Making Human Rights Real

FINAL REPORT of the

Victorian Human Rights Community Engagement Project
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Making Human Rights Real - Introduction

If you think that most people think ‘Human Rights’ are abstract and academic in nature - think again!
Throughout this project, Victorians made it very clear that human rights do have meaning for them and are important. Participants shared a multitude of experiences about the relevance of human rights to their daily lives, and in many cases, of how they had been denied.

The participants wholeheartedly supported a Human Rights Charter that would articulate rights for all Victorians and reflect our shared values. Such a statement would strengthen our democracy and make a better society.

The participants supported a Charter that included civil, political, economic, social and cultural rights.

The participants highlighted that a Charter would be an important tool for building a culture of respect and fairness for all and educating future generations about these concepts.

The participants emphasised the need for broad community consultation on any future reform, and for an education strategy to accompany the introduction of any instrument that recognises and protects human rights.

The education and consultation sessions were enthusiastically received and many of the participants indicated a desire for further sessions or for more time to explore the issues.

THE PROJECT PROCESS

The Victorian Council of Social Service (VCOSS) and the Federation of Community Legal Centres (the Federation) were able to utilise their community networks to access a broad range of people who might not otherwise engage in a human rights dialogue and/or who may need particular support to participate.

The VCOSS and Federation Human Rights Community Engagement Project:

1) Equipped community members, and in particular those who experience disadvantage, with a basic level of knowledge about human rights definitions and concepts. This basic knowledge facilitated meaningful participation in the Government’s consultation process; and

2) Facilitated the contribution of these communities to the Government’s consultation. Involvement in community life is conditional on possessing the necessary tools to participate, including language, mobility, health, and wealth. Many of the people who were involved in this Project face barriers that prevent full participation.

The Project delivered face to face education and consultation sessions with community members. Such education focused on the nature, scope and relevance of human rights within everyday life and enabled members of a diverse range of communities to articulate and apply those rights within the context of their lives and communities.

A total of fifteen community education and consultation sessions, attended by approximately 134 people, were held with:

- People living with an intellectual disability
- Mental health service users and advocates
- People living with a disability (general)
- People on low incomes in rural Victoria (Bendigo)
- Drug and alcohol users, ex-users, and their families.
- Muslim women
- Young people from culturally and linguistically diverse backgrounds (CALD)
- Newly arrived African women (both Arabic- and Somali-speaking)
- Women in prison (Dame Phyllis Frost Centre, Deer Park)
- Rooming house residents in St Kilda
- Indigenous people in regional Victoria (Mildura)
- Single mothers
- Community youth / CALD workers
- Community workers – Metropolitan Eastern Region
Project Partners

VICTORIAN COUNCIL OF SOCIAL SERVICE

The Victorian Council of Social Service (VCOSS) is the peak body of the social and community sector in Victoria. VCOSS works to ensure that all Victorians have access to, and a fair share of, the community’s resources and services, through advocating for the development of a sustainable, fair and equitable society.

VCOSS members reflect a wide diversity of the Victorian community, with members ranging from large charities and sector peak organisations, to small community services, advocacy groups and individuals engaged in social policy debates.

The aim of VCOSS to further the protection and promotion of human rights is consistent with our vision of a just and equitable society. Such a society is one which:

• ensures everyone has access to and a fair share of the community’s resources and services
• involves all people as equals, without discrimination
• values and encourages people’s participation in decision-making about their own lives and their community.

This position echoes Article 25 (1) of the 1948 Universal Declaration on Human Rights which states:

‘Everyone has the right to a standard of living adequate for the health and wellbeing of [her or] himself and of [her or] his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood’

FEDERATION OF COMMUNITY LEGAL CENTRES

The Federation of Community Legal Centres Vic. Inc (‘the Federation’) is the peak body for forty-nine Community Legal Centres across Victoria, including both generalist and specialist centres. Community Legal Centres provide free legal advice, information, assistance, representation and community legal education to more than 60,000 Victorians each year. We also work on strategic research, casework, policy development and social and law reform activities.

Community Legal Centres have expertise in working with excluded and disadvantaged communities and people from culturally and linguistically diverse backgrounds. We operate within a community development framework. We provide a bridge between disadvantaged and marginalised communities and the justice system. We work with the communities of which we are a part. We listen, we learn, and we provide the infrastructure necessary for our communities’ knowledge and experiences to be heard.

The Federation, as a peak body, facilitates collaboration across a diverse membership. Workers and volunteers throughout Victoria come together through working groups and other formal and informal networks to exchange ideas and strategise for change.

The day-to-day work of Community Legal Centres reflects a 30-year commitment to social justice, human rights, equity, democracy and community participation.
Project Background

The framework for the Victorian Government’s Human Rights consultations in Victoria ins 2005 was set out in the Government’s Statement of Intent, which states:

‘The Committee [the Human Rights Consultation Committee] is also to adopt strategies for engaging with marginalized and disadvantaged communities as well as strategies to ensure that people from regional and rural areas are given the opportunity to have their say.’

The Department of Justice (DOJ) engaged VCOSS and the Federation to utilise their community networks to access a broad range of people who might not otherwise engage in a human rights dialogue and/or who may need particular support to participate.

PROJECT SCOPE

The joint VCOSS and Federation Human Rights Community Engagement Project conducted a series of targeted community education and consultations with groups identified as some of the Victorians least likely to participate in public consultation processes. Involvement in community life is conditional on possessing the necessary tools to participate, including language, mobility, health, and wealth. Many of the people who were involved in this Project face barriers that prevent full participation.
Overview of Outcomes

The participants in the Project community education and consultation sessions supported the inclusion of civil, political, economic, social and cultural rights in a Charter and in any other measures taken to protect human rights in Victoria, noting that human rights are indivisible and interrelated. A Charter that only recognises civil and political rights leads to uneven rights protection, which fails to address some of the most pressing needs of the most disadvantaged members of the Victorian community. More broadly, this promotes a culture that does not afford proper recognition to vital economic, social and cultural rights.

The participants also emphasised the need for broad community consultation on any future reform, and an education strategy to accompany the introduction of any instrument that recognises and protects human rights. Ongoing community education will be vital to ensure that Victorians know what their rights are, understand how they are protected, and are empowered to use redress mechanisms in the event that their rights are breached.

The education and consultation sessions were enthusiastically received and many of the participants indicated a desire for further sessions or for more time to explore the issues. The three main questions on which the sessions focused were:

• ‘What rights are important to you?’,
• ‘What should be done to protect them?’, and
• ‘What should happen if those rights are breached?’

Participants shared a multitude of experiences about the relevance of human rights to their daily lives, and in many cases, of how they had been denied.

The following section responds to the ten key questions outlined in the Victorian Government’s human rights consultation community discussion paper, Have your say about human rights in Victoria. It provides a vision for how participants believe a human rights framework for Victoria should look. All of the following material, including the quotations, has come out of the community education and consultations conducted as part of the Human Rights Community Engagement Project, August – September 2005. It is their stories, testimonies and ideas that form the knowledge of this report.
Acknowledgments

The Victorian Council of Social Service (VCOSS) and the Federation of Community Legal Centres (the Federation) wish to thank the many people who participated and shared so generously of their time, stories and perspectives. VCOSS and the Federation warmly thank all the people who came along to the community education and consultation sessions, who trusted us enough to share their stories with us. We trust that this report accurately reflects your views.

VCOSS and the Federation would also like to thank the community sector organisations and workers who helped us to organise the community education and consultation sessions. The project would not have been possible without the support, advice and investment of time of organisations and individuals working with people who experience disadvantage on a daily basis.

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• Mental Health Legal Service, Vivienne Topp
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The Victorian Human Rights Community Engagement Project was funded by the Department of Justice, Victoria.
Is change needed in Victoria to better protect human rights?

Yes, change is needed to better protect and promote human rights in Victoria

VC OSS and the Federation strongly advocate that change is needed in Victoria, and Australia as a whole, to better protect and promote human rights in accordance with our obligations under international law. While the Federal Government has the primary overall responsibility to fulfill Australia’s human rights obligations, State governments are also bound by these obligations and, furthermore, are obliged to further the realisation of human rights in those areas for which they have assumed legal and administrative responsibility.

RIGHTS AND DISADVANTAGED VICTORIANS

For many of the people who attended the community education and consultation sessions, recognising human rights is not just a matter of protecting existing rights, but improving access to basic rights such as adequate housing, health care and education – sorely lacking for many Victorians who experience disadvantage. These fundamentals are a precondition for quality of life, and for a person’s ability to participate fully in their community. VC OSS and the Federation are particularly concerned that the people who are most at risk of having their human rights breached are those who are already the most disadvantaged. VC OSS and the Federation advocate that any mechanisms for protecting human rights also provide avenues of redress for the rights violations that many Victorians experience on a daily basis.

WHY ARE HUMAN RIGHTS IMPORTANT?

Acknowledging – and thus committing to protect - the inherent rights and dignity of its people is a hallmark of a society committed to fairness and equity. Without this acknowledgement and commitment, the fundamentals of democratic participation and the basics of life that many of us take for granted, can be taken away.

Australia is the only Western democracy that does not formally recognise human rights in the form of a Bill of Rights. With a Federal Government which not only opposes both legislative and constitutional human rights protections, but which is progressively engaged in stripping away many of the protections afforded through other measures, it is crucial that state and territory governments show leadership by developing positive measures to recognise human rights. In 2004, the Australian Capital Territory (ACT) became the first territory in Australia to do so through their introduction of the Human Rights Act 2004. For the Victorian Government to take similar steps, and be the first major Australian state to do so would send a clear message that it is committed to contributing to a more just and fair society, and to strengthen our democracy and communities.

To take a strong stand on human rights would be fully in keeping with the strategic priorities, objectives and commitments outlined in Growing Victoria Together: A Vision for Victoria to 2010 and Beyond and the 2005 Social Policy Statement, A Fairer Victoria, and would contribute to the Victorian Government ensuring that ‘every person [has] a fair opportunity to participate in the social and economic life of the community.’

Human Rights are about trying to achieve equality and ensuring a fair go for all.

DOES THE COMMUNITY SUPPORT CHANGE?

All participants who attended the community education and consultation sessions strongly supported a framework that would increase human rights protections. A Victorian Charter of Human Rights was enthusiastically welcomed as long overdue.
'We get sick and tired of our rights not being met. We’ve been fighting for our rights for decades’ remarked one person with an intellectual disability.

Of the 141 individual submission forms filled out during the education and consultation sessions, not one said that change was not necessary.

Participants in the VCOSS and Federation community education and consultation sessions welcomed the chance to share their first-hand their experiences of having rights denied or taken away from them.

‘A lot of older Australians would say “she’ll be right” – but the future will probably get harsher, and we need to protect ourselves into the future right now.’

**ARE CURRENT HUMAN RIGHTS PROTECTIONS ADEQUATE?**

Human rights are highly valued in our community but the current safeguards are inadequate to protect them. The laws and institutions that Victoria currently has are largely inaccessible to people most in need of protection.

‘It seems to me that we are more knowledgeable about human rights. But if you actually look at what is going on in our culture, there are more people who’s rights are being violated than ever before.’

The people most likely to be denied their rights are often those who are least able to fight for them: one participant stated, ‘People like us aren’t going to complain about it.’

Any reforms to human rights protections must acknowledge that the primary purpose of human rights safeguards is to prevent the abuse of power and provide a framework for democratic action. Many ‘conflicts’ of rights take place in a context where one party has greater financial, social or structural resources. The focus of human rights reforms must be to equalise the power imbalance and protect people at a particular disadvantage.

Recent federal legislative reforms such as the Anti-Terrorism legislation, the proposed Industrial Relations reforms, and aspects of the Migration legislation have demonstrated that many rights we have historically taken for granted - such as presumed innocence, right to silence, the right not to be arbitrarily detained, and minimum terms and conditions of work – can be revoked at any time through a simple legislative enactment. A Charter of Human Rights would go a long way towards making a clear statement about what rights are valued by Victorians and provide a minimum safeguard for those rights.

One of the most frequent arguments against introducing a Charter of Rights is that Victorians already have full enjoyment of their rights, and that those rights are sufficiently protected. This project reinforces that this is not the experience of a significant number of Victorians who experience discrimination based on race, religion, sexuality, gender, age, disability, appearance or socio-economic status (to name but a few), or who do not have access to basic services such as education and training, to good health and health services, freedom of religion and belief, freedom from discrimination, and equal access to justice.

The Human Rights Community Engagement Project canvassed the experiences of fifteen groups of Victorians who do not regularly access the same level of rights protection taken for granted by many Victorians:

**INDIGENOUS VICTORIANS**

Indigenous Victorians have poorer health and lower life expectancy than non-Indigenous Victorians, and experience discrimination in employment, education, housing and health. They are also over-represented in the prison system.

‘As an Indigenous woman also marginalised from society in many other ways, I see basic human rights trampled every day. These rights are the tenets of humanity and civilisation and need to be protected by law.’

**PEOPLE WITH A DISABILITY**

People with a disability face multiple barriers to full participation in the community.

One participant felt that ‘There’s one right for people with a disability and one right for normal people.’
PEOPLE WITH A MENTAL ILLNESS

People with a mental illness have limited access to community-based supports, which undermines their capacity to participate in community life. People with a mental illness have their right to control their lives and bodies taken from them through involuntary treatment and hospitalisation, and feel defined and stigmatised by their illness.

