Good Shepherd
Youth & Family Service
Charity gives, justice changes.

Review of the Human Rights Charter
Submission to the Victorian Government

27 June, 2011

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Executive Summary
Good Shepherd Youth & Family Service supports the Charter because of its demonstrated benefit to the Victorian community, especially to disadvantaged groups. The investment associated with the Charter contributes to a process of strengthening accountability between the people and the Victorian Government and offers community benefits that are not easy to measure or quantify on a traditional cost-benefit analysis.

Good Shepherd Youth & Family Service has embraced the Charter and used it to guide us in the development of our internal policies and to ground service delivery models. Furthermore, as a result of the introduction of the Victorian Charter, we have noted that both government and public authorities, including community based service delivery agencies, have seen their services improve as human rights and the dignity of clients become more central to the work.

However, there is strong expectation among Victorians that the Victorian Government continue to play a central role in securing needs such as education, housing, health care and an adequate standard of living that are at the core of economic, social and cultural rights and therefore view it as timely to extend the Charter to include Economic, Social and Cultural Rights. Our work has a strong focus on women and girls and thus we view as essential the inclusion of the principle of gender equality and reference to the Convention for the Elimination of All forms of Discrimination Against Women (CEDAW) and Convention on the Rights of the Child in the Victorian Charter. In the same vein our work with vulnerable children leads us to advocate for the inclusion of the Convention on the Rights of the Child.

If the dignity and worth of each person are to be recognised legally, the state has responsibilities to ensure that the rights and freedoms of all individuals are promoted, protected and fulfilled. We hope that the Scrutiny of Acts and Regulations Committee advocates for the inclusion of these three additional inclusions to the Charter and thus continues its progressive path towards creating a system of accountability in which public authorities will be formally directed to pursue the realisation of these rights for all Victorians.

In this submission we will focus on three of the terms of references:

- Term of Reference 1: Extending the Charter to include the International Covenant on Economic, Social and Cultural Rights, the Convention on the Elimination of All Forms of Discrimination Against Women and the Convention on the Rights of the Child;
- Term of Reference 3: Mandatory Regular Auditing of Public Authorities; and
- Term of Reference 6: Overall Benefits and Costs of the Charter.

Specifically we recommend the following:
Recommendation 1: That protection of economic, social and cultural rights should be included in the Charter as they promote access to essential services such as adequate education, housing and health for all.

Recommendation 2: That the Victorian Government, as part of a nation that is a signatory to the Convention on the Elimination of All Forms of Discrimination Against Women, should ensure that the Charter reflects the core principle of gender equality and CEDAW, and this should be explicitly stated in the preamble of the Charter.

Recommendation 3: That the statement of compatibility with human rights that must accompany Bills brought before the Victorian Parliament be extended to include a gender analysis of that Bill.

Recommendation 4: That the Scrutiny of Acts and Regulations Committee be required to apply a gender analysis when meeting its obligation to scrutinise Bills presented to the Victorian Parliament for compliance with the Charter.

Recommendations 5: That public authorities be required to develop gender benchmark indicators and collect sex-disaggregated data to enable analysis of gender sensitive legislation, policies, programs and services with the aim of institutionalising gender budgeting.

Recommendation 6: That the Charter be amended to expressly make reference to the Convention on the Rights of the Child.

Recommendation 7: That adequate resourcing be provided for community service organizations (as public authorities) to enable human rights compliance including undertaking workforce training.

Recommendation 8: That community service organisations are provided with resourcing for professional education and organizational capacity building to ensure understanding of the Charter and its potential in effective client advocacy and service delivery.

Recommendation 9: That the Victorian Government deliver a program of targeted community education campaigns to reach disadvantaged Victorians through a range of community stakeholders including peak bodies and service providers.
Introduction
The mission of Good Shepherd Youth & Family Service urges us to work to ensure that all people can "enjoy the fullness of life, which is the right every human being", and to "challenge those structures and beliefs that diminish human dignity".

We have a particular focus, historically and into the future, on working with the most marginalised women and girls. Each year we support more than 18,000 women, families and young people across Melbourne and the Mornington Peninsula through a range of services including housing for homeless young people, refuge services and support for women who are survivors of domestic violence, support to strengthen families through foster care, intensive family support, and community programs including community houses, kindergarten and childcare. We underpin these services with a broad commitment to economic participation for all through financial support.

