Submission to the Scrutiny of Acts and Regulations Committee

Victorian State Parliament
June 17, 2011
By Anthony van der Craats

Mr Edward O’Donohue, MLC
Chairperson
Scrubiny of Acts and Regulations Committee
Parliament House
Spring Street
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Re: Submission Review of the Charter of Human Rights and other legislative provisions

Dear Chairman and members of the Scrutiny of Acts and Regulations Committee

I wish to thank the committee for the opportunity to make this submission

My main concern in relation to the application of the Human Rights Act is the lack of accountability of the Victorian Electoral Commission (VEC) and concerns about the conduct, misuse and abuse of the Victorian Electoral Commission’s authority.

In the lead up to and following the 2006 State Election and the 2008 Municipal elections I had need to refer a number of complaints in relation to the conduct of the Victorian Electoral Commissioner, Mr Steve Tully to the Victorian State Parliament. In particularly complaints against the Chief Commissioner of harassment, vilification and intimidation of witnesses, arising from my submission and evidence provided to the Victorian State Parliament Electoral Matters Committee.

Complaints in relation to this matter were referred to, in the first instance, the Victorian State Ombudsman and the previous State Parliament Electoral Matters Committee along with a request that my complaint be independently reviewed. Unfortunately the previous Parliament failed to address this issue.

The political nature of such matters can lead to the possibility of allegations of political bias and as such members of Parliament are reluctant to address these issues, preferring instead that such matters be addressed by independent non-political bodies such as the State Ombudsman.

Whilst the Victorian Human Rights Act does canvass some of these issues raised it fails to provide a clear mechanism where such matters can be properly dealt with.
Under normal circumstances the State Ombudsman would have jurisdiction to review complaints of harassment, misuse of administration and jurisdictional error by Government Agencies.

Whilst the Ombudsman is the appropriate body to review such matters the Ombudsman Act currently prevents the Ombudsman from reviewing the Victorian Electoral Commission, as such there is limited opportunity for review and independent consideration of complaints made against the Victorian Electoral Commission. I believe this is an oversight and that parliament did not intend the Victorian Electoral Commission to be unaccountable for its administrative actions or breaches of Human Rights. The Ombudsman has jurisdiction over the Chief Commissioner of Police and likewise should also have the right to review complaints against the Victorian Electoral Commission.

The issue of accountability and authority of the State Ombudsman should be taken into consideration when reviewing amendments to the Victorian Human Rights Act so as to ensure that all government authorities are subject to the provision of the Act and that complaints against breaches of the Human Rights Act should be able to be made directly, whether to the State Ombudsman or the Equal Opportunity and Human Rights Commissioner, without the need for consideration under the Equal Opportunity Act – goods and services provisions.

Recommendation

I request that the review committee recommend that

- the Ombudsman Act be amended so to remove restriction and limitations that prevent the Ombudsman from considering complaints of administration matters related to the Victorian Electoral Commission and that
- the Human Rights Act be amended to give direct action and rights of administrative review of breaches of the Victorian Human Rights Act.

I would look forward to the opportunity to discuss further in more detail matters outlined in this submission at a scheduled meeting of the committee.

Should you require further information I can be contacted via return email;

Yours faithfully

Anthony van der Craats