GAY, LESBIAN, BISEXUAL AND TRANSGENDER PEOPLE

Gay, lesbian, bisexual and transgender (GLBT) people suffer discrimination and abuse on a daily basis. A large volume of legislation currently contains exemptions from discriminating against GLBT people despite being unlawful to discriminate on the basis of sexual orientation under Victorian Equal Opportunity Act.

PEOPLE FROM CULTURALLY AND LINGUISTICALLY DIVERSE BACKGROUNDS

People from culturally and linguistically diverse backgrounds experience linguistic and cultural barriers to accessing health, employment and other services. A key factor is that they are from a non-English speaking background. Discrimination is common, and often too difficult to counter using existing vilification laws. Muslim Victorians who participated in the community education and consultation sessions in particular reported high levels of victimisation, with many commenting that women wearing the hijab are reluctant to appear in public for fear of abuse.

CHILDREN AND YOUNG PEOPLE

Children and young people have little voice in legal and political process and need specific protection to recognise their particular vulnerability and promote their wellbeing.

PEOPLE FROM RURAL AND REGIONAL VICTORIA

People from rural and regional Victoria experience limited access to services compounded by large distances. One woman living in regional Victoria who participated in the community education and consultation sessions has two children with disabilities. While respite care is ‘free’, she has to make a round-trip of a few hundred kilometres to take them for the weekend. This costs a lot in petrol, which is not subsidised.

REFUGEES

Refugees have poorer settlement outcomes than other migrants. Depending on their visa category, they may be denied the right to work, to study, and to family reunification.

WOMEN

Women in Victoria are under-represented in the political decision-making process, and frequently find their concerns are considered ‘private’ problems rather than matters for public policy. Women in prison experience regular and fundamental breaches of their basic rights, which are disproportionate to any reasonable response of our justice system towards a person found guilty of committing of a crime.
WHY IS CHANGE IMPORTANT?

While the Victorian Government does not have the sole responsibility to respect and promote human rights, a government that fails to protect its citizens against breaches of those rights is seen, rightly or wrongly, as complicit in that violation. ‘If the government has a duty of care, how and where is that expressed?’ asked a mental health advocate who participated in the community education and consultation sessions. The ultimate responsibility for the welfare of the people rests in the hands of its government.

People whose rights are not protected feel disenfranchised from their government. Participants clearly expected their government to represent them, to act fairly and to provide them with support when they are most in need of it. An undertaking by the Government to protect and promote human rights sends a clear message to people most affected that they are valued members of society.

A public commitment by the Victorian Government to human rights principles would carry great symbolic value for the Victorian community and would help to foster respect for diversity. Such a step would send the message that all in Victoria are inherently rights-bearing and can shift the dialogue from ‘welfarism’ to empowerment.

Participants in the community education and consultation sessions felt strongly that their needs were not heard. Under the current system, many people experience democracy as an event that takes place every four years at the ballot box. However, some participants are denied even the right to vote (such as women in prison), and people with disabilities expressed difficulty participating in the electoral process. A human rights framework which is community driven will enable more people to actively participate in, and ultimately strengthen, our democracy.
If change is needed, how should the law be changed to achieve this?

Victoria should adopt a Charter of Human Rights

WHY A CHARTER OF HUMAN RIGHTS IS NEEDED

‘Australia is called the lucky country. Why don’t we have a Human Rights Act? I’m proud to be an Australian; we should have a Human Rights Act. We want our country to be a great place to live.’

As existing Victorian legislation does not adequately protect human rights, a Charter of Human Rights would offer more substantial and enduring rights protection that is less susceptible to political pressure. A Charter could formalise and unify existing human rights protections.

Experience from the community education and consultation sessions showed that many people are under the misapprehension that Australia already has a Bill of Rights, or that the Australian and Victorian Constitutions contain specific rights protections and statements. One contributor expressed the views of many participants when they said ‘I am surprised we don’t have a Human Rights Act’. A Charter could effectively protect rights that many Victorians believe are already guaranteed.

A Charter could give effect to international human rights treaties signed by Australia, demonstrating a commitment to enshrining these principles in Victoria. Major United Nations (UN) human rights treaties could be annexed to the Charter, or international treaty sources of rights could be scheduled to the Charter, as in the ACT Human Rights Act (2004). One participant noted that ‘It’s important to be able to point to a UN convention to support rights. It does have some moral force.’ Annexing or Scheduling international conventions would give the Charter increased legitimacy both within and outside Victoria. As different levels of government have different areas of responsibility, each level of government (federal, state and local) needs to enact a Charter of Rights that encompasses its area of responsibility.

A Charter could create a framework of human rights by providing a unified reference point for policy and procedural decisions as an extension of current administrative law standards, and guide the decision-making of the judiciary.

A Charter could provide an expression of the Victorian government’s commitment to addressing disadvantage in Victoria.

A Charter could also provide an aspirational statement of tolerance, non-discrimination, respect and social justice for the wider community.

In the homelessness sector, for some years now the dialogue is a client focused, rights based approach. It filters down and creates an expectation for clients that they will be treated with dignity and respect. It sets a framework that enables clients and service providers to ensure people are looked after. With community organizations it is a useful dialogue to have with people.

Community worker

CONSIDERATIONS IN DRAFTING A CHARTER OF HUMAN RIGHTS

A Charter of Human Rights, and any other laws enacted to protect and promote human rights should be drafted as far as practicable in a way that is clearly understood by ordinary people.

A Charter must have a clear purposive statement, perhaps in a preamble, which acknowledges that protecting and promoting human rights is often about preventing abuses of power and inequitable use of resources.
When they make laws, is there a separate part where they right down the spirit of the law? It is one thing to have a set of laws, but you need also a set of ideas about what the laws mean.

Participant in the disability session

While all Victorians have equal rights, not all Victorians are equally able to access their rights, and special additional measures would be required to give substantive effect to the provisions of the Charter. Recognising that people who are most marginalised and disadvantaged will often be most in need of protection, a Charter must be capable of substantive equality.

A Charter must reflect the values of Victorians, and protect the rights they consider important. (see Question 3 for a full discussion of the rights considered important by participants)

The implementation of similar Charters in other jurisdictions should provide guidance for the type of Charter applicable to Victoria. The ACT Human Rights Act 2004, being the only Charter introduced in an Australian State or Territory should be given consideration for its application in a Victorian context while at the same time acknowledging that Victoria is less constrained by federal influence than the ACT. Victoria should not feel bound by the provisions in the ACT Human Rights Act when drafting a Charter of our own.

If it is considered desirable to limit rights or remedies available under the Charter, other jurisdictions could provide a useful reference as to whether such measures are justified.

Participants in the VCOSS and Federation community education and consultation sessions were particularly interested in learning more about the South African Bill of Rights, and the practical benefits of including Economic, Social and Cultural rights in any Victorian Charter of Human Rights.

BEYOND A CHARTER OF HUMAN RIGHTS

A Charter of Human Rights is an important first step. However, it is only the starting point for proper legislative protection of human rights. In addition to the development of a Charter, VCOSS and the Federation advocate, on the basis of discussions in the community education and consultation sessions, that the following legislative measures should be implemented:

PRE-BILL SCRUTINY

Pre-bill scrutiny would ensure that a ‘human rights filter’ is applied to all proposed legislation, ensuring that all new laws are assessed in terms of their compatibility with a Charter of Human Rights. This would ensure that human rights could not be progressively eroded through introduction of legislation that is contrary to their protection. This practice should also extend to by-laws and regulations.

A requirement for all Victorian Government departments and statutory authorities to apply a ‘human rights filter’ in all policy and program development to assess their compatibility with a Charter of Human Rights would strengthen compliance with the Charter.

A group of single mothers discussed the possible effects of proposed changes to parenting payments. While this is a federal concern, it provides a good illustration of the considerations that may arise when policies are viewed through a human rights lens.

The participatory requirements in the changes require that an individual must work at least 15 hours per week. For single mothers, it can be difficult to find work that is flexible enough to fit with childcare arrangements, school hours and holidays.

Since the hourly wage is irrelevant, a person earning $40 per hour for 8 hours a week may have to accept a job paying $15 per hour to meet the 15 hour working requirement.

Individuals can study for no more than 12 months, which is not enough to pursue anything more than a graduate diploma or other lesser qualification. It may also directly conflict with course requirements, for instance, PhD students are not allowed to undertake more than 8 hours of paid work per week as part of their degree requirements, but to be eligible to receive parenting payments they will be required to work 15 hours per week once their child reaches school age.
Children may also need before or after school care. Figures suggest that there are 35,000 people on the waiting list for before or after school care. Changes to parenting payments will mean that approximately 190,000 women will have to seek full time work when their children reach school age. This will increase the already overwhelming demand for childcare.

Even if childcare is available, this is not necessarily the best solution for children. School hours are designed to be short because it is recognised that this is less stressful for children. Placing children in before- or after-school care due to parents’ work commitments defeats the purpose of having shorter school hours to the detriment of the welfare and rights of the child.

Such a policy change potentially impacts on the right to family life, the right to employment, the right to education, women’s rights and children’s rights.

The Charter should contain scope to invalidate proposed legislation that is found to be incompatible with its provisions. Failing this, a mechanism for judicial declarations of incompatibility should be available if the legislation cannot be invalidated outright. In the case of the latter, this should include the requirement of a response from Government justifying why the proposed legislation is incompatible with the Charter or Act.

Existing laws should also be examined for potential breaches of human rights or for discriminatory application. Some examples of laws that participants in the community education and consultation sessions felt were inconsistent with their rights, or had a discriminatory effect when applied included:

- **The Infertility Treatment Act 1995**, which denies infertility treatment to single women and lesbians.
- **The Mental Health Act 1986 (Vic)**, particularly the procedural provisions of the Act, denies people with a diagnosed mental illness the fundamental right to control their own lives, including decision-making and bodily integrity.
- **The Evidence Act** and the **Credit Act** both restrict the definition of ‘spouse’ to people in heterosexual relationships.
- **The Teaching Services Act** does not define ‘family’. This has the potential to restrict leave provisions for a number of people, including people in same-sex relationships and those with extended family relationships.
- The offence of consorting in s 6 of the **Vagrancy Act 1966 (Vic)** limits freedom of association. This was seen as an unjustified limitation on their rights, which assumed criminal intention.
- **S 48 (2) (b) of the Constitution Act 1975 (Vic)** prevents people from voting if they are serving a prison sentence of 5 years or more. While this may be a reasonable measure for certain offences such as treason or other crimes against the state, it was considered to unfairly restrict a fundamental political right.

**ADMINISTRATION OF THE LAW AND A CHARTER OF RIGHTS**

The way in which all laws are administered needs to be closely scrutinised.

- The way in which people are treated once they break the law is a reflection of our justice system. People convicted of a crime should not automatically forego all their rights as human beings. Justice will only be served if we clearly articulate what rights will be taken away (e.g. liberty, for a specified period of time), and ensure that all other basic rights are protected. The rate of imprisonment for women is increasing, and at a significantly higher rate than for men. More women are being jailed for a first offence. Indigenous people are seriously over-represented in prison populations.

  ‘In jail you lose enough without losing your rights as well’

- Police procedures need to be scrutinised to ensure they are not applied in a discriminatory fashion. Participants felt they were singled out and treated differently by police according to their appearance or background.

  One participant believed police pull cars over because of the way the drivers look. He suggested that police should run a check on a car’s registration to see if it’s stolen before deciding to pull people over because of their appearance.

  A rooming house tenant in St Kilda complained that police turned up regularly to search their rooms for drugs even though he claimed they rarely found any. He believed they needed to strengthen the minimum
threshold requirement in relation to searches conducted on the suspicion of the presence of drugs.

- A Charter should ensure that standard rules of evidence and procedure are appropriate for the issues being heard in state jurisdictions. Women who had been through custody battles provided the illustration of how the law deals with the sexual abuse of children in contested custody situations.

One woman’s 3 year old son told her that he had been sexually abused by his father. The mother reported this to the police, and the child confirmed the story to a counsellor at the police station. At the custody hearing, the child was too young to testify, and the counsellor could not verify the claim as her evidence is considered to be hearsay. The mother is forced to hand her young child over for unsupervised access to a man whom she is certain is sexually abusing him. If she breaches the custody order, she risks losing custody and having her child live permanently with the abuser. ‘Australia is not big enough to run away’, she said.

Without direct testimony by the victim, it is very difficult to prove sexual abuse. Evidence of prior convictions for sexual abuse is generally not relevant unless it relates to the child in question.

In the Family Court, only children 13 years old and above may provide evidence. Custody arrangements may be made which are against the child’s wishes.

**ACCESS TO LEGAL REPRESENTATION**

The cost of legal advice or representation undermines many people’s access to justice, and can inhibit many people from taking action to enforce their rights. Unless legal aid is accessible, the justice system will favour those with the deepest pockets. Legal aid is only available to candidates who satisfy certain financial criteria, is limited in the amount available, and is only applicable to certain categories of legal action.

**EDUCATION AND TRAINING**

All legislative changes need to be accompanied by education and training to inform the community of their scope and application (see Questions 6 and 7 for further discussion of this point).

‘I’m an asylum seeker in Australia … When I came here I needed to know; I knew nothing about the law. I need to know about traffic laws because the people make it a traffic offence. It was only when I got charged that I found out about it.’

One participant emphasised that it is important to encourage a culture of acceptance of human rights in society ‘…it is not enough to just have hard line laws’.