At the international level, across over 70 countries, Good Shepherd is active in human rights work and the Good Shepherd Asia Pacific Justice Peace Network represents 19 countries in the region including Australia and New Zealand. Internationally, Good Shepherd provides shelters, counselling, healthcare and legal assistance for survivors of human trafficking, conducts education and training programs on anti-human trafficking, and carries out prevention, rehabilitation and repatriation work with survivors of trafficking. The Congregation of Our Lady of Charity of the Good Shepherd also engages in advocacy work at various levels of government and with United Nations (UN) organisations in order to advance the rights and status of women and girls. It has special consultative status with the UN Economic and Social Council and is a member of various UN committees, including the NGO Committee on the Status of Women and the NGO Committee on Migration.

Good Shepherd youth & Family Service welcomes the opportunity to comment on the four year review of the Victoria Human Rights Charter. We believe that our experience of community work and independent research and policy advocacy locally, and our expertise in working with human rights mechanism at the international level, provide us with the relevant expertise to contribute to Victoria's human rights discourse.
Term of Reference 1: Inclusion of additional human rights

International Covenant on Economic, Social and Cultural Rights
Unlike civil and political rights, social and cultural rights are expressed in aspirational, rather than absolute or immediately realisable terms. However, economic, social and cultural rights and civil and political rights are interdependent and indivisible. For example, the right to freedom from inhuman and degrading treatment will be compromised by a lack of adequate housing and access to health care.

As a nation that is a signatory to the International Covenant on Economic, Social and Cultural Rights, we believe Australia should follow the path of many other countries in enshrining this undertaking in our own legal system. In Victoria, this could be achieved by the progressive realisation of an adequate standard of living for all, an undertaking which is at the core of economic, social and cultural rights. Here in Victoria the most persistent social issue is arguably the severe shortage of housing, particularly for young people and women with families who continue to account for the highest numbers waiting for decent public housing, particularly in Melbourne.

We were encouraged by the recent acknowledgement by the Victoria Government, in response to the Inquiry into the Adequacy and Future Directions of Public Housing in Victoria (April 7, 2011), that there is a need for “a renewed and clear strategic direction for housing in Victoria that addresses the housing circumstances of low income and socially disadvantaged Victorians who are experiencing homelessness and cannot participate in the Victorian community”. Real and sustained commitment to the issue would be further demonstrated by the Victorian Government extending the Charter to include the right to adequate housing.

As defined by the First United Nations Special Rapporteur on Adequate Housing, “the human right to adequate housing is the right of every woman, man, youth and child to gain and sustain a safe and secure home and community in which to live in peace and dignity”. The United Nations Committee on Economic, Social and Cultural Rights (under General Comment 4), has also listed a minimum standard as to what entitlements under this Right to Adequate Housing should include, namely: a) legal security of tenure b) availability of services, materials, facilities and infrastructure; c) affordability; d) habitability; e) accessibility; f) location; and g) cultural adequacy.

Again in reference to the recent response to the housing inquiry, we are encouraged by the statement that “the Victorian Government is working in collaboration with community stakeholders to examine the introduction of minimum standards in rooming houses. The
introduction of any standards in rooming houses, or in other forms of rental accommodation, would need to balance the health and safety of tenants with the need to maintain the supply of accommodation for those Victorians in need."

As a nation aligning to international human rights standards with obligations to respect, protect and realise rights, extending the Charter would put in place clear and enforceable obligations to take reasonable measures. Just as the existing rights and freedoms prescribed under the Victorian Charter have not imposed blanket constraints on government decision-making, protections of economic and social rights similarly would not impose such constraints or mandate fiscal obligations beyond taking reasonable steps to ensure the progressive realisation of those rights. In practice, this would mean that the availability of resources would be taken into account when assessing the reasonableness of any failure on the part of the State to secure, for example, a right to adequate housing.

There are various ways that the Government can realise the progressive right to adequate housing. In the effort to meet the general housing shortage, part of the solution could lie for example with a policy directive to mandate private housing developers to earmark a small percentage of their housing units for low cost housing. This would encourage the private sector to continue building dwellings and at the same time would increase the stock of affordable housing that is less stigmatising than highly targeted public housing.

