17 June 2011

Mr Edward O’Donohue MLC
Chairperson
Scrutiny of Acts and Regulations Committee
Parliament of Victoria
MELBOURNE VIC 3002

Dear Mr O’Donohue,

RE: Submission to the Scrutiny of Acts and Regulations Committee
Inquiry into the Victorian Charter of Human Rights and Responsibilities

Brimbank City Council is pleased to make a submission to the Inquiry into the Victorian Charter of Human Rights and Responsibilities Act 2006.

Please find a copy of Council’s submission prepared by Council officers in accordance with Council’s Social Justice Charter and Council Plan 2010-2014. This submission focuses upon specific terms of reference questions that are relevant to our governance role and strategic commitments. These include whether the Charter should include additional human rights under the Charter, the overall benefits of the Charter and options for reform or improvement for protecting and upholding rights and responsibilities in Victoria.

Brimbank City Council has a significant history of supporting human rights and responsibilities. Soon after the release of the Victorian Charter in 2008, Council used the human rights found in the Charter as a basis for its commitments to Social Justice in the Brimbank Social Justice Charter.

In particular, Council’s Social Justice and human rights responses aim to respond to the needs of disadvantaged groups in Brimbank. Brimbank is ranked the second most disadvantaged municipality in Melbourne with higher than average rates of unemployment, low educational levels and low incomes. As well, we are a highly diverse municipality with 43% of our population born overseas.

This submission is consistent with the Brimbank Community Plan 2009-2030 and the Brimbank Council Plan 2010-2014 which promote access, equity, participation and human rights in response to the discrimination and exclusion experienced by many people in our municipality due to their culture, age, gender, income or disability.

If there are any further queries please contact me on 9249 4468.

Yours sincerely,

Kelly Grigsby
General Manager, Community Wellbeing
Submission to the Scrutiny of Acts and Regulations Committee

Inquiry into the Victorian Charter of Human Rights and Responsibilities

1. Introduction

Brimbank City Council is pleased to be able to make a submission to the Inquiry into the Victorian Charter of Human Rights and Responsibilities Act 2006 (the Victorian Charter).

The focus of Council’s submission is on whether the Charter should include additional human rights, the overall benefits of the Victorian Charter and what options are there for reform and improvement of the regime for protecting and upholding rights and responsibilities in Victoria.

Council’s submission is consistent with the Brimbank Community Plan 2009-2030 which commits Council to ensure its services, programs and processes are consistent with the Social Justice Charter and contribute to a vibrant, culturally diverse city caring for all and building for a sustainable future. It is also reinforced by the Brimbank Council Plan 2010-2014 which acknowledges Council’s strong foundation in social justice as a basis for its commitment to the provision of affordable services and community infrastructure that builds healthy people and communities through education, recreation, arts and culture and sport.

2. Council’s Commitments to Human Rights and Responsibilities

‘What makes Australia fair – fair education, fair health, fair welfare, fair environments, fair work, fair community, fair reconciliation, fair housing, fair services and fair rights and responsibilities.’


Council’s commitments to Human Rights and Social Justice are presented in the Brimbank Social Justice Charter, a copy of which is attached for your perusal.

Established in 2008, the Brimbank Social Justice Charter expresses Council’s commitment to fairness for all citizens living in the municipality including those residents experiencing high levels of social and economic disadvantage and barriers to equality.
The development of the Brimbank Social Justice Charter exhibits Council’s commitment to governance on behalf of all its residents including the many people who may experience discrimination, poverty, disadvantage and exclusion from the community and public services.

Under the Brimbank Social Justice Charter, Council upholds the principle that every citizen of Brimbank is free and equal in dignity and rights and is entitled to a quality of life that allows them to reach their potential. In particular, the Social Justice Charter recognises that some individuals and groups within Brimbank have experienced and continue to experience particular disadvantage and that social, economic and cultural determinants that cause disadvantage need to be identified, addressed and assessed.

It is important to highlight here that a key foundation stone for Council’s commitments to Social Justice and human rights is the Victorian Charter of Human Rights and Responsibilities and the support provided by the Victorian Equal Opportunity and Human Rights Commission to raise awareness about the Victorian Charter’s implementation and review in relation to the local government sector.