It is imperative that education and training is a two-way process. While the community needs to be educated about the law, the law also needs to be educated about the community for it to be relevant and accepted. The wider community needs to feel ‘ownership’ of the process if they are to support it.

‘It is getting the info to our people. Once people fully understand something and it gets to their backyard they will follow it.’

Indigenous participant (Mildura)
If Victoria had a charter of Human Rights, what rights should it protect?

Human rights are interconnected and interdependent. They should be equally available to everyone. Human rights are a birthright. They are a collective statement of things essential to self-esteem and humanity.

‘They are the things that make us human’

A Victorian Charter of Rights should protect civil, political, social, economic and cultural rights

VCROSS and the Federation strongly advocate for a Charter of Human Rights that recognises civil, political, social, economic and cultural rights. All participants in the community education and consultation sessions highlighted the importance of these rights to their daily lives. Participants also completed the Human Rights Community Response Form, developed by VCOSS and the Federation as part of the project, and submitted it as an individual submission. Question 1 of the Response Form listed 44 different possible rights and asked ‘Which rights do you think are important and should be included in a Victorian Charter of Human Rights?’ Of the 141 individual submissions completed, 114 ticked ‘all of the above’.

As previously stated, human rights are equal, interdependent and indivisible. By excluding rights, the Victorian Government would be excluding people – particularly, in the case of economic and social rights – people who are already disadvantaged and marginalised. Furthermore, one of the overwhelming benefits of a Charter of Human Rights for Victoria would be its contribution to a ‘human rights culture’ in Victoria. Having a ‘human rights culture’ means that ordinary people see themselves as rights-bearing individuals and can articulate that right. In countries with strong human rights cultures, ordinary people will defend infringements of their liberty on the grounds of ‘my right to free speech’, or ‘my right to privacy’ or quote Constitutional provisions. Citizens may have an innate understanding, for instance, that all ‘all people are created equal’.

A ‘human rights culture’ means that an understanding of which rights are protected – and how they apply broadly to everyday life – is a part of society’s shared consciousness.

Creating a human rights culture that upholds liberty over equality is dangerous, and counter-productive.

‘I believe that [all of these rights] help create a better community with fair treatment of all people and where all people’s needs are more adequately met.’

‘A bill of rights should contain both economic, social and cultural rights and civil and political rights as it is the only responsible decision that the government can make to make sure that rights are protected.’

No rights are expendable. Victoria needs a Charter of Human Rights, not merely a Charter of Civil and Political Rights. Any Charter should give effect to all international Human Rights treaties to which Australia is a signatory, particularly to the three major treaties forming the International Bill of Rights.

Excluding economic, social and cultural Rights, as proposed by the Victorian Government in its Statement of Intent, was likened by one participant to

‘…giving you a band-aid to cover a sore without the cream to fix it.’

Indigenous participant, Mildura
**CIVIL AND POLITICAL RIGHTS**

In the current political climate in which civil and political rights are being sacrificed by governments internationally and domestically, in the interests of being seen to be ‘tough on terrorism’, it is vital that such rights - which are core to the values of a democratic society - be enshrined in law. On the basis of the community education and consultation sessions, VCOSS and the Federation recommend that the International Covenant on Civil and Political Rights (ICCPR) be used as a basis for civil and political rights in a Victorian Charter, with appropriate modifications to suit the Victorian context. The list of ICCPR rights contained in the submission by the Federation of Community Legal Centres, and included as appendix 1 in this report, should be included at minimum in a Charter of Rights, and advocate that there be no derogations from these rights outside of a situation in which a state of emergency has been publicly declared.

**ECONOMIC, SOCIAL AND CULTURAL RIGHTS**

On the basis of the views expressed by the participants, VCOSS and the Federation strongly advocate for the inclusion of social, economic and cultural rights in the Charter of Rights. The inclusion of social, economic and cultural rights is particularly important to Victorians who are the most marginalised and disadvantaged.

‘Limiting it to just civil and political is just not good enough. If I get a mental diagnosis, none of those civil and political rights exist.’

The assumption that the realisation of economic, social and cultural rights necessarily imposes a financial burden on governments is erroneous. A number of aspects of the right to adequate housing, for example, could be implemented immediately through legislative review and reform. Such measures could also incorporate the fulfillment of some of the civil and political rights that can be violated when a person becomes homeless.

If Victoria were to adopt a similar model to the one implemented in the ACT, the main purposes of the Charter will be to give new roles to all the arms of government, to institutionalise human rights considerations within policy and lawmaking, and to give the judiciary the power to interpret existing laws in accordance with accepted human rights standards. There would therefore be little reason not to include economic, social and cultural rights. Excluding economic, social and cultural rights may lessen the effect of the protection afforded by the other rights in the Charter.

**RECOGNITION OF SOCIAL, ECONOMIC AND CULTURAL RIGHTS BY OTHER COUNTRIES**

Many other countries have implemented Charters or Bills of Rights which include economic, social and cultural rights as vital to full rights recognition. Countries including South Africa, India, Namibia, Malaysia, Brazil, Ireland and Germany either include economic, social and cultural rights or have incorporated specific rights into their human rights protection measures in workable ways. In Canada, the *Ontario Human Rights Code* (the equivalent of a piece of State legislation in Australia) aims to ‘provide for equal rights and opportunities without discrimination.’ In doing so, it enshrines the requirement underlying both the *ICCPR* and the *ICESCR* that the rights that they contain be enjoyed without discrimination. The Code, for example, thus goes some way towards fulfilling the right to adequate housing by outlawing a number of discriminatory acts relating to the provision of housing, such as refusing to rent to someone on grounds including race, nationality, sex, sexual orientation, age, marital status, family status, disability or receipt of social security. Many of these measures are not currently contained in Victorian anti-discrimination legislation.

‘It is early days for Aboriginal people. We have been forced to live in white man’s ways. Not in line with Aboriginal ways. Our ways have not been respected. It is still not included in the Constitution. I would see civil and political rights as ‘old school’ ways and social, cultural and economic rights as new school ways.’
WHICH RIGHTS ARE MOST IMPORTANT?

Participants in the fifteen community consultations conducted by VCOSS and the FCLC spoke in detail about the rights that were important to them. For many people, these rights were considered important precisely because they had been violated or denied to them, and they understood first-hand what it is like to live without. The following rights are the ones considered important by the participants, and ones that they believed should be included in a Victorian Charter of Rights. The rights are not listed in order of priority.

Fundamental Respect and Dignity

All people are equal, and all people are entitled to the same enjoyment of their rights. Everybody has the right to be treated with respect and dignity. For many Victorians, being treated with respect is missing from their everyday lives.

‘To me [human rights] imply the fact that each and every individual has the right to be regarded and treated as a fully human being no matter how different they are.’

The unifying characteristic of participants in the community education and consultations was that all had had experiences in their lives where they were not treated with respect. People with a mental illness, women in prison, people with physical or intellectual disabilities, Muslim women, Indigenous people, people from culturally and linguistically diverse communities, people from low socio-economic background, refugees, children and young people and single mothers all had stories of being denied their most fundamental humanity.

People with a mental illness felt that their diagnosis stigmatises them and affects their relationship with the community:

‘Once a person is labelled as a mental health patient, they also lose their identity as a human being and simply become ‘a mental health patient’.

Many people with an intellectual disability grew up in institutions. Deinstitutionalisation has seen a transition to community-based Residential Units, some of which - to the participants - felt strikingly similar to the institutions they left behind:

‘They have open showers and they hose them down. I’ve seen them strapped down to the toilet. We’re just dirt on the floor to them.’

‘Those nine men had to lose their lives at Kew in that fire to get the sprinkler system put in.’

Conversation among participants with an intellectual disability

‘A friend of mine was living in a nursing home. If she didn’t get home at 5 for tea – her tea would be cold. One day she had to walk all the way to Frankston and her tea was cold. They wouldn’t heat it up.’

Women in prison experience daily violation of their rights. The practice of routine and random strip-searching was experienced as a particular indignity, described by one woman as ‘visual rape’. This is particularly disturbing considering the high number of women in prison who are survivors of sexual abuse.

‘I am a human being and deserve to be treated as one no matter what mistakes I may have made.’

Indigenous Victorians have been denied citizenship rights along with all social, economic and cultural rights. The legacy of this is ongoing.

‘Human rights are important for Aboriginal and Islander peoples because they are something we are looking forward to having in this country one day. Anyone here today over the age of 38 has lived part of their lives effectively as non-citizen.’
Health and Wellbeing

Health – General

All people should have a right to the highest attainable standard of health, which encompasses both physical and mental health. In practice, this includes having access to health services and being treated equitably when receiving a service.

Article 12 of ICESCR states that ‘every citizen has the right to the highest possible standard of physical and mental health’. Socioeconomic status has been cited as the most important indicator of health status among Australians, with people of lower economic status more likely to experience illness and early death than other members of the community.

In responding effectively to health inequalities, it is critical that the Government address the structural inequalities affecting health. The demand for primary and community health services is greater than their availability. CHSs currently have significant waiting lists for a range of allied health, dental health and counselling services, including mental health counseling services, resulting in negative impacts on the health and wellbeing of Victorians who experience disadvantage. CHSs also experience difficulties in providing sufficient general practitioner services, and are often compromised in their capacity to undertake critical community strengthening work, a key element of a social model of health.

Finally, particular groups, such as Indigenous Victorians, Victorians with a disability and people from culturally and linguistically diverse backgrounds have specific cultural, mental and physical health needs that are currently not sufficiently addressed in primary and community health. Structural reform is required to ensure that all Victorians, including those who experience disadvantage, are able to access their right to health. A Victorian Charter of Rights would be a key tool to drive this structural reform across Victorian Government departments and community services.

It is becoming increasingly difficult to find general practitioners (GPs) who bulk-bill for their services. For many people on a low income, it can be difficult to find the money to pay the ‘gap’ between Medicare and the doctor’s fee. Many people simply do not go to the doctor because they cannot afford it.

‘[It is] very hard in Bendigo – they bulkbill but you still need to pay the gap. Bad luck if you don’t have the money, or if it’s a couple of days off pension day.’

People unable to afford to see their own GP are more likely to attend the casualty department of their local hospital, putting further strain on already stretched public hospital system. It is also more likely that more acute health conditions will result from a lack of early intervention and preventative action.

‘My daughter went [to the emergency department] with severe abdominal pain, sat for 4 hours. By the time she saw a doctor the pain would be gone. They’d tell her ‘we can’t diagnose anything, you don’t have any pain.’ The only way to get my daughter seen was to ring an ambulance. Then they take it seriously. She had an operation for gallstones two days later.’

A severe shortage of GPs in rural and regional Victoria prevents many people from accessing health services. In Bendigo, GPs who are taking on new patients are so difficult to find that they advertise in the local paper when they have a ‘vacancy’. People who do not have their own GP must go through a complex appointment process through Primary Care.

‘If you don’t have a GP, then bad luck. What if you’ve got a really sick kid? Bad luck. Or go the emergency department and sit there for 5-6 hours.’

Participant in Bendigo consultation

Access to public dental health care is seriously compromised, with clinically unacceptable waiting periods existing, particularly for non-urgent dentures and general/restorative care. Difficulties accessing dental treatment are particularly acute in rural and regional Victoria with participants reporting waits of up to five years for treatment.

Health service provision needs to be culturally and linguistically appropriate. For people who do not speak English as a first language, attending GP appointments or undergoing medical procedures can be a traumatic experience:

‘I had a horrible experience at a hospital, I had a biopsy and no one explained what was going on when I was bleeding, I didn’t get offered an interpreter, I didn’t have my daughter in with me (they didn’t let me). It was a terrible experience.’
Interpreters need to be more widely used by GPs, hospitals and primary and community health services. While some people feel more comfortable having family members with them for support, using family as interpreters can breach privacy and constrain the free flow of information between patient and doctor.

Access to health services needs to be non-discriminatory. Many people experience a lower standard of service through assumptions about their ability to understand and consent to treatment.

“My husband had a hernia and... they didn’t want to do the operation. Because he had a disability, they thought he was making it up. David doesn’t complain very often about any pain. I said, ‘I know my husband.’ They listened to me after that, but it took me saying he wasn’t leaving the hospital without the operation... he’s a strong person, but when he was sick I had to be his advocate.’

“The doctor will address the nurse and not the person. They should look at and address the person. I went to one of the doctors – he put me on tablets that kept giving me more seizures. Every time I went to the hospital, he would directly look at the nurse and not me. That’s when I was in the Institution … Now – sometimes it’s different, it just depends.’

“I say that to doctors – I tell them I’m sick of that doctor lingo – I want to know what’s wrong with me.’

“My son’s a heroin addict and needed an operation on his hand. The only way they would have him there was to shackle him to the bed. When I complained further I was shown information about violence in the workplace.’

The woman’s son had displayed no violent tendencies, but she was told it was standard procedure when hospitalising a person addicted to heroin.

Health treatment should be non-discriminatory, regardless of moral distinctions between ‘deserving’ or ‘undeserving’ patients.

“There’s two doors – rich door and poor door. I have a friend who has alcohol issues but he is well off – he is given good treatment.’

Health treatment must be accessible for all Victorians.

“My husband went to hospital for treatment for alcohol dependency. The counselor tried to get him into detox but there were no available spaces and he was told he would have to wait four weeks. He was told that since he lives alone there’s no way of doing detox at home because there’s no-one living with him. He went home and started drinking and was violent again the next night. He is looking at another custodial sentence, facing two years imprisonment – the guy wanted help.’