Many nations have adopted laws that protect various economic, social and cultural rights, especially in areas such as education and labour rights. Fears that this will lead to judges exceeding their mandate, and undermining the democratic process by effectively making social policy in the courts, have not materialised in these countries. Under the 'dialogue model', presently used for the implementation of rights under the Charter, the Victorian Parliament rather than the courts retains the final power to respond to matters that may have been found to be inconsistent with human rights. Furthermore, since the existing 'remedy' mechanism in place to enforce rights within the Victorian Charter is weak, as it is not free standing, the executive and legislature bodies of Victoria will continue to shape policy and resource allocation, leaving the courts with the role of interpreting laws.

In conclusion, the Victorian legal system does not provide a comprehensive scheme of human rights protection and extending the Charter to social, economic and cultural rights would not only strengthen the accountability of the government to parliament and the people but would also facilitate social inclusion by protecting the most marginalised.

**Recommendation 1:** That protection of economic, social and cultural rights should be included in the Charter as they promote access to essential services such as adequate education, housing and health for all.

**The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)**

Under the Victorian Equal Opportunity Act, it is unlawful to discriminate against a person or group in the provision of services and education, but there are gaps in the protection of these rights particularly in comparison to the more comprehensive protection of civil and political rights.
under the Charter. The denial of economic, social and cultural rights continues to have a significant impact on women in Victoria who face systemic discrimination.

Economic security is a pre-condition for the exercise of human rights. Without access to the basic elements of economic security – such as housing, employment, education and an adequate income – women lack the resources and means to exercise their civil and political rights. The current Charter is not actively protecting women’s economic rights or making a substantial contribution to women’s economic security in Victoria. Women’s economic rights, including rights in relation to income security, pay equity and the recognition of unpaid work, must be addressed and protected to achieve equality.

In the Good Shepherd family, we too often come across women, like Carla whose story is briefly told below, who are vulnerable not only through poverty but also through family violence.

The multiple levels of violence and its economic costs: Carla’s story

Carla is a single mother with two young boys. The father of her children was physically abusive and she left him but Carla has not received any payments of child support from him. Eighteen months ago, Carla ended a long term relationship with another abusive partner. The constant abuse on Carla also negatively impacted on her 8 year old son which resulted in further health costs: he was traumatised and is now receiving counseling. At the end of the second relationship, Carla was also left with a large amount of debt incurred by her partner and at the time of the interview Carla still struggled to meet the daily needs for herself and her children.

In view of the different levels of violence faced by women in the community, and as part of a commitment to promote substantive equality and women’s economic participation, the Charter should be amended to expressively make reference to the Convention for the Elimination Against Women (CEDAW).

Recommendation 2: That the Victorian Government, as part of a nation that is a signatory to the Convention on the Elimination of All Forms of Discrimination Against Women, should ensure that the Charter reflects the core principle of gender equality and CEDAW, and this should be explicitly stated in the preamble of the Charter.

Women’s empowerment is a multi-dimensional process of achieving basic capabilities, legal rights and participation in key social, economic, political and cultural domains. We note and are heartened by the recent reporting, by Australia in its Universal Period Review to the Human Rights Council, that as a nation we strive to achieve gender equality and reduce violence against women.

In advancing the goal of gender equality, the necessary effective and efficient monitoring tools are gender analysis, gender budgeting and audit. Gender analysis is a tool to identify constraints and opportunities in relation to equal opportunities and rights to men and women in terms of knowledge and skills, conditions of work, social protection, family responsibilities and
economic and political decision making. A gender-sensitive budget is about translating legal, policy and program commitment toward gender equality into budgetary commitments to address gender inequalities systematically in legislation and organisational policies, programs and budgets at all stages of the programming cycle.

In light of this, the following recommendations would help in mainstreaming gender equality and realising women’s right instruments.

**Recommendation 3:** That the statement of compatibility with human rights that must accompany Bills brought before the Victorian Parliament be extended to include a gender analysis of that Bill.

**Recommendation 4:** That the Scrutiny of Acts and Regulations Committee be required to apply a gender analysis when meeting its obligation to scrutinise Bills presented to the Victorian Parliament for compliance with the Charter.