In summary, with high levels of disadvantage, diversity and poverty in the Brimbank community, Council has embraced a vision of a fair and inclusive community where discrimination based on culture, gender, age and ability is removed and all citizens have fair and equal access to public services.

3. The Benefits of Implementing a Human Rights Culture

Brimbank City Council supports the Victorian Charter because of its essential democratic value to the people of Brimbank. In particular, the Victorian Charter promotes ‘common good’ principles that establish the basis of equality and fairness for all. Council believes that human rights protections are an important way to set minimum standards that provide a common foundation for a society that is free and equal, and a society that can take responsibility to ensure a ‘fair go’ for all.

Brimbank City Council’s support for the Victorian Charter has led Council to:

- Provide annual responses to the Commission’s Human Rights Survey;
- Hold educational forums in the community;
- Incorporate commitments to human rights and responsibilities in Council plans and service policies including in Complaints Procedures, Community Engagement Strategies and Procurement Policy;
- Promote community wellbeing and ensure Council’s services, programs and processes contribute to a vibrant, culturally diverse city, caring for all and with a sustainable future;
- Raise awareness, take action in the community and advocate to other levels of government. This has led Council to establish a Social Justice Coalition and facilitate multi-agency partnerships in response to key community and human rights issues such as fair access to public transport, affordable housing and industry, employment and education opportunities;
• Hold an annual Social Justice Summit which brings people together under a human rights banner to promote access, equity and community participation with a focus on our most disadvantaged population groups; and

• Work with other local governments to develop best practice principles for the promotion, implementation and assessment of the Victorian Charter in the local government sector.

In conclusion, the Victorian Charter has had a profound impact on the way Brimbank City Council develops policy, relates to its constituency, responds to community priorities and high levels of disadvantage; and assesses its performance for continuous improvement. Nonetheless, these advances have occurred in a short period of time and with limited resources from the State Government.

4. Options for Reform and Improvement

Council considers there are three major actions that can be undertaken by the State Government to improve, protect and assist uphold rights and responsibilities in Victoria. In particular, we propose the State Government implement a program of information and community education, retain the existing Charter of Human Rights and Responsibilities and improve human rights protections by incorporating additional human rights instruments into legislation.

4.1 Improved Information and Community Education

Brimbank City Council’s commitments to developing a human rights culture are recognised in Council’s primary strategic planning and corporate framework policies and plans, service delivery protocols and community advocacy partnerships.

However, there is much more that can be done to effectively protect and uphold the human rights and responsibilities in our populous and culturally diverse community."

Specifically Council would encourage the State Government to allocate sufficient resources to assist Council inform, raise awareness and develop community education programs that promote human rights and responsibilities in the broader community.

*Note:* Brimbank’s population is approximately 180,000 with 54% of people speaking a language other than English at home; and 43% of residents born overseas. Accordingly, resources allocated for community education programs would need to take into account the need to reach communities with language and literacy needs.

4.2 Retain the Charter of Human Rights and Responsibilities

There are a range of strategies that can be employed to improve the performance and value of the Victorian Charter in the community. Council is of the view that it is crucial the existing Charter of Human Rights and Responsibilities should remain intact.

Council notes that in a short period of time, the Victorian Charter has played an important role in the public sector and the community to raise awareness about human rights and responsibilities, reiterate major democratic principles, establish service benchmarks and improved protections against unfair discrimination.
Council reiterates that these protections are of crucial importance to the many people in our community who may not have the resources, power, ability and privileges to withstand discrimination, unfair treatment and social exclusion.

Whilst fully endorsing the Victorian Charter, Council recognises the reach of its protections are generally accepted as normative civil and political rights and freedoms that underpin the basics of the democratic society we aspire to.

However, in relation to our constituency there are even more pressing social and economic concerns that illuminate gaps in current human rights protections and the negative impact this can have on disadvantaged and marginalised population groups.

In particular, Council proposes that there is a need to extend human rights provisions concerning the basic social and economic conditions in society. These additional human rights provisions would focus upon such areas as fair access to housing, education, employment; and equitable access to services such as hospitals, dental and preventive healthcare programs.

Specifically, the at risk population groups we are referring to in this instance include Aboriginal Australians, women, children and young people, elders, culturally and linguistically diverse groups, homeless people and people with disabilities.