Mental Health

The right to health includes the right to the highest attainable standard of mental health. People with experience of involuntary treatment under the Mental Health Act felt strongly that it was used in a way that undermined their autonomy.

“You might find that there are more people on CTOs [Community Treatment Orders] than in the prisons. There are tens of thousands of people on CTOs in Victoria. Even with a conservative estimate, there are 5 thousand new individuals per year. You’re 25 times more likely to be on a CTO in Victoria than in New York. This illustrates the arbitrariness of it. You need two signatures, but only one has to be a psychiatrist.’

Medical treatment must only be undertaken with genuine informed consent. Assumptions are made about the capacity of people to understand and consent to treatment that is ‘in their best interests’.

‘I was deliberately deceived into taking a potent and dangerous drug that was quite inappropriate for me. The psychiatrist told the PBS that it was for schizophrenia. I asked why did you say that? He said “it’s best to tell them what they want to hear”. But schizophrenia was never part of my diagnosis. As a consequence, I put on 20kg; I became a zombie as a direct consequence of that drug. My two suicide attempts came whilst I was on this drug. There is a deception there with pretty negative consequences.’
Education and Training

Education is a key determinant of socioeconomic status and impacts on a multitude of other areas of people’s lives, including employment, health and the ability to make informed decisions and participate in democratic or political processes. *It is also one of the primary means to break the cycle of disadvantage.* Education should not be seen as a privilege.

The VCOSS and Emergency Relief Victoria report, *The Rising Cost of Free Education,* details increased evidence of families relying on emergency relief services to fund school costs. It illustrates that the beginning of the school year is particularly financially draining for low-income families, with many having to ‘choose’ to pay school fees instead of utility bills. The costs of necessities such as uniforms, books, stationery and computers places an ongoing financial burden on families, while students whose families are unable to afford school equipment, excursions and school camps are excluded from enjoying the full benefits of their schooling. This in turn has a negative affect on children’s self-esteem and perpetuates the cycle of disadvantage.

The many associated costs of sending children to school, such as uniforms, books and transport can cause financial hardships for many families. For families on low incomes, it can be difficult to find this money at the beginning of the year. One mother complained that children get detention for wearing the wrong school shoes. Shoes are expensive, she noted, and are often the last thing to buy.

Many schools are also reliant on ‘voluntary’ payments to cover equipment or excursions. If parents don’t pay the ‘voluntary’ fee, children may be excluded from extracurricular classes like computer classes at high school.

‘My daughter’s form teacher made her sign an IOU for $1 – she went to an art exhibition in town and was forced to pay money for the bus fare to see the thing even when she didn’t want to.’

Sole parents lose parenting payments when their children turn 16. Although the child is eligible for Youth Allowance from this time, it is less than the parenting payment and puts increased financial pressure on the family if the child stays at school after the age of 16. One woman lost her parenting payment pension when her son turned 16, even though he is still at high school. She is now having difficulty meeting the costs of his school uniform and textbooks.

Increased fees for tertiary education and the increase of full-fee paying university places is a disincentive for young people to attend university, particularly for those from low-socio economic backgrounds. Many people cannot afford to pay full fees, and even those who are successful in obtaining a subsidised university place may incur a lifetime of debt as a result.

‘They complain that there’s a lack of teachers and doctors, but, university fees are too expensive for the average person who wanted to study medicine or education. Then even if you do get to Uni, you have a debt for 20 or 30 years.’

On the basis of the community consultations, we echo ICESCR in stating that everyone has the human right to primary, secondary and higher education. VCOSS and the Federation recommend that the Victorian Government include the right to education and training in a Victorian Charter of Rights to direct the structural reforms required to ensure that all Victorian children and young people are able to enjoy the full benefits of primary and secondary schooling without discrimination resulting from the socioeconomic status of their families.

‘My son is high tempered and is picked on by the teachers. He has high blood pressure, and when he gets angry it rises. When he takes a tablet he doesn’t completely lose his temper. Teachers ask him in front of the whole class ‘Did you take your tablet today?’ The teacher will tell him off in front of everybody, but won’t apologise in front of everybody. One teacher sat down and talked to him. They agreed on using a ‘special word’ whenever he felt he was losing control, and they would let him out of the class till he cooled down. It worked really well in that class and he had no more problems. No other teachers did this, and he is still considered a “trouble-maker” in other classes.’

Education must be accessible, affordable and culturally appropriate. Education should also be seen as a lifelong process that benefits the individual and society. Education includes pre-school, primary, secondary and tertiary education, as well as continuing adult education and can be both formal and informal.

A shortage of teachers in rural and regional areas means that children in these areas do not have the full range of options available to children in urban areas.
School curricula needs to be culturally appropriate. This includes teaching Indigenous history and acknowledging the different backgrounds of all students:

‘My mum fought for years and years for them to have a NAIDOC day at school. The excuse was that there were not enough Koori kids attending. There were probably about 20 Koori kids there. They have multi-cultural days but do not recognise a NAIDOC sports day.’

‘A Muslim girl who wore the Hijab at school was harassed by other students. She felt that she would have experienced less discrimination if the school curriculum had included information about different cultural and religious practices.’

People who cannot read and write in English find it difficult to assist their children with their schooling. One Turkish-speaking woman noted:

‘Communication breakdown ends up in there being inequalities between our children and other children. Children don’t bring work home and there is a big communication breakdown between teachers and children, children and parents, teachers and parents.’

Private schools provide more intensive assistance for students to get to university. Several people were concerned that attending public schools put their children at a disadvantage for obtaining a university place. One person noted that immigrants seemed to especially suffer the divide between public and private schools and felt fearful that their children would be disadvantaged when it came time for them to obtain higher education.

Education is a lifelong process of learning. One woman has had a problem with her leg and can no longer work as a waitress. She would like to study and build her skills so she can work in another profession. She feels that education opportunities are not promoted enough. She is now taking adult literacy classes, which she only found out about through a friend.

‘Centrelink don’t tell you about options like that’, she said. ‘No one else does either.’

**Family Life**

VCROSS and the Federation agree that ‘(t)he family is the natural and fundamental group unit of society and is entitled to protection by society and the State’.

The Government should not act in a way that threatens family life, nor have the power to define or restrict the definition of family. Many people in Victoria have experienced first-hand the failure of society and state to protect the family unit, particularly those who do not fit the norm of the nuclear family.

**Indigenous Victorians**

Indigenous Victorians continue to suffer the effects of forcible removal of Indigenous children from their families and culture. A myriad of social and cultural problems within the Indigenous community have been attributed to the decay of the social fabric caused by the destruction of the family unit.

‘My grandmother was one of the stolen generation. She had no say in her upbringing. She was made to hide her skin from the sun so she didn’t tan. You had to sign away your rights. You had no choice.’

**Women with an intellectual disability**

Women with an intellectual disability have been forcibly sterilised. Although the practice no longer continues, many women with an intellectual disability remain childless as they have had the right to bear children permanently and irrevocably taken from them without their consent.

‘I didn’t have the choice to have children.’

‘Got to let us have our lives, got to let us have children, not to have the operation.’

Women with an intellectual disability are often thought to be unable to raise their children, and may have their children taken from them and placed in care. These women are often ill equipped to fight the bureaucratic and judicial procedures necessary to keep custody of their children.

‘I’ve got a girlfriend … her children were taken away from her, put in foster care. … She’s got this lovely little girl. She’s got spina bifida, the little girl. They said she couldn’t look after her, but
now she’s looking after her. After receiving help from an advocate, she was able to go to court to fight to keep her daughter with her. She did not have the assistance of an advocate when she lost custody of her three older children.’

It was also been common practice to the late 1980s to institutionalise young children with intellectual disabilities. Many people with intellectual disabilities today have grown up in an institutional setting.

‘In those days, going back to the 1940s, 1950s, 1960s – when parents had problems with their children when they were born, if their parents couldn’t look after them they had to take them to an institution, or it was the Government that said they had to go to an institution because the parents couldn’t look after them.’

Refugees

Refugees who are granted a Temporary Protection Visa (TPV) are not entitled to family reunion, and are not permitted to return to Australia if they leave. Family reunion is only available for refugees holding permanent visas, for which most TPV holders to arrive after 2001 will never be eligible. While they remain on a TPV, they are unable to bring their family to Australia with them, or to travel overseas to see their family unless they are willing to lose their claim to protection as a refugee in Australia.

Women in prison

Many women in prison are mothers. The effect of incarceration on the children as well as the mothers is enormous, particularly with younger children. When men are incarcerated, children often remain with their mothers but when women are imprisoned their children are frequently cared for by relatives or become the responsibility of child protection services.

‘One woman has two daughters aged 9 and 15. Since her incarceration they were put in the care of her brother-in-law and are now living in different towns and attend different schools. Initially, she had weekly visits and spoke to them twice a week on the telephone. They would come to the annual prison play and the Christmas party. In 2005 her phone calls were reduced to once a week and in April 2005 her access was reduced to four visits a year, no phone calls, and letters only on their birthdays. She was not present at court most times her access was changed as no jail order was received. She did receive a jail order for the April 2005 family court hearing, but spent two days in a cell without entering the courtroom. She was told of the result by her legal team. On one occasion when her access was reduced she slashed her wrists and was put in ‘the fridge’ (a.k.a the ‘wet cell’) for three days – a concrete cell in the management unit with a concrete slab for a bed, a thin canvas blanket and a canvas gown for clothing. She was taken off observations after four days and not provided with psychological support.’

While in prison, family bonds are eroded further through the maximum-security requirements of visits. If women want contact visits they must undergo a strip search, despite being dressed in a jumpsuit zipped up from the back with a special closure to prevent tampering. If their visiting child touches or hugs them during the visit, the visit may be cancelled at the discretion of the officer.

‘One woman told of a visit by her adult child who was crying on her shoulder. ‘The officer told me that if we kept crying the visit would be stopped. Why should I be treated this way, or my son?’

Visitors may also be strip-searched if they request a contact visit. There is no age limit to the strip-searching, and babies and young children can be searched. Visitors can refuse the procedure, but if they do so they will be denied entry and barred from future visits.

‘One woman has told her son not to bring her grandchild in to visit her because there was no way she was going to allow the child to be strip searched.’

Such practices inevitably contribute to the erosion of family bonds essential to successful reintegration in the community post-release.
Sole mothers

Sole mothers experience great difficulty balancing their family responsibilities with demands of employment. It is difficult to undertake full time work and still care for children, but equally difficult to find part-time work or work which is flexible enough to accommodate the demands of being a sole parent, such as school holidays, sick leave for children’s illnesses and dropping children off and picking them up from school. Proposed changes to parenting payments threaten to further penalize single parents by requiring them to enter the workforce when their children reach school age.

Understanding of what constitutes a family has widely different cultural interpretations, not recognised by our current institutional framework. The concept of family for many people, including Indigenous peoples and many people from different cultural backgrounds includes various forms of extended families and relations. The duties and obligations that form part of this understanding are often overlooked in program planning and delivery. In particular, the role of grandparenting as a form of childcare among CALD communities in Victoria has been well documented but given little consideration in policy development.

Same-sex couples are denied the right to adopt, and to access IVF treatment under the Victorian Infertility Treatment Act.

The right to family life must acknowledge and value families that do not fit the traditional heterosexual two-parent with children model.

Childcare is not accessible or affordable for many people. Waiting lists are long, and the high cost is prohibitive for many.

Cultural conflict between the generations in families from culturally and linguistically diverse backgrounds was identified as a serious problem. People from a CALD background emphasized the importance of being able to raise their children according to their culture and traditions, but often found it hard to reconcile with Australian culture. Many participants, both the parents and the children, emphasized the need for support and education during this transitional process.

Right to protection from violence and a right to be emotionally cared for in a family. Family violence is unacceptable.

More family-friendly work places and practices could contribute to a better balance between work and family life. Single parents find it difficult to find work that is flexible enough to allow them to combine paid work with their child-rearing responsibilities. Those who work full time must meet the high costs of childcare and separation from their children. For those with school age children, few workplaces provide sick leave for looking after children or unpaid leave for school holiday periods. For two parent families, the difficulty of finding appropriate part-time work or family-friendly work places often results in one partner working full time and the other little or not at all. The working parent (typically the father) is deprived of the opportunity to participate meaningfully in their child’s upbringing, the child is deprived of a relationship with both its parents, and the non-working parent risks outdating their qualifications and experience in the job market. For women who separate from their partners, this often leads to a lower standard of living in both the short and long-term. Poorer employment prospects result from being out of the workforce for a period of time and those who do find work are more likely to be employed on a casual or part time basis. Apart from a lower income, this also means that they will take longer to pay off HECS debts and will have less superannuation.

Unpaid work –as carers, as volunteers, and as parents – receives little societal recognition.

Freedom of Religion

‘I have seen here in Australia everybody who is religious comes here has the freedom of worship. There is nothing better than that.’

While freedom of religion is generally accepted in Australia as a right, predominance is tacitly given to Christianity. ‘When they open parliament they open with prayers’, noted one young man.

Freedom of religion is valued as an ideal, but Muslim Australians in particular are finding that they are increasingly stigmatised on the basis of their religion.

‘I think people think that if you’re a Muslim you should shut up, they call you names; it’s hard to get a job, it’s just ridiculous. I still want to be able to say what I want. I still want to be in touch with my religion and be proud of it.’
Housing

A right to secure, affordable, adequate and culturally appropriate accommodation must be protected. The International Covenant on Economic, Social and Cultural Rights (ICESCR), to which Australia is signatory, recognises ‘the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions.’