**Recommendations 5:** That public authorities be required to develop gender benchmark indicators and collect sex-disaggregated data to enable analysis of gender sensitive legislation, policies, programs and services with the aim of institutionalising gender budgeting.

**The Convention on the Rights of the Child**

Good Shepherd Youth & Family Service has a holistic model of intervention which focuses on the child or young person’s needs based on the Best Interest Case Practice Model developed by the Victorian Department of Human Services. This child-centred model is based on the principle of the best interest of the child and has helped our case workers to ensure the safety, stability and development of many children. We take note that this principle is in line with Article 3(1) of the Rights of the Child which requires that: “in all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interest of the child shall be a primary consideration.” To support these established principles, policies and practice, and to avoid any confusion resulting from having multiple instruments reinforcing the rights of the child, we therefore would request that the Charter be extended to include the Convention on the Rights of the Child.

**Recommendation 6:** That the Charter be amended to expressly make reference to the Convention on the Rights of the Child.

**Term of Reference 3: Mandatory Regular Auditing of Public Authorities**

In line with human rights principles of transparency and accountability we support the need for mandatory regular audits. We believe that human rights auditing can help find solutions to day-to-day practice and that this in turn will help identify potential problems and ensure they are addressed before they escalate to a case before the courts. To support this commitment and compliance, additional resources should be provided to carry out effective audit reporting.
We note that following the introduction of the Charter, a number of training and information sessions organised by the Victorian Equal Opportunity & Human Rights Commission were held for the community sector. These sessions assisted with our understanding of our responsibilities as a public authority. Along the same vein, we would ask that these sessions be continued after the four year review has been completed.

Good Shepherd Youth & Family Service, along with many other community service organisations, receives government funding to provide services for the government and in this sense is a public authority under the Charter. Also like many other community organisations, we receive non-government funding and deliver some services and conduct some activities independent of government. This group of organisations could perhaps be regarded as ‘quasi public authorities’ to distinguish them from government departments. Such a distinction may be useful when determining appropriate types of, and mechanisms for, compliance with the Charter. The level of resourcing is different in the community and government sectors and this factor needs to be taken into account in designing compliance and auditing processes.

In view of the multiple sources of donors that quasi public authorities rely on which have different reporting requirements, we also ask that the audit not be burdensome and time consuming. Auditing against the Charter could be done by consolidating existing standards, accreditation requirements and the Charter principles. In this way, public authorities delivering social services can devote adequate resources and time to client advocacy and service delivery. A possible mechanism to balance the need for audit reporting with service provision and not overburden quasi public authorities would be to randomly select authorities for audit but include those where the Scrutiny of Acts and Regulations Committee have received human rights complaints from the general public.

**Recommendation 7:** That adequate resourcing be provided for community service organizations (as public authorities) to enable human rights compliance including undertaking workforce training.

**Term of Reference 6: Overall Benefits and Costs of the Charter**

**Organisational cultural change**

The introduction of the Charter triggered a process of internal organisational review and development within the Good Shepherd Youth & Family Service to ensure the work of the agency is consistent with the Charter. This included incorporating human rights into a number of internal agency policies and procedures and into workforce training at staff meetings and bi-annual agency days. There is some evidence that a human rights perspective has permeated into the direct and indirect practice of the agency.

> "We believe in the right of each person to live a life of dignity and justice... We ensure all Good Shepherd people are treated equitably, impartially and fairly, with dignity and respect. We foster a culture that accepts and values the diversity of Good shepherd people. We commit ourselves to oppose racism and policies of exclusion.... We are committed to environmental protection, human rights, equitable human development and peace."

In line with its overarching organisational mission (see above), Good Shepherd Youth & Family Service has incorporated international human rights in its guidelines and practices as part of its overarching goal of institutionalising human rights, including respect for Indigenous peoples and cultures.

Good Shepherd Youth and Family Service undertakes to ensure that all its workers and volunteers work ethically and professionally and with the greatest respect and integrity with those who use our services, especially with children, young people and the most vulnerable members of the community. All workers and volunteers are required to comply with the agency’s Code of Conduct and Service with full protections for the rights to informed consent, confidentiality and privacy. Furthermore, the Good Shepherd Youth & Family Service developed a Research Policy in Oct, 2009, to govern its conduct of research in accord with ethical practices and to protect the welfare and rights of participants in research.

