2011 Review of Victoria’s Human Rights Charter

Protecting the rights of the most disadvantaged

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Introduction

Jesuit Social Services welcomes the opportunity to make a submission to the review of the Victorian Charter of Human Rights and Responsibilities Act 2006 (the Charter Act) in accordance with section 44(2) of the charter act. This submission contains a brief description of the Jesuit Social Services, who we are, and what we do, as well as real examples of the sort of contact with human rights issues facing some of the people we work with. It is the people we work with and almost 35 years of dedication and experience in working to help these people, who are amongst the most disadvantaged, that means Jesuit Social Services are qualified to contribute to the Victorian human rights debate.
Who we are and what we do

Jesuit Social Services works to build a just society by advocating for social change and promoting the health and wellbeing of disadvantaged people, families and communities. Our service has its origins in work with disadvantaged young people involved with the youth and adult justice system in Victoria.

We strengthen and build respectful, constructive relationships for:

- **Action** – by partnering with people most in need and those who support them to address disadvantage
- **Education** – by providing access to education, life-long learning and development
- **Advocacy** – by building awareness of injustice and advocating for social change

Jesuit Social Services values every person and seeks to engage with them in a respectful way, that acknowledges their experiences and skills and gives them the opportunity to harness their full potential.

Jesuit Social Services works where the need is greatest and where it has the capacity, experience and skills to make the most difference.

Jesuit Social Services works in the following areas:

- **Justice & Crime Prevention** - People involved with the justice system;
- **Settlement & Community Building** - Recently arrived immigrants and refugees and disadvantaged communities
- **Mental Health Support & Wellbeing** - People with multiple and complex needs
- **Education, Training & Employment** - People with barriers to sustainable employment.

Our services presently include:

- **Brosnan Youth Services**: Supporting young people and adults in the justice system, and assisting them to make a successful transition from custody back into the community.
- **Artful Dodgers Studios**: Providing pathways to education, training and employment for young people with complex and multiple problems associated with mental health, substance abuse and homelessness.
- **Connexions**: Delivering intensive support and counseling for young people with mental health, substance and alcohol abuse problems.
- **Community Programs**: Working with people, including the African Australian and Vietnamese communities, on public housing estates across metropolitan Melbourne.
- **Support After Suicide**: A bereavement support program developed specifically for those bereaved by suicide.

An illustration of the depth of disadvantage experienced by some of the young people we work with is the case of Sam. Due to problems with his mother's drug use, he was removed from his mothers care from the age of one until he was seven years old. During this time he was sexually abused. By the time he was 14, he had experienced violence, periods of homelessness, problems at school and his first recorded criminal offence.
- **Jesuit Community College**: increase opportunities for people constrained by social and economic disadvantage to participate in education, work and community life and reach their full potential.

In addition to this, we have recently commenced community development activities in the area of Mount Druitt, Western Sydney.

These activities involve our staff relating to a range of Commonwealth and state government departments and services providers.

Respect for the value, dignity and human rights of each person is fundamental. The following submission reflects the views of our staff and the participants; people with direct experience of where Australia’s human rights protections fail or are incomplete.

Jesuit Social Services agrees that more needs to be done to protect human rights for all Australians, but particularly those who face marginalization due to their educational, economic, cultural and/or health situations. These people are often described as having fallen through the cracks in society, whether through a lack of services or because the services on offer do not meet their complex circumstances and problems. They include many of the people we work with on a daily basis. It is our experience that many of these people do not perceive that they have ‘rights’, whether because they have never experienced them in reality, they lack the practical means to realise and enforce them, or are alienated from these structures.

Poverty as a term does not appear in any of the international human rights instruments, and it is only recently that people in Australia and internationally started to think about poverty and social isolation as violations of their basic human rights.

For Jesuit Social Services, human rights are a major part of answering the question: what needs to be changed to ensure the people we work with have greater life choices and can participate fully in the community in which they live? An important part of improved human rights protection has to be the adoption of a national Human Rights Act, which includes both economic, social and cultural rights, as well as the more traditionally accepted civil and political rights. In addition to this, a greater effort to educate people about their rights and create more accessible avenues and mechanisms through which people, including those with little formal education or legal understanding, can pursue them.

Greater protection of human rights, particularly for the marginalised and poor, is vital given the trends towards privatised social service provision and rapidly changing economic, political and social and technological relationships in our society.
Response to terms of reference –

Whether additional rights should be included in the Charter, including economic, social, cultural, children’s, women’s and self-determination rights.