Concerns about people’s fair access to these essential services leads Council to support the provision of additional rights and responsibilities that can be integrated with the Victorian Charter.

Accordingly, Council supports the inclusion of the following rights instruments with the existing Victorian Charter:

a) The International Covenant on Economic, Cultural and Social Rights;

b) The Convention on the Rights of the Child; and


In closing, we thank you for the opportunity to respond to this important consultation.

If you require further information please contact Fiona Reidy, Manager Community Planning and Development, on 9249 4033 or by email fionar@brimbank.vic.gov.au
SOCIAL JUSTICE CHARTER
building a just and inclusive community
AIM

Brimbank City Council aims to promote active civic engagement, strengthen community wellbeing and reduce the causes of disadvantage.

VISION & CORE VALUES

Under this Charter, the Brimbank City Council will endeavour to fulfil its vision to be a vibrant, culturally diverse city caring for all and building for a sustainable future.

A SOCIAL JUSTICE FRAMEWORK

Brimbank City Council recognises that equal opportunity is about treating all people equally and providing people with equal rights. However, since inequality still exists, treating everyone the same does not necessarily mean fairness of treatment. Council acknowledges that some individuals and groups within the municipality have suffered and continue to suffer particular disadvantage.

Brimbank City Council commits to working within a social justice framework to provide equitable outcomes to marginalised groups by recognising past disadvantage and the existence of structural barriers embedded in the social, economic and political system that contribute to systemic discrimination.

Social justice and social inclusion describe changing systems and shaping culture to guarantee full citizenship. The idea of social justice is founded on the principles of equal worth of all, entitlement of all to income, shelter and other basic necessities; opportunities and the silencing for all, and reducing and eliminating unjust inequalities.

Brimbank City Council upholds that every citizen of Brimbank is free and equal in dignity and rights and is entitled to a quality of life that allows them to reach their potential.

Through this Charter, Brimbank City Council affirms its respect for, and its commitment to, promoting these rights for all of its citizens and each of their communities.

Social justice inherently recognises that some citizens are disadvantaged and do not enjoy the same access to resources as others. Brimbank City Council is committed to taking action in partnership with the community and other levels of government, to strive for social justice and address the social, economic, environmental and cultural determinants that cause disadvantage.

The implementation of this Charter Brimbank City Council will be better placed to support improvements in community wellbeing in a range of ways including improved access to services and resources for the most disadvantaged living in the community.

HUMAN RIGHTS

Brimbank City Council upholds that every one of its citizens has inalienable rights under the International, Federal and State laws outlined below. Council supports the development of policies that builds strong, caring communities through a fairer society that reduces disadvantage and respects diversity such as the Victorian State Government Policy outlined in the Growing Victoria Together document.

// International Law


// Australian Federal Law


// Victorian State Law


These laws include the right to:

- An adequate standard of living, including food, clothing, housing and medical care.
- Full development through learning throughout life.
- Work, including conditions of work and remuneration that ensure a dignified existence.
- Participate in the public and cultural life of their community.
- Rest and leisure.
- Liberty and security of the person.
- Social security.
- Enjoy these and other human rights without distinction or discrimination of any kind.
- Belong to a community, to enjoy and practice that community’s culture and to have that culture respected.
Social Policy Research

Recent research by the Social Policy Research Unit at the University of New South Wales extends research into poverty beyond a concentration on people's income to include concepts of deprivation (missing out) and social exclusion (left out).

Poverty, deprivation and social exclusion are distinct but overlapping concepts. They cover what most people understand by the term 'social disadvantage', which involves restricted access to resources, lack of participation and blocked opportunities.

This research has clearly demonstrated that there are a core group of disadvantaged Australians who experience all three conditions – poverty, deprivation and exclusion – simultaneously. These deprivation indicators highlight that many people are unable to afford the most basic needs for food, shelter and good health. The exclusion indicators reveal how lack of access to vital health and community services, social isolation and low economic capacity prevent many community members from participating socially and economically.

The Australian Council of Social Services released results from a national survey of 972 Australians focused on what Australians value conducted in November 2006. This research found a high level of agreement on some values with 91% of people surveyed nominating 'a fair go for all' as an important Australian value.