Growing numbers of low-income households are paying more than they can afford in housing costs. In 2001, 81% of private rental tenants belonging to the lowest 20% of incomes were paying more than 30% of their incomes in rent.12 This has a devastating impact on the capacity of these households to meet other basic needs. Almost half of all low-income private renters cannot pay a utilities bills, one in six went without meals and one in five said they couldn’t pay their car registration or insurance on time.13 This financial stress contributes to ill health and family breakdown undermining the wellbeing of families.
The rate of homelessness remains high in Victoria. In 2003-04, approximately 34,700 Victorians, and 19,550 accompanying children, sought assistance from homelessness services. Being homeless, even temporarily, impacts on every aspect of a person’s life.

There are also long waiting lists for public housing. Public rental currently accounts for 3.8 per cent of the housing market in Victoria and is inadequate at this proportion to meet the needs of all households who cannot afford private rental housing. The waiting list for government housing can be as long as ten years, and even high priority tenants may have to wait a year or longer to be housed.

A woman has two children with disabilities but is unable to get into the housing commission. She is currently paying over one third of social security income on private rental.

One man was sleeping on the floor at a friend’s house. He was advised by a housing agency not to go into private rental or he could lose place on public housing list.

When public housing is available, it is often inadequate. Even for those who are able to access government housing, overcrowding is often a serious problem.

‘11 people in a three bedroom house is not adequate.’

A woman in public housing in rural Victoria lives in a three-bedroom house with her 19 year old son, her adult daughter and her daughter’s two children. Her daughter shares a small bedroom with the two children. Although she has requested a larger house, she hasn’t yet been able to access one.

People often feel unsafe in public housing. Public housing is often located in lower socio-economic areas and people feel that the police are reluctant to intervene when there is trouble.

A woman living in a government-housing neighbourhood feels that she and her children are not safe. People are selling drugs on the street, neighbourhood children throwing firecrackers and verbally abuse people, while the police ignore the violence.

Housing must be culturally appropriate:

A family from Afghanistan who arrived as refugees were housed in high-rise housing commission flats. They had been farmers and were scared of living in a concrete box so far from the earth.

For many Indigenous people the right to housing is intertwined with concepts of land ownership and use. Extended family obligations can lead to overcrowding and eviction.

The right to live in your own your own home was raised as an issue for people with intellectual disabilities who have been institutionalised or are living in Community Residential Units, and by people suffering mental illness who have been subject to Involuntary treatment orders.
Employment

Industrial relations reforms are removing workers’ protections. Workplace agreements mostly benefit those with the strongest bargaining power, which rarely applies to people working in low- or unskilled occupations or part-time or casual workers. This impacts particularly on women, who are more likely to be employed in part-time or casual employment, and people who do not speak English as a first language. Workers with little bargaining power feel helpless to negotiate favourable conditions at the risk of losing their job altogether, which will be made easier for employers under the new unfair dismissal provisions.

A Turkish woman was offered a workplace agreement. When she asked her union for assistance, her employers

‘...then did everything in their power to try and sack me. ...There is lots of discrimination at the government level – now with enterprise bargaining – it is so easy for employers to terminate our employment on discriminatory grounds.’

The industrial relations reforms are further eroding the ability of workers to strike an acceptable balance between work and family commitments. Workers who have particular responsibilities as parents or carers may need flexibility in working arrangements that will make them a less attractive option to employers than workers without such commitments. Women who are likely to become pregnant and start a family may be seen as a liability. Family friendly work practices, including flexible hours of work, enabling workers to take their sick leave to care for sick children and family, flexible annual leave to coincide with school holidays, and paid maternity leave should be guaranteed under legislation.

Single parents find it particularly difficult to find appropriate employment that does not conflict with their childcare responsibilities. This will become even more problematic under the changes to parenting payments when they will be obliged to enter the workforce as their youngest child reaches school age.

Discrimination in employment is unlawful under Victorian legislation, but can be difficult to prove.

‘You sometimes apply for a job and they turn you away just because you are different but to him he can’t tell you that you are black go away... While these laws are very important it is difficult to get any action, they have a limited effect on your life.’

Work rights include the right to social security as a safety net for people who are unable to find appropriate employment.

Adequate Standard of Living

All people should have a right to an adequate standard of living. This includes access to nutritious food, clean drinkable water, clean air, a liveable and safe environment, clothing, and electricity.

‘I feel human needs are just as important as rules protecting freedom of speech and property rights and democracy.’

Right to Vote

The right to vote is not one enjoyed by all Victorians. All people serving 5 years or more in Victorian prisons lose the right to vote.

People with a disability often find that their right to vote is theoretical.

‘If you register with the Electoral Office – you don’t have to vote. They assist with postal votes – language assistance, physical assistance. Most places do that. I’m not sure if it’s widespread. You need to let them know that the assistance is going to be there.’

‘When I vote I find it difficult and I asked if I can have some assistance. And they said no, you’ve gotta do it yourself. I was spewin that day.’
Self Determination

Self-determination is understood broadly as being about the ability to make decisions about a person’s own destiny. Although the term is primarily used in relation to Indigenous peoples, it is a concept that resonates with many communities who are systemically denied the ability to make decisions regarding their own and their group’s lives and future.

The idea that people should be self-governing was seen by the participants as a cornerstone of democracy. People should be able to have a say in decisions made for and about them. This is a fundamental need that emphasises control, destiny and choice.

Community Residential Units (CRUs) were intended to provide a transition between institutionalisation and self-sufficient life in the community. People with an intellectual disability complained that little life-skills training is taking place in CRUs, and that they are like mini-institutions.

‘Even the ones who are badly disabled, they’re meant to be taken out in the community. I don’t see a lot of people with disabilities in the streets. It’s the same as 30 years ago; people would rather see us locked away. We’re not stupid, we’re just as smart as they are, they just have to give us a chance.’

Single mothers spoke of the right to self-determination in terms of the ability to choose the type of work that was appropriate for them, including meaningful work, having unpaid work as volunteers or carers recognised and valued, and the ability to achieve a balance between work and spending time with their family.

Mental health advocates feel the involuntary hospitalisation and involuntary treatment provisions of the Mental Health Act are in direct conflict with the right to self-determination. The right to refuse treatment, and the right to choose one’s own path to health were seen as vital to personal autonomy to respect for people with a mental illness.

‘Sometimes the right to health is seen as the right of society to impose certain interventions against us against our will. Self-determination is important to prevent that. There were many occasions where I was treated against my will, which I won’t recover from.’

Self-determination is a cornerstone of Indigenous rights dialogue. Many of the problems facing communities today stem from the dispossession of Aboriginal people from their land, and the forced assimilation policies of Australia’s recent history.

"Self-determination is good for your health and good for your children. And a comparison of life expectancy statistics shows that Indigenous peoples who have treaties and various self-determining rights have far better health outcomes."

A Charter of Human Rights should include the right to self-determination, and should include an explicit reference to the right of Indigenous Victorians to self-determination.

Equality

All people are born equal. Procedural fairness requires that laws and policies be applied uniformly and in a non-discriminatory manner. Substantive equality, however, recognises that the playing field is not level, and special provisions may need to be made for equitable outcomes.

Equality embraces diversity and respect for difference. It recognises that Victoria is not a homogenous society, and that we need to recognise and celebrate our differences.

Equality entails a right to share equally in the natural and social resources of Victoria.

Human rights in the Charter should be applicable to all people within the state of Victoria, and not be conditional on citizenship status. Some refugees living in Victoria (particularly those on temporary or bridging visas) are denied access to services, work rights, education, family reunification and social security. The right to citizenship and national identity also includes the right to have multiple citizenships and national identities.
Cultural Life

Many of the social and economic problems currently faced by Indigenous communities are consequential to historical policies of assimilation that eroded the cultural fabric of Aboriginal life. Despite changes in policy, Indigenous people feel their culture is still not respected or supported by government and the wider Australian public.

*A decision was made allowing people to ride motorbikes on a burial site in South Australia. What is the difference between allowing that and me going to ride a motorcycle here in a cemetery?*

In many communities, culture and religious freedom cannot be separated. The right to cultural life includes outward expressions of faith such as religious dress, participating in cultural festivals and practices, and public worship.

Cultural life includes a right to maintain a native language, a right to know about one’s culture and a freedom to identify with multiple cultural identities.

Many families from culturally and linguistically diverse backgrounds struggle with intergenerational cultural conflict when the traditional values of parents conflict with the blended cultural values that children or young people are developing. A right to cultural life acknowledges that special assistance may be needed to negotiate cultural conflicts in a sensitive and appropriate manner.

A Charter should include a right to access institutions and services in the community that are culturally sensitive, such as legal institutions, health services and inclusive governance. A Charter should also recognise and celebrate the cultural diversity of Victorians.

Freedom of Speech and Expression

The right to ‘have a say’ was endorsed by many participants. However, it is often the case that vulnerable people do not feel free to speak out.

During the consultation sessions, individual submission forms were supplied for people to fill out. The importance of signing them was explained to the participants, and it was explained that all signed forms would be forwarded to the Human Rights Consultation Committee to be counted as a separate submission. It was also made clear to participants that they were not obliged to sign the forms, and that if they wanted their opinions considered but didn’t want to be personally identified, they were welcome to fill out the submission form without signing it and the contents would be included anonymously in VCOSS’ final report.

Of a total of 141 forms submitted, fifty of them were unsigned. This means that over a third of the participants wanted to have their views heard, but did not want to be personally identified by the government, even though it was made clear that they could choose not to have their submissions made public.

The reluctance to draw attention to themselves inhibits the ability of people who are already experiencing disadvantage or marginalisation to participate in public life and in decision making, even if there is no actual likelihood of being singled out for adverse consequences as a result.

One woman in prison was warned that it would be detrimental to her parole to ‘cause trouble’ by writing letters or advocating for her rights. A number of women commented that they felt they were victimised if they stood up for themselves.

The right to freedom of speech and expression entails the right to be heard and to be acknowledged. This right is theoretical if participation is only tokenistic.

Freedom of the press should also be protected, as well as freedom of communication and expression. Protection of other rights cannot fully operate without a public reporting and accountability process. Certain provisions of the Anti-Terrorism legislation provide an example of the potential damage to civil liberties when state apparatuses operate in secrecy.

The right to speech and expression includes the right to access information. People need to know what is available and what their entitlements are to know when their rights are being infringed. One group believed there is a current lack of transparency regarding information from the Government.
Freedom of Movement

Many people with a disability rely on taxis for their mobility. Taxi cards are available with a doctors certificate, although they can be limited or ‘capped’ depending on the extent of the disability. This limitation often involves a decision about the extent of independence that is reasonable.

‘I’ve got a friend with a physical disability – she’s capped because she can get in and out of the chair. There’s only one bus that’s accessible. The bus driver doesn’t know how to operate the lift.’

‘Because my husband can drive, they took mine away. When he was in hospital, I rang them up – I have to prove to them that he can’t drive me anywhere. He doesn’t bring me into the city. I had to get my doctor to write a letter to say my husband is not able to drive me everywhere.’

Even when provision is made for people with mobility restrictions, freedom of movement is not always guaranteed in practice.

‘They have a lift for people with wheelchairs and scooters. But the lift is blocked by boxes. There are a lot of buildings like that where people in wheelchairs can’t get in.’

One group believed that current Government policies and practices appear to punish women for leaving marriages. Strong disincentives to parent a child on their own means that women may stay married, potentially remaining in situations or relationships that are unsafe or unhealthy. Custody and access orders can legally prevent women from moving.

Right to Not be Arbitrarily Detained

Detention should only occur when a person has committed an offence and is found guilty in a court of law. Arbitrary detention for administrative reasons, for minor infringements of rules or by-laws, or as a precautionary measure, is unacceptable.

‘I was kind enough or stupid enough to put my daughter’s ex boyfriend car in my name, and he got a parking fine, and so I’m looking to go to prison for two days because I can’t afford to pay the parking fine.’

People with a disability who have been institutionalised believed that they were being ‘locked away’, conflicting with their right to live in and participate in the community. They felt that society felt uncomfortable dealing with people with disabilities and preferred them to be invisible.

Consumers and advocates of mental health services believed that involuntary hospitalisation under the Mental Health Act amounted to arbitrary detention.

The recent anti-Terrorism legislation, particularly the provisions to hold people in incommunicado detention for interrogation, and the proposal to electronically track people suspected of little more than having information about possible terrorist activity, was cited as an example of this right already being eroded in Australia:

‘As we know it [the freedom not to be arbitrarily arrested and detained] does not happen now’.

‘It is a bit sad because Australia calls itself the lucky country. If these kinds of laws exist you know it’s basically a police state rather than a free country.’

Participants held the view that Arab and Muslim Australians were the targets of this legislation, and therefore that it had a discriminatory application. This was a view shared by CALD and non-CALD communities alike.

Freedom from Violence / Right to Safety

The right to safety within the community encompasses both physical and emotional safety. It includes the right to be free from violence, sexual abuse and harassment.

One participant shared her experience of being sexually assaulted by a nurse whilst she was involuntarily hospitalised. When she told hospital staff about the assault, they were dismissive because there were inconsistencies in her statements, saying that it was ‘just the illness talking’.