Self determination - Article 3, UN declaration on the Rights of Indigenous Peoples

As would be consistent with the UN declaration on the Rights of Indigenous Peoples, Jesuit Social Services supports the right to self determination being included in the charter. We would support that self determination be understood and interpreted within the UN framework taking into account the unique circumstances of Victorian Aboriginal communities.

The Community Guide to the UN Declaration on the Rights of Indigenous Peoples published by the Australian Human Rights Commission state that self-determination is the central right of the Declaration. All other rights help achieve self-determination, and all Indigenous peoples are entitled to this right.

In recognising that Indigenous peoples have this right, governments are required to recognise our collective/group identities such as our nations, language groups, clans, family alliances or communities. Self-determination is a process of choice to enable Aboriginal groups to feel safe and meet basic human needs. This means three key things:

1. Aboriginal people have choice in determining how their lives are governed
2. Aboriginal people participate in decisions that affect their lives. This includes a right to formal recognition of group identities.
3. Aboriginal people have control over their lives and future including economic, social and cultural development.

Exercising the right to self-determination means Aboriginal people have the ‘freedom to live well and to live according to their values and beliefs’.

There is no predetermined outcome of what self-determination looks like. Aboriginal people are from many different language groups, clans, nations and communities that all have their own views on the world. Self-determination recognises different groups have different world views. What is good for mainstream Australia might not be good for Aboriginal people. What is good for one Aboriginal or Torres Strait Islander group might not be good for another.

Aboriginal people from remote areas of Australia have different needs from Aboriginal peoples in urban areas.

Self-determination is the right of a group of peoples to meet the human needs of that group, including the means to preserve that group’s identity and culture.

In recognising Aboriginal people’s group identities and decision-making rights, exercising self-determination means Aboriginal people can participate in Australian society.

Self-determination requires that governments:

1. Recognise that Aboriginal people form distinct groups with their own group identity; and
2. Enter into relationships with these groups based on mutual respect and equality.
A group of peoples assert the right to self-determination when they can make choices about their lives and feel like they have the power to make these choices.

The following are some different examples of what self-determination could look like in practice:

- local self-government through Aboriginal community controlled councils
- a Victorian elected Aboriginal representative body
- the legal recognition of Aboriginal group identities and rights including through constitutional recognition
- control of the provision of basic services (for example health and housing) through Aboriginal organisations
- a system that allows Aboriginal people to participate in decisions made about their lives
- The ability to make a complaint when rights are denied and to have that complaint heard and addressed without fear of being punished for it.

The right to take part in public life - Article 25, International Covenant on Civil and Political Rights

Much of our public discourse is prefaced on being an open and inclusive society. As part of this, we often talk about the right to take part in the community without being discriminated against, whether it is voting, engaging in public debate or standing for public office.

Many barriers stand in the way of the right to take part in public life, such as lack of a fixed address or education. But more fundamental, is the lack of self-respect and dignity that occurs as a result of a person experiencing significant and sustained disadvantage. Such life experiences might include prolonged exposure to a regimented lifestyle while in incarceration or on medication, or long-term unemployment. This right can also be undermined by having to deal with complex and multiple health problems, such as mental health and/or substance or alcohol abuse, a situation further compounded by inadequate or inappropriate responses from health and welfare service providers. Any amendment to the Charter should ensure, wherever possible, mechanisms to provide that all people have access to express civil and political rights.

Cultural rights, including freedom from discrimination - Articles 27 & 26, International Covenant on Civil and Political Rights

Discrimination is a key cause of social exclusion. While governments at the Commonwealth, state and territory level have enacted laws to prevent discrimination on the basis of race, age, sex and disability, many groups remain vulnerable. One of these groups, which Jesuit Social Services works with, is the African Australian community.
"You hear a lot about the general abuse of woman who wear the hijab. It can be a matter of snide remarks to full on abuse. I am also aware of instances of African Australian women being ruled out of getting a job because they are perceived as someone who would scare the customers away, or at least that is the excuse that the employer has made." Staff member, Communities Together

Some members of this group are excluded from taking advantage of public services. For example, the Muslim religion of many African Australians prohibits women from using services, such as swimming pools and gyms, at the same time as men once they reach puberty. We have been involved in helping to establish women’s only times for some such services.