When asked what would make Australia fair, the majority of people nominated the same list of ten items: fair education, fair health, fair work, fair environment, fair community, fair reconciliation, fair housing, fair services and fair rights and responsibilities.

Council commits to reducing factors that influence disadvantage including a lack of:

- Respect for difference relating to skin colour, language, religion, national or ethnic origin, gender, socio-economic status, sexuality, ability and age
- Education, employment and recreational opportunities
- Affordable food, housing and transport
- Appropriate health services
- Information
- Personal safety
- Social networks
- Appropriate use of alcohol, other drugs or gambling

Disadvantage in Brimbank

- 8% of the population are unemployed compared to 4.7% for the state of Victoria
- 22% of the population are below social security payments
- 35.4% in the region would like more for an individual. The poverty line for individuals varies from $789 (September 2007) to $977
- Brimbank is ranked the second worst disadvantaged essentially in Melbourne according to the 2006 SEIFA Indexes, which compares relative social and economic conditions across Australia
- Over 60% of Brimbank's population belong to other Health Zone Data of Metropolitan Melbourne

What makes Australia fair – fair education, fair health, fair welfare, fair environment, fair work, fair community, fair reconciliation, fair housing, fair services and fair rights and responsibilities.
Brimbank City Council commits to equity, equality, access and participation for all citizens.

Brimbank City Council recognises that there are situations where the application of the same to all can result in unequal outcomes for some.

The Victorian Charter of Human Rights & Responsibilities and the Social Justice Charter

The Victorian Charter Act 2006 creates a legal obligation to create and support a rights culture through the active consideration of rights when developing and adopting policies.

From the 1st of January 2009, all public authorities are obliged to act strictly in accordance with the Victorian Charter Act. This includes:

- Act consistently with all rights.
- Assess all rights when considering the impact of a situation on human rights.
- Ensure that no right has priority over any other right.
- When determining whether a right can be reasonably limited, the interests of all parties are balanced and considered.

The Social Justice Charter will support Brimbank City Council to fulfil its obligation to ensure that existing policies are compatible with the Victorian Charter Act and new policies are assessed for their impact on human rights.

For further information on the Victorian Charter Act and the Social Justice Charter please refer to appendix 2.

Guiding Principles

In adopting this Charter, Brimbank City Council commits to equity, equality, access and participation for all citizens. The adoption of the following principles delivers Council's leadership role in the social arena. The principles are:

Social Justice

Brimbank City Council believes that human rights are applicable to everyone, that social justice targets disadvantaged groups within our community, and that there are circumstances where the application of the same to all can result in unequal outcomes for some.

Human Rights

Brimbank City Council recognises that human rights are universal and affirms the inherent right of people to be treated with respect, equality and dignity.

Participatory Rights

Brimbank City Council acknowledges that local government has a unique and privileged role in promoting the participation of its citizens in the public life of the City. The active exercise of the right to vote, participate in public life, the right to information and to accountability are the foundation of democracy.

Community Strengthening

Brimbank City Council is committed to adoption of community building and community strengthening frameworks that have an underlying commitment to discovering or re-educating on community's capacities and assets. The adoption of a community strengthening framework does not ignore the problems and needs of a community, instead it locates them in a much broader framework that has a starting point of the evidence of need, as well as identification of existing community capacities and assets, rather than one or the other.

Human Rights and Diversity

Brimbank City Council believes that human rights are the birthright of every person and are neither representational nor derived from or oriented towards, one culture to the exclusion of others.

Universal Human rights do not impose one cultural standard, rather, one legal standard of minimum protection necessary for human dignity.

Every human being has the right to culture, including the right to enjoy and develop cultural life and identity. Cultural rights however are not universal. The right to culture is limited at the point at which it infringes on another human right in accordance with international law.

Recognition of Indigenous Australians

Brimbank City Council acknowledges the Kulin nation of people as the traditional owners of the land and the Indigenous community's right to self-determination.

Council recognises the Indigenous community's continuing spiritual connection to the land and renew our commitment to respect Indigenous beliefs, values and customs as we learn to share our lives and build a future together.

Cultural Diversity

Brimbank City Council believes that cultural and linguistic diversity is one of the municipality's greatest resources. Cultural diversity creates jobs, helps trade, provides services, encourages tourism, attracts overseas students and enriches our culture.

