.

For further information please contact:

Andrew Rowe
MAV
Level 12, 60 Collins Street
Melbourne VIC 3000

Ph: (03) 9667 5549
F: (03)667 5550
E: arowe@nav.asn.au
Introduction

The Municipal Association of Victoria (MAV) as the legislated peak body for local government in Victoria presents this submission to the Scrutiny of Acts and Regulations Committee regarding the Review of the Charter of Human Rights and Responsibilities Act 2006 (the Charter). The MAV commends the Charter and overall considers its implementation has been positive for local government.

At the time of the introduction of the Charter, local government was already a leader in community building and strengthening, community development and equal opportunity. Local government was at the forefront of engaging with access and equity issues and has a long history in promoting access, opportunity and robust, vibrant local communities. The increased activity around community planning and community engagement activities over the past six to eight years has enabled the Charter’s introduction to occur in an environment of shared concerns for putting community at the centre of local government.

There were several themes, questions and issues concerning the Charter’s enactment that were evident within local government at the time of the introduction of the Charter. These included:

- The potential costs of compliance in an era of cost shifting to local government by State Government;
- The potential risks and consequences for councils for non-compliance;
- Managing culture change in particular areas of council activity;
- Staff training and induction;
- Complaints management;
- Appropriate location of human rights activity within council structures;
- Support for local laws reviews;
- Concern regarding costs of defending against complaints;
- Identification of areas of anticipated problems e.g. planning, local laws, human services;
- Create unnecessary duplication of legislation;
- Concerns about endless, vexatious and nuisance complaints; and
- Proactivity.

Four years in, it is the MAV’s view that none of these initial concerns remain as issues for local government. In addressing the Terms of Reference this Submission will comment on each of the issues listed above.

"The continuing progress being made by local government in promoting and protecting human rights is improving the quality, accessibility and accountability of the services councils provide to their communities. It is also increasing community participation and engagement in council policies and decisions".

The data collected by the VEOHRC in its annual survey of local government in regard to Charter operations provides a rich source of evidence which this report will cite in providing elements of councils’ experience of the Charter.
What has been identified is a plethora of local government community building and community development activity consistent with, supported by, encouraged and influenced by the Charter.

Response to Terms of Reference

The MAV intends to address only the Terms of Reference that it has formed a view on and that can be supported by local government experience.

Terms of Reference

**Whether there should be mandatory regular auditing of public authorities to assess compliance with human rights**

Local government is primarily accountable to its own communities through the framework provided by the *Local Government Act* 1989. The Act and a variety of other Acts provide a complex reporting framework to government. It has been a long held view that local government reporting should be streamlined to avoid a literal plethora of reporting processes and to strengthen reporting around key local government activities and the Council Plan.

Equally local government is subject to a variety of auditing processes of its functions, activities, finances and procedures. The recently formed Local Government Inspectorate has a wide range of investigative and auditing powers.

A key driver of the implementation of the Charter has been its use as a vehicle to change culture and to drive change within public authorities including local government. The notion of mandatory regular auditing stands in stark contrast to the success of the Charter in changing culture and building support with local government.

Local councils have a mandated Audit Committee which primarily advises them on issues of risk, compliance and finance. It would assist local government if compliance with the Charter was identified by each Council Audit Committee to review as part of its annual audit program. Outside of this internal audit process the MAV does not support mandatory regular auditing of Charter compliance.

To assist with transparency and accountability the MAV believes that the annual report to the Attorney General on the Operations of the Charter by the VEOHRC should continue.

The MAV believes that the Charter coverage should be extended to all public authorities. The ability for some public authorities to remain exempted is no longer accepted as consistent with the intent of the Charter and the public’s confidence in it. The MAV does believe that clarity needs to be established around what is or is not a public authority as some funded agencies remain unclear as to whether they are covered by the Charter.
Whether the Charter should include further provisions with respect to legal proceedings that may be brought or remedies that may be awarded in relation to acts or decisions of public authorities made unlawful by the Charter

The MAV believes that the genuine opportunity for Victorians to raise complaints under the Charter is limited by the requirement to attach a complaint on Charter breaches to another complaint to the public authority in question. The MAV supports the opportunity for Victorians to bring ‘stand alone’ complaints as a basic right under a genuine Human Rights process.

The MAV also supports the Charter providing a role for the VEOHRC in conciliating complaints about Charter breaches. The VEOHRC has significant experience and knowledge and an existing disputes resolution process. Supporting a conciliation role for The VEER will also ensure a quick resolution of issues for many complaints without requiring the determination of the courts.