It is in reference to the right to freedom from discrimination that the Equal Opportunity Amendment Bill recently passed by parliament must be mentioned. Jesuit Social Services notes that the Scrutiny of Acts and Regulation Committee’s guidelines accompanying the Terms of Reference specifically state that “the Terms of Reference do not include consideration of whether any current or proposed laws... are compatible” with the charter.

However, the Government’s passing of this legislation must be condemned for the way that clauses 18 and 19 of the bill removes rights to freedom of discrimination in relation to attributes of “religious belief or activity, sex, sexual orientation, lawful sexual activity, marital status, parental status or gender identity”. This can only be seen as a backward step in striving for a fairer more equitable society and directly contradicts the terms of reference for the charter review pertaining to “whether additional rights should be included in the Charter”.

The right to work - Article 6, International Covenant of Economic, Social and Cultural Rights

One of the most fundamental rights is the right to employment. This is about the right to contribute as an active member to society. It is about belonging and not belonging. Long term unemployment is totally debilitating. In some of the families we work with, which have experienced three generations of unemployment, there is not the expectation or understanding in the family of long term employment.

Many barriers stand in the way of disadvantaged people accessing their right to work, including lack of education and skills, health problems or lack of communication skills or lack of transport. Sometimes, it can be as simple as the way someone looks.

Language skills are a major problem, particularly for the recently arrived. Although newly arrived migrants are allocated some language tuition as part of their resettlement services, this is not always delivered in an appropriate or flexible manner, particularly with migrants who may have very poor literacy in their own language, let alone English.

Protection from torture and cruel, inhuman or degrading treatment or punishment and Human Treatment when deprived of liberty - Articles 7 & 10, International Covenant on Civil and Political Rights

Of particular concern to Jesuit Social Services in its work with young people in the Victorian justice system is the lack of compulsory ‘dual tracking’ in youth remand. This leaves many young men and women remanded in custody in adult prisons. Article 10 (2) of the International Covenant on Civil and Political Rights states that “accused juvenile persons
shall be separated from adults and bought as speedily as possible for adjudication". Article 10 (3) states, "Juvenile offenders shall be segregated from adults and accorded treatment appropriate to their age and legal status."

Even in Victoria, where dual tracking of sentenced offenders does take place, a significant proportion of 18-20 years olds are remanded to adult prisons. According to the most recent Department of Corrections figures, there are 139 18-20 year olds in Victoria’s prisons, 60 of whom are unsentenced. Anecdotal information from Brosnan Youth Services staff also points to people spending longer periods on remand.

Remand is increasingly being used to accommodate Victorians with health and social problems associated with engagement in crime, including mental health problems, alcohol and drug addictions, poor schooling (less than 6% of male prisoners in Victoria have completed secondary, trade or tertiary education, and homelessness. Notably, remandees are more likely than other prisoners to be homeless, unemployed or have some form of mental disorder.

In the recently released Jesuit Social Services report, Young people in remand in Victoria, written by Professor Tony Vinson, a number of alarming findings were made including that:

- Of all Victorian prisoners aged 18-24 years in May 2007, 43% of females and 71% of males had a history of drug and alcohol addiction.
- Intellectually disabled Victorians serve a greater number of remand only terms of imprisonment and twice the period of people without intellectual disabilities.
- Indigenous Victorians are significantly over-represented in remand, 0.5% of the general population is Indigenous, yet 5.6% of those on remand are Indigenous Victorians
- Remandees come from a few suburbs: 2.1% of Victoria’s postcodes account for 25% of the remand cases; 15% of the cases from 1% of postcodes.

The right to housing - Article 11, International Covenant of Economic, Social and Cultural Rights

The right to adequate and appropriate housing is a fundamental issue for Jesuit Social Services – whether it is trying to prevent someone from entering the justice system, assist someone to exit the justice system, or providing space and support to a young person overcoming abuse or mental illness.

The right to adequate housing is not expressly protected anywhere in Australian law and Jesuit Social Services is aware of numerous instances where it is violated. Obviously, the tight real estate market and the resulting contraction in terms of available rental accommodation have significant implications in terms of reducing the amount of available housing especially for people on low incomes. Public Housing is vital in protecting Victorians from the loss of their right to housing. However it is too often an area of public policy that is neglected in favour of more politically motivated spending of taxpayer funds. With more than 40,000 Victorians waiting on Department of Housing lists for government housing, the needs of Victorians are clearly not being met. Adding to the issue of those on waiting lists is the
fact that current housing stock is overcrowded, with the number of unofficial residents much higher than the official figure. While the Jesuit Social Services applauds the work of the Federal and previous State Government in investing heavily in the area of government housing, once these programs expire it is up to the new state government to keep pace with the growing demand for public housing.