Brimbank City Council is committed to delivering accessible and equitable services and promoting community harmony through inclusion, understanding, celebration and respect.

The Rights of Children

Brimbank City Council recognises that a wide range of social, cultural, physical and economic factors influence the health and development of children and that supporting the healthy development of children has significant long-term benefits for building strong resilient communities.
Policy Commitment

Brimbank City Council is committed to social justice, to building a City that supports and encourages our communities and individuals to strive to fulfil their aspirations.

Implementation

Brimbank City Council will work in partnership with key stakeholders and organisations that seek to address disadvantage.

An implementation plan will be developed following Council endorsement of the Social Justice Charter. Gaining external and internal stakeholder input and commitment to actions will significantly assist development of a course of collaborative actions. It is envisaged that the final implementation plan and priorities will include actions such as the following.

Priority Actions for Implementation

1. Development of the role and agenda for the Multicultural and Access and Equity Committee with regard to the Social Justice Charter.
2. Establishment of a Social Justice Working Group with membership from across Council to ensure future plans, strategies and policies include social justice principles and outcomes.
3. Development of social justice assessment tools for review and monitoring of plans, policies and processes as well as to assist staff in the implementation of the Charter.
4. Development of tailored and gender approaches to addressing social justice issues in line with the results of community consultation processes.

6. Development of transparent administrative procedures that record decision-making if human rights are balanced in service delivery.
7. Development and implementation of a process to deal effectively with any direct human rights complaints made by citizens or visitors.
8. Promotion of the Social Justice Charter to enhance community understanding of social justice and relevant responses.
10. Establishment of opportunities to involve service providers and the community in the review of the Social Justice Charter.
Human Rights and Social Justice Resources

The following resources have been collected in the process of developing the Social Justice Charter.

Australian Bureau of Statistics www.abs.gov.au

ACUSS (2006), A Fair Go for All Australians, published on behalf of Australia Fair


City of Ryde (2007), Social Justice Charter


Hume City Council (2004), Hume Social Justice, 2004

Hume City Council (2007), Social Justice Charter Review


Scottish Council for Voluntary Organisations (2003), Social Justice - Unpacking the Equality Dimension, June 2003


Brimbank City Council recognises supporting the healthy development of children has significant long term benefits for building strong resilient communities.
### APPENDIX 2

The Victorian Charter of Human Rights & Responsibilities and the Brimbank City Council Social Justice Charter

<table>
<thead>
<tr>
<th>CHARTER OF HUMAN RIGHTS &amp; RESPONSIBILITIES ACT 2006 (Vic)</th>
<th>EXPLANATION</th>
<th>DISCUSSION</th>
</tr>
</thead>
<tbody>
<tr>
<td>Recognition and equality before the law</td>
<td>These rights refer to recognition and equality before the law and the right to enjoy human rights without discrimination. Every person has the right to life and the right not to be arbitrarily deprived of life.</td>
<td>The right to equality under the law is not outlined in the Brimbank SJC due to its jurisdictional status. The SJC makes reference to the right to participate in the public and cultural life of the City.</td>
</tr>
<tr>
<td>Right to life</td>
<td>A person must not be tortured, treated or punished in a cruel, inhuman or degrading way and subjected to medical or scientific experimentation without consent.</td>
<td>This right is outlined in the Brimbank SJC due to its jurisdictional status.</td>
</tr>
<tr>
<td>Protection from torture, cruel, inhumane or degrading treatment</td>
<td>A person must not be held in slavery or servitude.</td>
<td>This right is outlined in the Brimbank SJC due to its jurisdictional status.</td>
</tr>
<tr>
<td>Freedom from forced work</td>
<td>People have the right to enter and leave Victoria, to move freely within it and to freely choose their place of residence.</td>
<td>The right to freedom of movement is not outlined in the Brimbank SJC due to its jurisdictional status. The SJC makes reference to the right to travel including safe conditions and the right to fair pay.</td>
</tr>
<tr>
<td>Freedom of movement</td>
<td>A person has the right not to have his or her privacy, family, home or correspondence unlawfully or arbitrarily interfered with and the right not to have his or her reputation unlawfully attacked.</td>
<td>This right is outlined in the Brimbank SJC due to its jurisdictional status.</td>
</tr>
<tr>
<td>Freedom of thought, conscience, religion and belief</td>
<td>This includes the freedom to choose a religion or belief, and the freedom to demonstrate the religion individually or as part of a community and in public or private.</td>
<td>The right to freedom of thought, conscience, religion and belief is outlined in the Brimbank SJC due to its jurisdictional status.</td>
</tr>
<tr>
<td>Freedom of expression</td>
<td>A person must not be coerced or restrained in a way that limits his or her freedom to choose a religion or to demonstrate the religion.</td>
<td>The SJC upholds the right of all citizens to adequate hearing.</td>
</tr>
<tr>
<td>Peaceful assembly and freedom of association</td>
<td>People have the right to hold opinions and express them except when they interfere with the rights and reputation of others or for the protection of national security, public order, public health or public morality.</td>
<td>While property rights are not discussed in the SJC, the right to freedom of expression is upheld by the SJC. The SJC embodies the right of all to liberty and security and takes a broader approach by taking into account the rights of those not breaching the law to personal safety.</td>
</tr>
<tr>
<td>Protection of families and children</td>
<td>Families are entitled to be protected by society and the State. Children have the right to such protection as is in their best interests, without discrimination.</td>
<td>The SJC makes reference to the right to participate in the public and cultural life of the City.</td>
</tr>
</tbody>
</table>

### CHARTER OF HUMAN RIGHTS & RESPONSIBILITIES ACT 2006 (Vic)

<table>
<thead>
<tr>
<th>CHARTER OF HUMAN RIGHTS &amp; RESPONSIBILITIES ACT 2006 (Vic)</th>
<th>EXPLANATION</th>
<th>DISCUSSION</th>
</tr>
</thead>
<tbody>
<tr>
<td>Taking part in public life</td>
<td>Every person has the right to take part in public affairs, to vote and be elected and to have access to the Victorian public service and public office.</td>
<td>The SJC upholds the right of all citizens to adequate hearing.</td>
</tr>
<tr>
<td>Cultural rights</td>
<td>People with a particular cultural, religious, racial or linguistic background have the right to enjoy their culture, customs and practice their religion and use their language. Aborigines have the right to maintain their language, living ties and spiritual and material relationship with the land, waters and other resources to which they have a connection under traditional laws and customs.</td>
<td>The SJC upholds the right of all citizens to adequate hearing.</td>
</tr>
<tr>
<td>Property rights</td>
<td>A person must not be deprived of his or her property except in accordance with law.</td>
<td>The SJC upholds the right of all citizens to adequate hearing.</td>
</tr>
<tr>
<td>Right to liberty and security</td>
<td>Every person has the right to liberty and security.</td>
<td>The SJC upholds the right of all citizens to adequate hearing.</td>
</tr>
<tr>
<td>Human rights treatment when deprived of liberty</td>
<td>People deprived of liberty must be treated with humanity and with respect of their inherent human dignity.</td>
<td>The SJC upholds the right of all citizens to adequate hearing.</td>
</tr>
<tr>
<td>Children in the criminal process</td>
<td>Children must be segregated from adults, brought to trial quickly and treated in a way appropriate for their age.</td>
<td>The SJC upholds the right of all citizens to adequate hearing.</td>
</tr>
<tr>
<td>Fair hearing</td>
<td>The right to a fair and independent and impartial court or tribunal.</td>
<td>The SJC upholds the right of all citizens to adequate hearing.</td>
</tr>
<tr>
<td>Rights in criminal proceedings</td>
<td>Civil and criminal proceedings must be fair and the person's rights in criminal proceedings must be protected.</td>
<td>The SJC upholds the right of all citizens to adequate hearing.</td>
</tr>
<tr>
<td>Right not to be tried or punished more than once</td>
<td>A person must not be tried or punished again for an offence for which he or she has already been finally convicted or acquitted.</td>
<td>The SJC upholds the right of all citizens to adequate hearing.</td>
</tr>
<tr>
<td>Retroactive criminal laws</td>
<td>A person must not be found guilty of a criminal offence because of conduct that was lawful at the time.</td>
<td>The SJC upholds the right of all citizens to adequate hearing.</td>
</tr>
</tbody>
</table>