‘I think the Government breached their duty of care to me when I was sexually assaulted by a charge nurse in a psychiatric hospital. Nobody believed it except for a friend of mine, when I saw this same man, I said I didn’t want to go back to that hospital, when I saw him again, I was really
upset, I had friends who supported me and reported it to a student nurse. She said she’d look into it, but told me there were inconsistencies in my report. I must have reported it, I can’t remember, but I must have because it was in my notes. Nobody was allowed to visit me. My parents were told I was too sick for them to visit me. I couldn’t tell anybody. I spoke for the first time about it, I said I wanted to take it further – by that stage my mother said she believed me. She accompanied me there, I made a statement and the follow up was two burly cops coming to my door trying to see if it was substantiated. Two male cops. Armed. I went to the station instead of being bullied into making a statement at my own home. I felt like I couldn’t pursue it. But they didn’t pursue it either.’

Freedom from Discrimination

Everyone has the right to live his or her life free from discrimination. The Victorian Equal Opportunity Act specifies 16 personal attributes that may form the basis of discriminatory treatment, but states that discrimination is not necessarily limited to these attributes.

Discrimination intersects with all the other rights identified as important, including health, education, employment, family life, cultural life and self determination. When any of the other rights are breached, it is often because the individual is experiencing individual or systemic discrimination.

Most of the people VCOSS and the Federation spoke with felt their ‘group’ or community was discriminated against and many of the experiences related in the consultation sessions related to discrimination of one sort or another. Most Victorian anti-discrimination legislation is targeted at individual acts of discrimination that ignores the systemic nature of much discrimination that occurs.

People with an intellectual disability

People with an intellectual disability live with discrimination on a daily basis. The examples are numerous.

A group of people with intellectually impairment were refused entrance to a pub. The security staff claimed they had the right to refuse entry to whomever they wanted. Later negotiations with management resulted in an apology and an agreement that they would not be refused entry again.

A man was walking down the street and got pulled over by the police who thought he was drunk. It was because of his disability - he had cerebral palsy. He was locked up for a little while until it was sorted out.

‘One night I was going somewhere – and [the taxi driver] gave me the wrong change. I made a fuss so he gave the money back to me. They know. It happens a fair bit.’

People with a mental illness

Mental health consumers and advocates felt that they were frequently victims of discrimination at some stage of their life because of their diagnosis.

At university in 1983 one participant had a confrontation with a police officer after letting down a car tyre during a demonstration. During the altercation the officer pointed a gun at him. When he went to court the police ‘suggested’ dropping reference to the gun.

‘Who would the judge believe? I regard this as a violation of human rights’ he said.

A diagnosis of mental illness can be used to invalidate people’s opinions and beliefs. One woman commented that the most offensive phrase to her is

‘...that’s just the illness speaking’ – it’s not the illness, it’s me speaking’

Sole mothers

Sole mothers experience prejudice for not conforming to the norms of the standard family.

One single mother approached her child’s primary school requesting that her son be put in the class being taught by a male teacher because she wanted a male role model for her child. The request was ignored. She believed it would have had a different outcome if a male parent had made the request, and made a point of taking her father with her for support when she had meetings with the school.
Other

People who have been convicted of a crime are given a Criminal Registration Number (CRN), which stays with you for life. This effectively criminalises a person in their life outside and can have significant impact on number of areas of life, including precluding employment in certain occupations.

‘A 19 yr old woman wanted to be a nurse. Having a CRN means that this is impossible since she will not be allowed to work with drugs, regardless of the offence for which she is charged.’

Many participants complained of discriminatory treatment based on their socioeconomic status.

‘If you go to Centre link for some help, they find out where you live, and they treat you differently.’

One participant felt that the staff in welfare and government agencies show less respect to them than someone ‘dressed posh’, and are less likely to believe them.

A rooming house resident in St Kilda felt that the police made assumptions about their behaviour according to how they were dressed:

‘Half of it’s appearance, unfortunately. I’ve got two pairs of jeans, this jacket, these shoes. Apart from that, I’ve only got tracksuits. I get pulled over, stopped. I take my beanie off to try to minimise my chances of being pulled over.

Right to Benefit from Scientific Progress

All people should have the right to equally enjoy the benefits of scientific progress.

IVF infertility treatment in Victoria is restricted to heterosexual, married or de facto couples.

Medical treatment, including experimental treatments is often not generally available, or not included on the PBS. Many people are facing large expenses for cancer treatment that is not subsidized by the public health system.

‘In this area it could be as small as Housing Commission Policy not reflecting advancement in air conditioning technology by not providing air-conditioning in their homes when we get 45-degree days in summer.’

Indigenous participant, Mildura

Freedom of Association

Young people wanted the freedom of association and a right to congregate in public spaces without being identified as gangs.

Consorting laws make assumptions about criminal intent, and unduly restrict the freedom of association.

People from non-English speaking backgrounds, particularly Muslim or Arab Australians were concerned that they are perceived as ‘terrorists’.

Freedom from Torture

People who had experienced involuntary treatment under the Mental Health Act believed that involuntary Mental Health treatment constitutes torture.
Right to Justice / Equality Before the Law

All people should receive equal treatment before the law.

Indigenous people are over-represented in the prison system and are incarcerated at a level disproportionate to the rest of the community.

One participant alleged that gender bias is evident in sentencing, and that divorced or separated women, or women from ‘a deviant family background’ such as broken homes attract heavier sentences.

Participants felt that there should be equal punishment for crimes, and that this was not currently the case. While mitigating circumstances need to be considered, participants felt that value judgements about a person’s respectability influenced sentencing.

‘I know one person who sexually abused a 13 year old girl. He admitted it. He got a 2 year suspended sentence because he had good references. It happened 6 years ago and the girl is still very nervous when she sees this person in the street. Someone else who did this got a 5 year jail term.’

Equality before the law entails equal access to justice, including the right to access legal representation. The level and quality of legal representation a person can access will affect the likelihood of a favourable outcome, particularly in an adversarial legal system such as our own. Legal aid needs to be available for people who are unable to afford legal representation.

Equal access to justice also includes non-discriminatory treatment by all institutions in our justice system, including police investigations and response. Participants complained that police were reluctant to answer calls from people who live in lower socio-economic areas.

‘My life has been threatened, a guy was trying to break into the room, threatened me with ammunition. I started screaming ‘help’ at the top of my lungs, but the cops didn’t come because they knew where it was coming from. No one called the cops. It got that desperate that they got the fire alarm going, fire brigade came before.’

One man felt that the police treated him differently because he has an intellectual disability.

A group of blokes at the [train] station busted me jaw. I got stuck into by 12 of them, I ended up on the floor, with them kicking and punching. My face had stitches along there. But the cops weren’t worried about it. They said we can’t do nothing about it. They said ‘I know you’, and told the fellas just go away and forget about it.

Other examples already cited include where people with disabilities have been arrested on suspicion of being drunk, and the man who was advised not to mention during a court case that the police pulled a gun on him, because he had a mental illness and would not be believed.

Enforcement of rights needs to be available and accessible to safeguard and protect individuals.

Human Treatment when Deprived of Liberty

The treatment of women in prison falls far short of humane treatment that respects the inherent dignity of women incarcerated. Treatment in prison should be limited by considerations necessary and appropriate to punishment or deterrence, and should be clearly articulated. Some of the most pertinent issues raised by the women included:

• The use of frequent and arbitrary strip-searching constituted a violation that amounted to ‘state sanctioned sexual abuse’ in the opinion of many sections of society. One woman summed up the feelings of the women by describing it as ‘visual rape’. It is a particularly inappropriate measure given that it is estimated that 90% of women in prison are survivors of sexual abuse, and that the practice has been proven to be largely ineffectual in achieving its aims of discovering contraband. Force can be used if women do not cooperate.

‘One woman was held down and had her clothes cut off her by male staff when she refused to be strip-searched.’
• Strip-searching of women receiving visitors and of the visitors themselves separates women from their families and connections in the outside world, which are vital to reintegration on release. The fact that babies and young children can also be subjected to this makes many women reluctant to see their families.

• Many women in prison experiencing mental health problems are not provided with appropriate medical treatment and given psychiatric drugs to manage their behaviour rather than for therapeutic reasons. On release, they are often entering the community without having had appropriate treatment.

The ‘wet cell’, a bare concrete cell in the management unit, is often used to contain women assessed as being ‘high risk’. It consists of a concrete slab for a bed, a thin canvas blanket and the women are made to wear a canvas gown. Often this is used for people who are unwell and attempt suicide or other self harming behaviours. The decision to put someone in the ‘wet cell’ can be made by prison officers without reference to medical opinion.

One woman was sent to the “wet cell” for 3 days after slashing her wrists. The light was on 24 hours a day, she was totally isolated and was offered no help or support.

• Confidentiality: Women complained about ‘very personal comments’ being made ‘in front of a group of male officers’, or of being escorted to gynecological appointments by male officers.

One woman visited an Orthopedic Surgeon at St Vincent’s Hospital. She was handcuffed to a waist belt and was wearing ankle shackles. The prison officer remained in the room while she removed the top half of her clothing for examination. To examine her lower back, the surgeon himself had to remove her shoes, socks and trousers and dress her again in front of the officer when he was finished.

• Medical services provided are inadequate. It can be difficult to see staff, and prison officers can use their discretion to deny medical treatment.

• Equality - As there are only two women’s prisons in Victoria, many medium or minimum security prisoners are maintained in maximum security facilities due to the fact the only minimum security facility is full. In contrast, there are many prisons available to accommodate men and they are more likely to be housed in prisons which accord with their security needs.

• The Criminal Record Number given to people who commit an offence remains with them for life and affects future prospects.

• Over-disciplining and high levels of physical control are exercised.

For greater detail regarding humane treatment when deprived of liberty, see the separate submission prepared on behalf of women incarcerated in the Dame Phyllis Frost Centre.
Specific Rights

Particular groups need to be offered special protection in a Charter of Human Rights to recognise the unique vulnerability or disadvantage faced. General statements of rights will be insufficient to encompass the distinctive nature of these communities.

VCOSS and the Federation advocate that specific provisions need to be included in a Charter to recognise the rights of:

- Children,
- Women,
- Indigenous People, and
- People with a disability

There was also a suggestion that the Charter specifically mention the cultural diversity of Victoria.

‘All nationalities should be mentioned in the constitution, link us all together. They say we are a melting pot but we are not until we are all mentioned in the constitution.’

It was suggested that a reluctance to recognise specific group rights reflects the interests of the people who hold political power, mostly adult males from an Anglo-Celtic background.

Other

Other rights mentioned included:

- The right to peace; or to live peacefully;
- The right to be free: To be able to walk around and do things just enjoy life;
- The ability to participate in meaningful pursuits;
- Life, and
- access to resources.

VCOSS and the Federation advocate that all of these aforementioned rights be included in a Victorian Charter of Human Rights.

VCOSS and the Federation acknowledge that situations arise where rights conflict. Although resolution of conflicting rights is difficult, it is no justification to exclude or limit some rights from the outset.

Rights are often spoken of as having corresponding responsibilities. VCOSS and the Federation strongly hold that making rights conditional on corresponding obligations is antithetical to the concept of human rights.
What should be the role of our institutions of government in protecting human rights?

All institutions of government has a responsibility to protect human rights

Government has a responsibility for ensuring that all its institutions are compliant with human rights principles. At the very minimum, they should not be actively breaching human rights, particularly in cases where they have a duty of care.

“When somebody wants help but is failed, who is responsible for that?”

It must be emphasised that human rights are most recognised in their breach, and any attempt to protect or promote human rights must acknowledge that the primary purpose of human rights safeguards is to protect individuals or groups from abuses of power, whether this be by the state or other bodies.

The Government has the responsibility to provide leadership, and institutions of government should be seen to be taking the first step towards better protecting human rights. The Government is seen as powerful and there is much symbolic value in the Government coming out as the leader on this issue. This involves not only ensuring that the human rights legislation is enforceable but also means ensuring that the general population is educated about the importance of such legislation. All of this contributes to encouraging a cultural and behavioural shift in society.

PARLIAMENT

VC OSS and the Federation acknowledge the Victorian Government’s concern to preserve Parliamentary sovereignty. This sovereignty, however, should be subject to the usual checks and balances including providing appropriate powers to the judiciary.

Parliament can show leadership by enacting a Charter of Human Rights that ensures that fundamental human rights are protected from changes in leadership or the tides of politics.

Election time accountability is too simplistic a model of democracy. Democracy is a process, not an event that takes place every four years. Political consequences only apply if a majority of the population are affected, and there are no guarantees that the rights or interests of any minority will be respected or protected through the election process.

There is also the possibility that policy platforms will be determined by what is electorally popular: ‘the Government’s never interested in anything to do with us people with intellectual disabilities.’

Elections are complex and are not won or lost on a single issue. A population may not support a particular law or policy, but will vote for a party regardless for a host of other reasons.

Any existing or proposed law that purports to protect human rights must be properly implemented and adhered to by government and non-government bodies.

Parliament needs to ensure that a dialogue with the community informs all law making. One participant commented that

‘the Government should listen to the people before making a law.’
EXECUTIVE

New legislation should be checked against human rights standards and a statement of compatibility prepared by the Attorney General.

All major policies introduced should be accompanied by a statement of compatibility prepared by the relevant government department.

Any law or policy that breaches human rights standards set out in a Charter should not be able to be introduced without a compelling justification and should contain a sunset clause as a matter of course.

As stated previously in this submission, a Charter of Rights is an important starting point, but it is not enough. Victorian Government departments and statutory authorities should be mandated to change their policies and administration practices to comply with standards of rights protection and promotion. Only if this occurs can a human rights culture truly be said to exist in all arms of the Victorian Government.

One group discussed the role of child welfare agencies in family disputes. Indigenous people found welfare agencies made them feel uncomfortable under supervision making it hard for parents to have parenting relationships and communicate with their children. The participants suggested that family meetings with welfare agencies should be conducted in a neutral space, and supervised by a person who is not going to make the parents feel ‘small’ or on edge. Participants suggested that a culturally appropriate organisation should mediate the dispute so that the process does not lead to the parents losing contact with their children.

The introduction of a Charter of Rights for Victoria provides an excellent opportunity to challenge the residual culture of ‘welfarism’ still evident in some Victorian Government departments through their dealings with people experiencing social and economic disadvantage.

One group felt that public policy directed at single mothers is premised on the misconception of single mothers as ‘pregnant 16 year olds’, despite the fact that the average age of a single mother is 33 years. They felt policy was designed with the intention of making single parenthood an unattractive option.

To support the requirement that Victorian Government departments ensure their policies and administration practices, including the development of new policy and programs comply with human rights principles, VCOSS and the Federation recommend:

- Mandatory training on human rights standards, and compliance with such standards, for all Government departmental and statutory authority employees. Such training should be developed in conjunction with community sector bodies such as VCOSS and the Federation of Community Legal Centres, who have experience in translating human rights standards into practical measures and in conducting training in understanding and working within a rights-based culture.

- Human rights-based ‘performance indicators’ or similar compliance mechanisms for Government departments, with incidence of compliance or non-compliance reported in Departmental annual reports.

- Human rights codes of conduct should be introduced for government departments.

COURTS

Courts must be given the power to act as an effective check to the unrestrained use of government power.

‘Only the courts can protect me against abuse of rights by the executive and/or the legislature.’

The power to interpret existing legislation consistent with a Charter of Rights would be a valuable step towards creating a legislative dialogue of human rights. Courts should be able to make a declaration of incompatibility between existing legislation and a Charter. To demonstrate a serious commitment to human rights, it would be preferable if courts were given the power to strike down incompatible legislation.

Human Rights legislation needs to be enforceable and mechanisms for redress must be available in cases where human rights are breached.
Consideration should be given to forming more specialist courts. Experience with existing specialist courts in Victoria and other jurisdictions has demonstrated that specialist courts provide more accessible justice to certain groups of people. Specific domestic violence units within the legal system in South Australia and in the ACT, and the Drug Court in Victoria are specialised in their area of law and are better able to deal with the issues that arise in domestic violence or drug related cases. Providing specially trained experts in areas of law such as domestic violence better protects the rights of women and children who are the subject of such cases. Appropriate training and education of the judiciary can be more effectively targeted in such cases.

Legal representation must be available to everyone if rights are to be adequately enforced. Criteria for the provision of legal aid, including the types of cases eligible and the amount of funding available, need to be revised.

OTHER

Acknowledging the increasing role of private and community sector organisations in the delivery of Government and essential services in Victoria, VCOSS and the Federation recommend that the measures outlined above for government departments also apply to private and community sector organisations through the inclusion of human rights criteria as conditions of Government contracts.

VCOSS and the Federation note that the human rights training seminars VCOSS provided to Victorian community sector organisations in late 2003 was strongly welcomed and identified as being of significant value is assessing organisational structures, processes and practices against a human rights framework. This training was funded through a grant received from the Reichstein Foundation. Where appropriate, the Government should ensure that it provides sufficient resourcing to enable these measures to be implemented, particularly for community sector organisations. Furthermore, the renewal of such contracts should be conditional on compliance with human rights indicators.

The Government has a role in educating the community about their rights to ensure that all people have knowledge and understanding of how they can participate fully in democratic processes.
What should happen if a person’s rights are breached?

Rights enumerated in a Charter of Rights should be enforceable.

If rights enumerated in a Charter of Rights are not enforceable, it will be difficult for the community to take human rights seriously, and to believe in a Charter of Rights being more than rhetoric. Participants strongly supported a range of enforceable remedies and ‘multiple administrative and judicial pathways’ for enforcement.

Consideration should be given to the expansion of the powers of the Equal Opportunity Commission of Victoria (EOCV) to enable it to represent people when discrimination occurs, rather than acting solely as a mediation body. In addition, the EOC should be allocated the power and resources to deal broadly with structural discrimination, rather than dealing with limited categories of discrimination on a case-by-case basis. This would strengthen the human rights culture in Victoria by broadening the understanding that particular rights violations such as discrimination are often systemic – they affect a group or community of people sharing similar attributes, such as Indigenous people or people with disabilities. Promoting this understanding would increase understanding of rights protections being especially important for people experiencing particular disadvantage.

Many existing forms of rights protection, such as those provided through the Equal Opportunity Commission, are not well understood by, or accessible to, many people in Victoria. Any legislative remedies will face similar limitations. Therefore the Victorian Government needs to explore alternative non-judicial remedies for human rights breaches.

Disturbingly, the community consultations showed clearly that people do not feel they are able to turn to the government or to statutory bodies for assistance if their rights are breached. Many people we spoke with felt that in the current situation, there was little that could be done to effectively protect their rights, and that there was little action they could take if their rights were breached.

‘There is nothing she can do – she can ignore the comments’
Participant in African Women’s group

This was particularly true for people from a non-English speaking background and visible minorities. One group of women spoke of ‘being strong’ in themselves if harassed or abused and did not believe there was any help or support available to them.

Another person talking about racial discrimination in the workplace suggested that the best option might be to ‘keep (the) job and keep going’. People felt largely that the onus was on them themselves to deal with the discrimination.

It is concerning that people who may be most in need of rights protection feel the onus of protecting themselves against discrimination falls to them. It is important that any remedies are explored collaboratively with affected communities, and that appropriate remedies are devised through consultation.

VCOSS and the Federation strongly urge community education around rights protection and available remedies, and conversely, that government bodies and the judiciary are educated about community concerns.

One view was that assistance is available, but only if you are able to navigate the system and are able to stand up for yourself: ‘If you want something bad enough, help is out there. You need the strength to ask for it.’

A woman with a disability hailed a taxi to take her and a friend a short distance away.

‘We got in the taxi and he said, why don’t you walk? He said to get out. I said we’re gonna stay in the taxi. I stayed in the taxi. He said it twice to me. I said I’m not getting out of the taxi.’ The taxi driver eventually took them where they wanted to go, but only because she stood her ground.

She didn’t complain to anyone or take the matter further.
**LEGAL REMEDIES**

VCOSS and the Federation acknowledge the Victorian Government’s preference stated in the discussion paper for dialogue, education, discussion and good practice as the most appropriate and effective means of preventing breaches of rights.

However, while dialogue, education and good practice are key to preventing breaches of rights, participants were very clear that there are no rights without effective remedies. ‘Effective legal remedies must be available for violations or breaches of rights. To deny legal remedies for violations of rights sends the message that human rights are optional and that there are no consequences for violating rights. Having a law, and consequences for breaking the law makes a strong stand in favour of respecting human rights.

‘[T]here should be some sort of consequence for interfering with another person’s human rights.’

‘All abuse should be made public and the perpetrators held accountable’

VCOSS and the Federation advocate that individuals should be able to take individual action if they are subjected to human rights abuse. Courts should be able to order monetary compensation for damage, order that certain actions should be stopped, or that certain acts must be undertaken - for instance the implementation of organizational policies or procedures, or an apology.

‘Hitting at the hip pocket – suing for negligence, – that’s what a lot of us are here for, to say what the hell can we do. What we’re doing today is not working. Inability to get good healthcare is an accepted part for most of us.’

Whatever options are available for violations of rights needs to be understood by the public. The law can be confusing and intimidating for ordinary people and any changes to legislation will need to be accompanied by public education campaigns.

‘I am very aware about how poorly educated I am about the law. I don’t understand it. It is all very complicated. The Government and lawyers have a responsibility to go out and educate people (about) the laws and what they mean’

Legal remedies are often least accessible to those who need them the most. A human rights framework needs to consider ways of making legal remedies for breaches more accessible. Some suggestions include:

- A special body could be given the power to run test cases and act on systemic discrimination. This role could be undertaken perhaps by a Human Rights Commission as part of an expanded role of the Equal Opportunity Commission, or another similar body that is established.
- Legal representation through for example legal aid and other forms of assistance should be available for people who need it.
- Consider giving standing to other bodies (eg statutory bodies, advocacy organisations etc) to take action on an individual’s behalf.
- Establish specialised courts, such as family violence courts, drugs courts or Koori courts.

**OTHER REMEDIES**

‘Law is important, but … sometimes it can’t make a big difference.’

Legal remedies provide an important deterrent for abuses of human rights, and can provide results for some individuals in the most egregious examples of human rights violations. However, there are limitations to what legal remedies can achieve:

- Many people are intimidated by legal proceedings and will view them as a last resort, if in fact they believe them to be an option at all;
- The burden of proof is high;
- Court proceedings can be time consuming, stressful and costly;
• The consequences of losing a court case can act as a deterrent to initiating action;
• Litigation is individual and event-specific. It does not generally address systemic problems of rights abuses, nor complaints by a group of people.
• Legal processes and remedies may not be culturally appropriate or meaningful.

‘You sometimes apply for a job and they turn you away just because you are different but he can’t tell you that you are black, go away. While these laws are very important it is difficult to get any action, they have a limited effect on your life.’

A range of alternative dispute resolution and conciliation measures need to be put in place which are more accessible, less intimidating, less costly, carry less risk to the person initiating the complaint, and which can provide individually tailored solutions.

Any complaints mechanisms must be equally accessible to everybody. This access must be more than theoretical.

A statutory body, such as a Human Rights Commissioner could have a valuable role to play in alternative dispute resolution procedures. Any such Commissioner would need to be independent and impartial, and could either be a specially created body, or be a part of an expanded Equal Opportunity Commission of Victoria. On the basis of the needs expressed by participants in our consultations, VCOSS and the Federation advocate that the Human Rights Commissioner or equivalent should be given the power to investigate and arbitrate individual complaints as well as undertaking and educative and training role. They could also be well placed to undertake research and consultation into appropriate procedures. The Human Rights Commission must be empowered to investigate and take appropriate action on both individual and systemic instances of rights violations. Possible alternatives include:

• Mediation
• Apologies
• A formal complaint mechanism, such as a Human Rights Ombudsman or a Human Rights Commission.

‘The Ombudsman is really good, they really helped. We had our gas disconnected, been paying $30 a fortnight but one week missed payment – tried to pay it the next morning. the gas company cut it off, even though we had agreement. All because I was one day late in paying, was paid on the Friday, disconnected it and told me they wouldn’t reconnect it until I payed what I owed - $300 [the whole amount outstanding]. I rang the ombudsman and 2 hours later it was on again.’

Sometimes the threat of possible action is sufficient to have people ‘do the right thing’.

‘I wasn’t being charged for an account, and I just kept it open. They started slapping fees on it without telling, I warned them I’d tell the bank ombudsman, and then it was okay.’

• Education and training (eg providing staff at Consumer Affairs Victoria with Human Rights training)
• Codes of ethics could be enacted in companies and government, this could be done for instance by linking rights to the existing public service charter.
• Culturally appropriate remedies, including Indigenous customary law;
• Media campaigns - advertisements on television similar to the current ones on bullying in the workplace. Where advertisements perpetrate negative stereotypes about certain groups, media corporations could be held accountable under potential new human rights legislation.
• Encourage local councils to enact and enforce bylaws and regulations:

‘Try to find a disability park in the city or anywhere else. People without disability stickers park in those parks. It’s difficult to find a park. If you find someone who parks there and you speak to them, they swear at you. Have a $500 fine.’

‘I think it should be $1000, that would learn them their lesson.’

Each situation will have multiple possible alternatives that can be explored.
One group gave the example of a recent report in the newspaper about a blind man with a guide dog who got stuck at the train station.

‘Because of the reconstruction of Spencer St, the lift wasn’t working and he got stuck there. He was there for hours. He was late for an appointment. They didn’t get him a taxi, the staff didn’t know the procedures for what to do. They should be accountable for their actions. They should give him compensation, an apology, an assurance that it wouldn’t happen again. What if there were several people there and there was a fire? You have to have a policy, a plan, procedure.’

**COMMUNITY EDUCATION**

Community education is also important.

‘I think some breaches are a result of lack of education and people’s ignorance.’

An example was given of a campaign by an organisation hoping to raise money and awareness of mental health issues. The phrase they used in their marketing was ‘help us help them’. This was described by a participant as ‘incredibly offensive’. It demonstrates a paternalistic view of welfare in which individuals are seen as passive recipients of charity. Education would help to challenge such beliefs and reinstate consumers of services as people with agency to control their own lives and treatment.

A legitimate concern around alternative dispute resolution measures is that they will hinder development of jurisprudence around the legislation. It is important that any alternative measures available do not preclude the possibility of taking a complaint to court for those who wish to do so, or when alternatives fail.

Dispute resolution procedures and available remedies must address the disparity of wealth and power between the person making the complaint – who is often vulnerable with few resources at her or his disposal – and the person or body against whom the complaint is being made – frequently individuals or bodies in positions of power over the complainant or with greater resources.