The only alternative to homelessness for many young people are rooming houses. There has been a growth in rooming house-style accommodation run for a 'for profit' basis by operators who take on rental properties and then sub-lease individual rooms. Some rooms often have more than one tenant, and Jesuit Social Services is aware of 'hot bedding', a practice when more than one person shares the same bed but sleep at different times. Many of these rooming houses are not legally registered, have poor amenities, and are dangerous.

As highlighted by recent newspaper articles, these for profit rooming houses are a totally unsuitable housing option for vulnerable young people. We applaud the recent move to tighten regulations relating to rooming houses and call on the current government to take further action in making rooming houses and hot bedding redundant.

*The right to the highest attainable standard of physical and mental health - Article 12, International Covenant on Economic, Social and Cultural Rights*

Good physical and mental health is a vital right and, along with access to housing, a pre-condition of enjoying many other rights. While there is no general law in Australia relating to the right to health, our system of universal public health remains in good shape compared with many other developed countries. However, it does have significant problems that prevent many low income Australians from accessing the highest possible standard of health.

Another group often excluded from health services are those suffering from mental illness and/or alcohol or substance abuse. Medical and allied health staff may take some time to correctly diagnose or treat people who may be experiencing multiple problems, including acquired brain injury, mental illness, drug use, self harm and other challenging anti-social and sometimes violent behaviours, in addition to their other economic and social needs.

Often the lack of timely, appropriate and comprehensive responses to high-risk people suffering multiple health and behavioural problems has more to do with the way existing policies and programs are structured and implemented, rather than problems with specific laws, as such.

Jesuit Social Services welcomes the most recent Federal Government budget announcement with the hope that the injection of funds specifically into the area of mental health can have real outcomes for those in need.

*"I have worked with a number of clients whose human rights have been violated in respect to housing. They can’t get emergency housing and have to sleep rough as a result or they have been inappropriately housed in unsafe conditions." Staff member, Jesuit Community College*

*"If there is a shortage of acute beds for patients, ironically the higher the risk, the greater the need and the greater the chance that they will be excluded from services due to that risk and complexity." Staff member, Connexions*
Response to terms of reference –

The effects of the Charter on:

- the development and drafting of statutory provisions
- the consideration of statutory provisions by Parliament
- the provision of services, and the performance of other functions by, public authorities

Jesuit Social Services believes that one of the greatest strengths of the charter is the onus it places on parliament, the bureaucracy and major public service providers to consider human rights when formulating legislation and policy or providing services. It does not require a constitutional amendment. Rather than allow the courts to take a role that they have not previously, it only encourages them to interpret laws made by parliament, in so far as they can, to be consistent with the act. If any inconsistency exists the only action required is to bring the matter to the attention of parliament.

In addition to building a deeper human rights culture, Jesuit Social Services believes the charter has the following benefits:

- It sets out and codifies the human rights we believe embody the values and aspirations of our society, as well as the responsibilities that come with these.
- It ensures that human rights considerations, including the concerns of the most marginalised, are brought to the centre of government and embedded in the design of legislation and public policy, while ensuring decision making, including on budgetary and resource allocation, remain firmly in the hands of elected representatives.
- It provides benchmarks against which the government's performance in the area of human rights can be measured.
- It provides tools for individuals to advocate for their own rights or for community organisations to advocate on their behalf, with government departments and service providers.

The very real example of a government agency utilizing the existence of the charter to promote better outcomes is that of the Victoria Police Human Rights Project. According to the Victoria Police submission to the National Human Rights Consultation “Victoria Police has embarked on significant internal operational and corporate practice audits that inform policy, as well as human rights education programs.” The submission goes on to state that “the Victorian Charter provided a platform for the development of minimum human rights standards as understood and articulated at every level of the organisation.”