What have been the effects of the Charter Act on the provision of services, and the performance of other functions, by public authorities?

The experience of local government in relation to Charter implementation includes:

- One third of councils having developed a Human Rights Plan to assist organisation wide implementation (2010 VEOHRC).
- A quarter of councils have developed a Human Rights monitoring and review process (2010 VEOHRC).
- Half of councils have completed a review of all their key strategic documents (2010 VEOHRC).
- More work is required to have Human Rights as a self-sustaining process of planning, implementation, monitoring and review that is part everyday operations of local government (2010 VEOHRC).
- Half of councils have completed reviews of local laws. A further third have the review process underway. Two-thirds of councils have a procedure or guidelines in place for drafting new local laws to ensure that they are compliant with the Charter (2010 VEOHRC).
- Of the councils that have completed local laws reviews few have found it necessary for wide ranging changes. The development of the Local Government Victoria Guidelines for Local Laws Reviews should assist in this area.
- Local government has been keen to be seen as a leader in Human Rights implementation and has used the Charter to amplify and reinforce existing strategies in regards to community strengthening, access and engagement activities.
Councils have reported that the Charter has had a positive impact on the quality, accountability and responsiveness of many council services (2010 VEOHRC).

The Charter has been identified by councils as having a positive impact on community engagement and participation. This includes participation in council meetings and access to services. (2010 VEOHRC)

Responsibility for Human Rights falls in several areas of council activity. Generally the functions of human resources, corporate services, social and community services, and governance. The location of a Human Rights function within council has much to do with where expertise lay, whether resources were available and how council initially saw the implementation of the Charter e.g. an issue of risk management and compliance or a matter of cultural change and development.

Two thirds of councils have provided Charter training for councillors. Requests for Charter training by councils to the MAV have been disrupted by the uncertainty surrounding the Charter review.

**The overall benefits and costs of the Charter**

In looking at benefits and costs we will partly return to the issues top of mind for councils at the introduction of the Charter.

- **The potential costs of compliance in an era of cost shifting to local government by State Government**
  Local government has embraced the Charter and has managed to address most issues of Charter implementation without undue challenges to costs. Funding and support from government would see quicker responses to implementation issues. Overall the Charter has provided benefits to services, access and engagement.

- **The potential risks and consequences for councils for non compliance**
  Local government has embraced the Charter's impact on creating cultural change and see the most significant risk as a risk to reputation. There is no evidence of undue costs in relation to non compliance.

- **Managing culture change in particular areas of Council activity**
  As in any area of public authority activity there is unevenness across councils of Charter Implementation. This is no larger an issue than any area of cultural shift across organisations.

- **Staff training and induction**
  Human Rights training is generally being added to staff induction packages. The benefits to councils of trained staff mean less risk in relation to non compliance and greater opportunity to imbed change across the council.

- **Complaints management**
  Councils have needed to address complaints management to ensure compliance with the Charter. This has been a benefit to ensuring best practice in face to face engagement with citizen.
- **Appropriate location of Human Rights Activity within Council Structures**
  Human Rights responsibilities are located in a variety of different council areas. This variance is a response to councils finding the best fit and available resources at the local level.

- **Support for Local Laws Reviews**
  The development of the Local Government Victoria Guidelines for Local Laws Reviews will be an ongoing support for councils undertaking a review.

- **Concern regarding costs of defending against complaints**
  There is no evidence of undue costs in relation to non-compliance.

- **Identification of areas of anticipated problems e.g. planning, local laws, human services**
  The concerns regarding these anticipated areas of concern have proved groundless.

- **Create unnecessary duplication of legislation**
  The initial concerns were that the Charter would duplicate unnecessarily existing legislation which councils have had to comply with for some years e.g. The Disability Discrimination Act, 1992. The local government experience is that this was not an issue once councils understood the coverage of the Charter in providing rights for all Victorians. In this sense the Charter complements previous legislation.

- **Concerns about endless, vexatious and nuisance complaints**
  No evidence for this concern, it has proved groundless.

- **Proactivity**
  A greater proactive approach to promotion of Human Rights by local government is a consequence of a need for a proactive funded promotion of Human Rights by government. In this area local government has been uncertain about leading without a concerted approach by other public authorities.

Overall the MAV believes that the benefits of the Charter to Victorians and to local government have been significant and the cost burdens manageable.

**References**

2010 Compilation Report on the Operation of the Charter of Human Rights and Responsibilities by the VEOHRC.

**MAV**
June 2011: