14 June 2011

Mr Edward O’Donohue MLC,
Chairperson,
Scrutiny of Acts and Regulations Committee
Parliament of Victoria,
Melbourne Vic 3002

Dear Mr. O’Donohue,

Thank you for the opportunity to submit our comments in relation to the review of the Charter of Human Rights and Responsibilities Act 2000.

In order to progress our organisational aims, which include:

- to empower and support members of our community to use the law and legal system to protect and advance their rights and broaden their awareness of legal processes;
- to redress imbalances in access to justice through the provision of legal assistance and information, community legal education and law reform;

Springvale Monash Legal Service Inc. (SMLS) has found the Charter of Human Rights and Responsibilities Act 2006 (the Charter) a very useful guide in developing policies and practices.

We wish to address the terms of reference in this review by stating that we have evaluated the submission prepared by our colleagues at the Human Rights Law Centre (HRLC) and ask it to be noted that we support all of the comments made in their document as an accurate reflection of our views relating to each of the Committee’s terms of reference, with particular regard to terms of references 4 and 6. Furthermore, in regards to terms of reference 1, 2, 3 and 5 we make further comment, which reflect the working experiences of SMLS.

Terms of reference 1 and 2:
SMLS recommends that in respect to the necessity for the inclusion of all of the additional rights described by the Human Rights Law Centre in their submission, that the Victorian Government adopt a whole of government approach to the enforcement of these rights. Further to this, we also recommend that the Charter stipulates that Victorian Government decisions regarding budgetary allocation of resources should take into consideration the progression of social, economic and cultural rights as described by the Human Rights Law Centre in their submission.

Terms of Reference 3:
SMLS agrees with the HRLC submission in this regard but seeks to add the requirement that auditing compliance reports be tabled in Parliament to enable public scrutiny and accountability of public authorities.
Terms of Reference 5
SMJLS supports the HRLC comments in relation to the effects of the Charter. We also wish to stress that real cultural change in public authorities cannot be achieved at the statutory and policy level alone; that this change requires implementation of mechanisms such as staff training and development programs aimed at supporting the daily activities of staff in their interactions with the clients of these public authorities. In addition, legal education for clients is also vital for these cultural changes to be achieved.

In addition, the Charter has been a reference point for us in our policy and community education work. For instance, we contributed significantly to the Victorian Equal Opportunity and Human Rights Commission Report entitled “Rights of Passage: The experiences of Australian-Sudanese young people”.

We strongly agree with the following recommendations that may not have been possible but for the existence of the Charter:

Recommendation 11 states:
**Victorian Police in the City of Greater Dandenong to research and review question and search powers in response to allegations of racial profiling and compliance with the Equal Opportunity Act 1995 (Vic) and the Charter of Human Rights and Responsibilities Act 2006 (Vic). Research findings to be reported to the commission through annual reporting on the operation of the Charter of Human Rights and Responsibilities Act 2006 (Vic).**

Recommendation 12 states:
**Victorian police in the City of Greater Dandenong to prioritise human rights and equal opportunity education and training in relation to how police exercise their powers. Training to be reported to the Commission through annual reporting on the operation of the Charter of Human Rights and Responsibilities Act 2006 (Vic).**

Recommendation 20 states:
**Southern Region DEECD to provide professional development and training for all schools in the City of Greater Dandenong on how to identify and deal with racism and discrimination based on a whole of school approach which includes curriculum. Training to be reported to the Commission through annual reporting on the operation of the Charter of Human Rights and Responsibilities Act 2006 (Vic).**

In each of these recommendations we were able to utilise the compliance reporting processes stipulated in the Charter to advance the concerns we identified through our work in this community. We wish to take this opportunity in the review of the Charter to highlight this as a significant and applaudable benefit of the Charter.

Likewise, our involvement in the Review of Victoria’s Child Protection Legislative Arrangements is strengthened by the existence of the Charter as follows:

**Protection of families and children:**
Particularly relevant to this review are the protections afforded to families and children. Section 17(1) of the Charter provides that families are the fundamental group unit of society and are entitled to be protected by society and the State.
Section 17(1) is modelled on article 23 of the ICCPR and recognises that one of the principal ways in which the family is to be protected is through the promotion of family unity. The Human Rights Committee has emphasised that protection of families requires the development of necessary protections by social institutions. Accordingly, human rights principles and standards relevant to the protection of families and children must be central to the current review undertaken by the VLRC. Section 17(2) provides that every child has the right, without discrimination, to such protection as is in his or her best interests and is needed by him or her by reason of being a child. Section 17(2) of the Charter is modelled on article 24(1) of the ICCPR. Particular guidance on the nature of the protection to be afforded to children that is in their best interests must also be taken from the CROC. The CROC is based on four general principles being:

- The primary consideration of the child’s best interests.
- The right to non-discrimination
- The right to life and development; and
- The right of all children to be heard

Of specific relevance to particular aspects of this review is article 12 of CROC, which addresses the legal status of children and their rights to be heard and taken seriously. Article 12 recognises that children on the one hand, lack the full autonomy of adults, but on the other hand are subjects of rights.

Right to a fair hearing:
The right to a fair hearing in section 24 of the Charter is also particularly relevant to proceedings relating to the care and protection of children. The right to a fair hearing is an essential aspect of the judicial process and is indispensable to ensure the protection of other human rights. The concept of a fair hearing contains many elements and the standards against which a ‘hearing’ is to be assessed in terms of fairness are interconnected. Many of the elements of a fair hearing relate not just to the conduct of the hearing itself, but also relate to notions of procedural fairness and the ability of an individual to access the justice system. The administration of justice must “effectively be guaranteed in all cases to ensure that no individual is deprived, in procedural terms, of his/her right to claim justice.”

Cultural rights:
Division 4 of the Children, Youth and Families Act 2005(Vic) provides additional decision-making principles for Aboriginal children. In this respect, the protection of cultural rights, contained in section 19 of the Charter, may also be relevant. Section 19(1) provides that a person:

“with a particular cultural, religious, racial or linguistic background, to enjoy his or her culture, to declare and practise his or her religion and to use his or her language”

Section 19(2) provides that:

“Aboriginal persons hold distinct cultural rights and must not be denied the right, with other members of their community—

(a) To enjoy their identity and culture
(b) To maintain and use their language
(c) To maintain their kinship ties; and
(d) To maintain their distinctive spiritual, material and economic relationship with the land and waters and other resources with which they have a connection under traditional laws and customs.”
Considerations relating to the protection of culture, religious practice and language must therefore also be incorporated into decision-making processes regarding the care and protection of Aboriginal children.

Obligation on 'Public authorities':
Section 38 of the Charter provides that "public authorities" must act compatibly with and give proper consideration to the human rights contained in the Charter. Accordingly, relevant public authorities, such as DHS, have direct legal obligations to give proper regard to the Charter rights outlined above.

As demonstrated, the existence of the Charter has added weight to the issues we have identified, through our involvement with members of our community and is thus of great benefit to our client base.

In our experience, there has not been an influx of litigation as a result of the Charter’s existence. One example where the Charter assisted one of our clients is in relation to a dispute between a Sudanese woman and her landlord, the Office of Housing. Through negotiation and mediation, this client and her three young children have been able to remain in Office of Housing accommodation and deal with a debt to the Department. As well as seeking to resolve the debt, we are also seeking to assist this highly vulnerable woman and her children remain in a stable family environment. The Charter gives this protection to our client and many other vulnerable people.

We would be happy to address any of these points further.

Yours sincerely,

Helen Yandell
Director
Springvale Monash Legal Service Inc.