The Good Shepherd Youth & Family Service has in place a Quality Improvement Team which works on quality improvement for the dignity and protection of the right to a decent life. This team provides an oversight mechanism by conducting internal reviews and audits for the organisation to both improve transparency and clarity for clients. In addition, all permanent staff members at the Good Shepherd Youth & Family Service are required to undergo a basic training on the Victorian Human Rights Charter.

The agency’s Human Resource Policy developed in 2007 was aimed at providing a workplace that is free from discrimination, harassment and workplace bullying. The policy explicitly prohibits discrimination and harassment in relation to age; physical or mental impairment (whether total or partial); industrial activity; gender; sexual orientation; lawful sexual activity; marital status; physical features; political belief/activity; pregnancy; breastfeeding; religious belief/activity; parental status or status as a carer; gender identity (e.g. transgender); disease or other illness; personal association (whether as a relative or otherwise); and race.

**Client advocacy**

If disadvantaged Victorians are to benefit from the Charter, this must frequently be through the direct face-to-face support and advocacy of community service agencies like Good Shepherd Youth & Family Service. As with consumer rights and citizenship rights, access to human rights cannot be assumed simply through making them available. We need to proactively engage with people, to understand how they are being denied their rights, and to then mediate, interpret and advocate for their rights as required.
Some successful client advocacy in using the Charter
In our St Kilda branch, the Charter was explicitly used in the successful advocacy to secure work for a woman who was reintegrated after being released from prison. Case managers in the St Kilda branch have also used the Charter to successfully mediate between homeless persons who were facing removal and the business owners on a busy commercial street in St Kilda.

In the Social Policy Research Unit we have used the Human Rights Charter to present in various forums the needs of a number of marginalised groups, including women who have experienced family violence, and women who have experienced trafficking, forced labour, or forced and servile marriage.

However, many case managers and workers within our organisation have identified gaps in their understanding in how to effectively link their client advocacy work to the Victorian Charter and have indicated the need for more training. In line with this, we would welcome implementation guidelines to facilitate the roll-out of any changes to, or reinforcement of, the Charter. Specific requirements and timelines may assist public authorities of all sorts to operationalise the Charter. Good Shepherd Youth & Family Service believes that the Victorian Charter can ultimately be an even more effective tool to empower our clients to advocate in their personal capacity.

The Charter also requires better promotion through targeted community education campaigns to reach disadvantaged Victorians.

**Recommendation 8:** That community service organisations are provided with resourcing for professional education and organisational capacity building to ensure understanding of the Charter and its potential in effective client advocacy and service delivery.

**Recommendation 9:** That the Victorian Government deliver a program of targeted community education campaigns to reach disadvantaged Victorians through a range of community stakeholders including peak bodies and service providers.

References


Good Shepherd Youth & Family Submission for a Human Rights Consultation (Victoria), 2005.


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27 June 2011

To the Scrutiny of Acts and Regulations Committee

Submission to the Review of the Charter of Human Rights and Responsibilities Act

Thank you for the opportunity to respond to the Review of the Victorian Charter of Human Rights and Responsibilities Act 2006 (the Charter).

Good Shepherd’s mission is to work to ensure that all people can enjoy the fullness of life, which is the right every human being, and to challenge structures that diminish human dignity. We are committed to helping strengthen families and to supporting young people through programs such as housing, financial counseling, foster care, intensive family support, and community programs. We underpin these services with a broad commitment to economic participation for all.

Good Shepherd Youth & Family Service supports the Charter because of its demonstrated benefit to the Victorian community, especially to disadvantaged groups. In recognising the dignity and worth of each person, there are responsibilities to ensure that the rights and freedoms of all individuals are promoted, protected and fulfilled, and we hope the Scrutiny of Acts and Regulations Committee will consider the recommendations outlined in our submission. If you have any questions, please call Kathy Landvogt at our Social Policy Research Unit on 03 9418 3000 or email k.landvogt@goodshepvic.org.au.

Yours sincerely,

Penny Anderson  
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Good Shepherd Youth & Family Service