30 June 2011

Mr Edward O'Donohue MLC
Chairperson
Scrutiny of Acts and Regulations Committee
Parliament House
Spring Street
EAST MELBOURNE VIC 3002
Via Email: charter.review@parliament.vic.gov.au

Dear Sir

Re: Inquiry into the Charter of Human Rights and Responsibilities

We thank you for the opportunity to make this submission to the Scrutiny of Acts and Regulations Committee ("Committee") in relation to its inquiry into the Charter of Human Rights and Responsibilities Act 2006 ("Charter").

Barwon Community Legal Service provides free, independent legal advice, referral, casework and community education to individuals and services, including public authorities, within the Barwon region being the City of Greater Geelong, Colac Otway Shire, Surf Coast Shire and Queenscliff Borough. Our client base predominately consists of people living with vulnerability and social disadvantage. We actively promote the empowerment of those who are disadvantaged within the community and engage in policy and law reform activities in response to community issues.

Barwon Community Legal Service is a member of the Federation of Community Legal Centres (Victoria) and we endorse their submission to the Committee.

This submission relates to our experience in utilising the Charter as specific to the Barwon region.

Recommendation 1: Retaining and expanding the Charter

Many of our client's are disadvantaged in terms of their lack of access to normal standards of literacy, education, job security, housing security, income and age-related difficulties; also by their exposure to domestic violence, drug and alcohol issues and general lack of opportunities.
As interactions between citizen and State become more complex, individuals (especially the disadvantaged) and public authorities require an easy-to-understand set of guiding principles through which mutual relations can be mediated.

We support the retention of the Charter as an instrument accessible to disadvantaged individuals to protect and promote their rights. We also support the expansion of the Charter to include rights contained in international treaties to which Australia is a party that affect the disadvantaged as well as the rights of marginalised or vulnerable groups including children, women, indigenous people and people with disabilities.

**Recommendation 2: Engagement of Charter rights should give rise to an independent cause of action with remedies available**

Since the Charter's introduction, our Service has found it a useful and sensible guide to assist in defining basic standards of accountability in relation to how our clients interact with public authorities. We have not experienced an overwhelming demand to utilise the Charter for litigation purposes, the limitation that it is only available to assist where there is another cause of action has restricted the scope of its operation in that sense. We suggest this limitation be removed so that, where a right under the Charter is engaged, it gives rise to an independent cause of action.

We further recommend that remedies be available when rights under the Charter are engaged to give greater impetus for public authorities to change their policies and practices as may be necessary and ensure that individual rights are protected and promoted.

**Recommendation 3: Resourcing the capacity building of public authorities to be Charter compliant**

Our service has facilitated trainings for community services, including public authorities, within the Barwon region in relation to the Charter and the implications of the Charter on their policies and procedures. These trainings have been well received and have had a positive impact for the community thus far.

We recommend that capacity building public authorities to be Charter compliant through trainings like those offered by our service be appropriately resourced. Investing in capacity building public authorities around the Charter would provide better service outcomes for individuals and who typically do not have the skills or means to advocate for their own human rights.
Conclusion

Our experience of the Charter is that Victoria has not been threatened with a flood of litigation by the encoding of a list of basic standards which public authorities are required to recognise in carrying out their administrative functions on behalf of citizens. We believe a mature Westminster-style polity such as Victoria that relies on rule-of-law principles to underpin its democracy is strengthened by the encoding of basic principles; we should not rely solely on Parliament and the common law to provide those principles. Neither of those institutions have shown themselves capable of performing the specific function of declaring citizens’ rights in a compendious way. They are not designed to continuously perform that function. Only an instrument like the Charter can achieve that purpose.

We believe that robust democracies wishing to have transparent structures should have no difficulty embracing the concept of a Charter. Its operation so far has certainly been mild and progressive in the mainstream tradition of Australian politics. When no pressing reason exists to curtail its operation, to do so would be a retrogressive step.

Barwon Community Legal Service would be pleased to provide the Committee with further information or clarification as required. Should you wish to discuss this submission further, please do not hesitate to contact Karina Okotel of our office on 5221 4744.

Yours faithfully

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