We believe that the impact of the charter on Victoria police has led to positive outcomes at the coal face as for the first time Victoria Police is instituting standard procedures in police cells including mandating access to natural light, fresh air, exercise yards, drinking water, replacement clothing, reading material and personal and professional visits as well an audit to remove hanging points. These changes are vital for society’s most vulnerable, who are significantly over represented in the justice system. And while we believe that further work needs to be done in ensuring that these new standards are strictly adhered to by Victoria Police, it is clear that without the charter this very positive step probably would not have been taken.
Jesuit Social Service hopes that by making the operation of government more transparent and responsive, the charter contributes to more innovative and responsive policy thinking and decision-making that is less vulnerable to the political cycle. It is often our experience that many government service providers have difficulty supporting the needs of people with complex or multiple needs, no matter how well intentioned but as the police example has shown the charter provides a strong platform for supporting people’s rights.

Jesuit Social Services believe that the current requirements of the charter on government and its agencies strikes the right balance between obligating these organizations to entrench minimum human rights standards into practice while at the same time minimizing the burden on departments that can restrict dynamic and innovative policy and thinking.
Response to terms of reference –

The effects of the Charter on:

- litigation and the roles and functioning of courts and tribunals
- The availability to Victorians of accessible, just and timely remedies for infringements of rights.

For a right to be a right, it must be enforceable or have some outcome otherwise it remains a powerless guideline. While we support some form of mechanism to hear claims of human rights abuses and determine redress, if proven, Jesuit Social Services does not want to see the introduction of further complex and expensive remedies and procedures. There are already a number of avenues open to people seeking redress for grievances, including administrative law and ombudsmen structures at Commonwealth, state and territory levels. Redress for alleged human rights abuses should be done, wherever possible, via alternative dispute resolution (ADR) and conciliation processes occurring outside the court system, even though they may suggest options within the intent of the law.

ADR is part of the non-adversarial justice within the Victorian justice system, using alternative means to deal with civil and criminal matters. It has the potential to resolve human rights complaints more quickly, cheaply and in some cases more effectively and with less emotional stress and cost to tax payers than traditional litigation.

A report by the Victorian parliament’s Law Reform Committee recommended expanding community access to ADR for members of the community, including:

- More dispute settlement centres throughout Victoria.
- Providing assistance for people from non-English speaking backgrounds and culturally appropriate services.
- Increasing the capacity of people to resolve disputes through education about conflict resolution and communication.

While the increased use of ADR would provide cheaper and more accessible avenues of hearing complaints, access to the mainstream justice system remains a vital precondition of people being able to understand and enforce their rights.

In addition to ADR mechanisms, appropriate legal and related support measures for low income parties, such as low cost representation, are also be required. This is important to ensure these people can participate on equal terms with more equipped and legally sophisticated opponents.

The burden for providing such services will most likely fall on the community legal sector and state and territory legal aid systems. Not only are these the most affordable services for the disadvantaged, they are often best placed to respond flexibly to the needs of disadvantaged clients in areas of law that other providers are unwilling or unable to cover. Insufficient funding means one person in five who seeks legal aid is turned away.

What is of concern however is the attitude of legislators towards the charter’s requirement for any new legislation to be accompanied by a statement of compatibility. This requirement must be taken seriously. In the example of the recent Equal Opportunity Amendment Bill 2011, referred to earlier in this submission, in the face of clear and wilful politically motivated removal of rights to freedom of discrimination, the statement of compatibility presented for
the bill did not sufficiently justify the bill as being compatible with the charter. As a mechanism for upholding the rights of Victorians, and it is the most vulnerable who are more likely to have their human rights infringed upon, this is of concern.
Recommendations:

1. The inclusion of further rights into the charter - including self determination, public life inclusion, freedom from discrimination, work, rights when imprisoned, housing and physical and mental health. They are vital to giving the most vulnerable in the community access to the services and dignity too often taken for granted by the rest of community.

2. Any amendment to the Charter should ensure, wherever possible, mechanisms to provide that all people have access to express civil and political rights.

3. The charter must remain intact as an overarching platform for the community, its lawmakers and administrators. Victoria’s Charter of Human Rights and Responsibilities is now entrenched as an important part of the Victorian community including and not restricted to government and its agencies.

4. The Statement of Compatibility that accompanies new legislation should be treated with respect. Given that the Charter itself draws its authority from the parliament, it is parliamentarians that must set the standard for the proper adherence to the Charter.

5. The charter provides a positive reinforcement of the rights that the Victorian community wishes to embody however greater access to remedying infringements must be provided to the community and specifically the most vulnerable. Greater provision to avenues of alternative dispute resolution is required in order to empower those who have been infringed upon.