‘In the case of wealthy corporations and organisations being able to litigate against those who protect their activities - such organisations are violating right to free speech and public participation and should not only compensate for costs incurred but also have to pay additional money as a form of restorative justice and acknowledge any stress incurred.’
What wider changes would be needed if Victoria brought about a Charter of Human Rights?

Education, awareness, and training are needed to promote a culture of rights to make the Charter real for Victorians and more than just a law.

If Victoria introduced a Charter of Rights, the rights protected in it would need to be given substantive effect. Education, awareness, and training are needed to promote a culture of rights to make the Charter real for Victorians and more than just a law.

A Human Rights Commission would most appropriately act as the body overseeing human rights education and training.

COMMUNITY EDUCATION

The primary responsibility for educating the wider community about human rights should rest with an appropriately empowered and resourced statutory body, such as a Human Rights Commission. As noted previously, one possibility is that this could form part of an expanded Equal Opportunity Commission.

A Human Rights Commission could act as a central coordinating body to explore the most effective ways of providing community education. VCOSS and the Federation advocate that the most successful and appropriate model of community education is one that is driven by the community itself, using community members wherever possible to conduct the training. Tapping into local communities enables a program to capitalise on trust that has already been established, particularly important for marginalised communities who may not trust ‘the government’ to have their best interests at heart.

‘We have a right to know to understand what has been happening around us in Australia and we have a right as women to educate their community. There are enough people who speak English who can help us in our community understand what is going on in the community and government here.’

People belong simultaneously to many different ‘communities’, and have multiple corresponding identities. People identify simultaneously as Australian, Victorian, as a member of their local community, faith group, interest group or through sharing a similar characteristic. The smaller and more specific the level of group identity, the higher level of trust and confidence generally shared. The success of the consultative model utilised in the joint VCOSS and the Federation Human Rights Community Engagement Project was largely due to its utilisation of existing established localised networks.

VCOSS and Federation Human Rights Community Engagement Project

The community consultation model employed by VCOSS and the Federation owed its success to a number of factors, outlined below, could usefully be replicated in other promotional or educational campaigns.

1. VCOSS and the Federation are sector wide peak bodies. The project was advertised and promoted through existing networks of organisational members who have long-standing existing relationships with VCOSS or the Federation. Because VCOSS and the Federation represent the interests of their membership, the member organisations had confidence that the way that the sessions would be run, and that the way in which the information gathered would be used would be in their members interests.

2. Three ‘train the trainer’ sessions were initially held to empower community members, representatives and leaders to engage in their own education and consultation sessions. VCOSS and the Federation acknowledge that a community development model which utilises the knowledge and experience of the community itself, rather than relying on outside ‘experts’ creates and capitalises on stronger levels of connection and trust within communities.
3. A series of community education and consultation sessions were held with a diverse range of people who experience disadvantage. These sessions were organised through the membership and networks of VCOSS and the Federation, which have long-standing existing relationships with VCOSS or the Federation and who were therefore happy to facilitate sessions. The organisations then promoted the sessions among their clients and members who had a similar relationship of trust and confidence with the agency.

4. A number of participants wanted more information about VCOSS at the beginning of the community education and consultation sessions. A strong sense from the participants was that they felt more comfortable once they had an understanding of VCOSS’ work, and felt comfortable to talk freely with us because we were not ‘from the government’. One participant was clear to point out that this was meant as a compliment.

5. Successful elements:

   • **Information provision**: Many participants were ignorant of the proposed changes, and about human rights generally. To participant meaningfully, they needed an appropriate context.

   • **Interactive model**: participants were encouraged to ask questions throughout the session, to ask for clarification and to question the content or perspective being offered, or offer their own perspective on the material presented. Information was limited and broken up into smaller blocks, interspersed with group work and discussion.

   • **Small groups**: sessions were limited to 15 participants to encourage participation and discussion.

   • **Location**: sessions were held in community settings. Often, this was with an established group who met regularly in the same place. Going out to the community also creates a sense that their views are important enough to be sought out.

   • **Flexibility**: The community education and consultation sessions were individually tailored for each group to make it understandable and relevant to their particular experience. This included preliminary discussions with the participating agencies around the needs of the participants, and their likely expectations. Although a ‘standard’ training manual had been developed, it was acknowledged that while this would form the basis for each session, it would need to be significantly modified in each situation. Modifications included:

     - **Time of session**: some sessions needed to run during working hours to cater for paid workers, or to tap into existing groups, while others needed to be run on the evenings or weekends.

     - **Length of session**: The training manual was designed for a half-day session to provide adequate time for information and training, and for discussion and consultation. Some groups requested shorter sessions due to other commitments or concentration span, while one group with communication impairment was given a full day session to take the material at a pace that was comfortable.

     - **Format of materials**: modifications to materials included translations into Arabic, Somali and Turkish, ‘plain language’ versions and large print.

   • **Reciprocity**: It is important in any community session that it is made clear at the outset what the worker expects to gain from the session, and what they are prepared to give in return, for instance an undertaking to keep participants informed of any outcomes of the session. It is vital for ongoing trust that this commitment is followed through.

A large number of community organisations already do significant work with the most marginalised and disadvantaged Victorians. A great deal of the work they do is directly related to the rights of their clients or members, although few of them conceptualise the work they do in terms of human rights.

The Victorian Government could easily capitalise on the community interest and enthusiasm by resourcing existing organisations to ‘add on’ human rights training to the work already being undertaken. A training program targeting community workers and representatives could be promoted through existing relationships using a similar model described above.
TRAINING

A degree of training will be necessary for any body or institution of government involved in the development or implementation of a human rights framework. This includes the judiciary and the whole of government, from parliamentarians to senior bureaucrats, to workers in government departments.

Decision makers need to be aware of the implications of the new legislation, and the community response to it. Public servants need to be aware of issues surrounding compliance and auditing.

The Human Rights Commission could implement training programs to strategically target ‘worst offenders’ of human rights breaches following an auditing of complaints.

OTHER WAYS THE GOVERNMENT CAN TAKE THE LEAD IN PROMOTING HUMAN RIGHTS

The Victorian Government could demonstrate leadership in protecting human rights by adequately resourcing a Human Rights Commission.

Community sector organisations could be funded to make submissions on areas of experience to the Commissioner.

Compliance procedures could be introduced within government, and for any funded organisations. This would require more than a simple statement of compliance – as one participant noted, ‘most companies and departments can simply say they comply and it wouldn’t make them compliant.’ Clear objectives and criteria for policies and procedures would need to be established for compliance for government and non-government (including corporations), such as performance indicators.

Individual workplace agreements and Industrial Awards should have human rights protections in them that comply with human rights principles.

Further dialogue needs to take place on the topic of multiculturalism and the fact that Victoria is not a homogenous society. The media, particularly local media, can play a role in highlighting value of community harmony in a non-homogenous society.

An advertising campaign similar to the TAC or workplace bullying campaigns could provide a good impetus for community engagement in the early stages of the Charter.

Encourage non-government organisations and businesses to undertake human rights auditing, compliance and reporting requirements for government funding or contracts.

‘I reckon it’s bad privatising everything because it’s turning into chaos. The government doesn’t want the responsibility. It’s wrong. People won’t get good service. You know the Post Office – since it’s been privatized, everything’s in the middle and there’s no way for people in a wheelchair to get through.’

Establish a human rights working group to advise and encourage professional bodies (eg media, health professionals etc) to incorporate human rights considerations in their professional codes of conduct or codes of ethics.

Work with local government to implement human rights action plans at a local government level.

Provide information and assistance to other State and Territory governments interested in introducing Charters, and actively promote a coordinated national approach to Bills of rights.

It is noted that a Victorian Charter of Rights will only have application to areas which fall under the responsibility of the Victorian state government, and that many aspects of life for Victorians are impacted on by federal legislation and policy. A strong state-based human rights culture could contribute to a national dialogue on the implementation of a federal Charter of Rights.

The Victorian Government can give effect as far as practicable to provisions in other international treaties. The example was given of Australia not signing certain parts of international treaties, such as the reservation on paid maternity leave in the Women’s Convention. For provisions outside its jurisdiction, the Victorian government can lobby the federal government to be compliant.
What role could the wider community play in protecting and promoting human rights?

The community must be at the centre of any reform process.

Many of the strategies discussed in Question 6 are applicable here, as the relationship between government and the wider community is symbiotic and it is impossible to completely separate the respective roles.

VCOSS, the Federation and other community sector peak bodies, if adequately resourced, are well placed to assist the Victorian Government to promote human rights in the broader Victorian community. As noted, in 2003, VCOSS ran a series of training seminars informing community sector organisations about human rights and how to comply with them through good organisational practice. The feedback from these seminars revealed that the community sector believed in the value of human rights but needed to be informed and educated about what human rights are, and their purposes. A culture cannot change without proper information and training. VCOSS and the Federation strongly recommends that education and training programs be implemented to inform policy leaders, community sector organisations and the general community about human rights and rights protections, in order to make a human rights culture ‘real’ in Victoria.

There is an opportunity for non-government bodies, both non-profit and for-profit to undertake voluntary compliance with human rights principles elaborated in the Victorian Charter. Statements of compatibility could be included in annual reporting requirements. For non-profits, this could improve accountability to the community; for businesses it could be an opportunity to demonstrate corporate social responsibility.

Training and review of procedures within workplaces could help ensure that human rights are respected.

Participants felt that it was important for rights not just to be ‘paper rights’. To ensure rights are given effect, VCOSS and the Federation strongly advocate for a body such as a Human Rights Commission to be adequately resourced, however, changes in working methodology can minimise demands on resources.

An example already mentioned was of a person with an intellectual disability who felt that healthcare providers often neglect to communicate directly with intellectually disabled patients. It would take only a small change in work practice for the doctors to address the patient and not the carer, and to speak in language that is clear and easily understood.

As mentioned earlier, a ‘train the trainer’ model could prove a cost effective engagement strategy that is consistent with a community centred approach and enables community members to engage in their own information dissemination.

Already a large number of organisations and groups are doing ‘human rights work’ without conceptualising it in that way. Changing the way service providers and consumers think about their services re-frames much of the work already being done as human rights work.

‘Human Rights charters are aspirational. But they are also about making those aspirations a part of the daily life of people. In the homelessness sector, for some years now the dialogue has been client focused and rights based. It has filtered down and created an expectation for clients that they will be treated with dignity and respect. It has set a framework that enables clients and service providers to ensure people are looked after. With community organisations it is a useful dialogue to have with people.’

In this way, community-based organisations can provide services and education that could complement the services provided by the government.

To create cultural change it is necessary to encourage a dialogue. One participant commented that more talking was needed, both ‘public talking and private talking’.

More community forums were recommended to disseminate information.
One of the participants did not think there were many people with disabilities in the streets and that ‘people would rather see us locked away’. Part of the ‘private talking’ is about personal interaction, and helping the community understand ‘what we have to put up with, what we have to go through.’ This will only happen when people with physical and intellectual disabilities are active participants in the community.

Some communities will need more assistance than others to fully participate, and VCOS and the Federation recommend that the Government commits to resourcing special needs.

People from non-English speaking backgrounds may need interpreters or translated written material to fully access services. An example was given by a Turkish-speaking woman of visiting a hospital, where the lack of available translators impaired the ability of the health professionals to provide her with quality care.

In other situations, particularly where there is a high concentration of people from one cultural or linguistic background, hiring a bilingual or bicultural worker would achieve the same result with little or no additional financial commitment.

Increased use of advocates was also recommended for people who have difficulty claiming their own rights. Advocates generally come from the communities themselves, and provide a bridge between the individual and the system. As one participant commented,

‘we have so much more to offer than just our stories. We have people capable already of being leaders. We’ve been banging on about this for about 15 years’.

Advocates are currently underutilised and rarely funded.

‘Reactive advocacy’, we get called in only after the fire is burning. Instead of waiting for the shit to hit the fan, imagine you find yourself in hospital, you’re not feeling too flash, you’re not too coherent, you’re frightened, in a very alien space and you’re struggling to make sense – imagine if you’re greeted at the door by an advocate whose job is to assist you....

A pilot project, the Rosenman Project,18 employing advocates in this way was highly successful.

‘There’s huge savings to the government as well, and obvious so beneficial to us. We put it to the government here, it’s unanimously supported by the consumer community here, but I don’t know, it’s been put on the shelf. You can’t get the government to take notice. Doesn’t take consumer-oriented research seriously. It’s all about consumer participation.’

A commitment to meaningful engagement is one of the most effective ways of enabling the wider community to protect and promote human rights.

A group of mental health service users use the slogan, ‘nothing about us without us’. It captures what we’re saying, we’ve got to be genuine participants in what affects us.’

The message is very clear: Listen to us.
What other strategies are needed to better protect human rights?

A number of elements are required, including community education and training, a Human Rights Action Plan, a review mechanism, and an ongoing dialogue with the community.

Strategies and tools for protecting human rights, including training and education, and the role of the institutions of government and the wider community have been discussed at length in previous questions. (See Questions 4, 5, 6 and 7).

The Victorian Government needs to commit to an ongoing human rights dialogue, both within government and importantly, with the wider community. This initial consultation process must be seen as a starting point.

VC OSS and the Federation advocate that a key part of any Charter of Human Rights should be a review mechanism. Given the overwhelming support for social, cultural and economic rights from disadvantaged community participants, if social, cultural and economic rights are excluded, as indicated is intended in the Statement of Intent, a review mechanism should be included to examine the feasibility of including ESC Rights at a later date. If the Charter is a legislative Act of Parliament, again as indicated in the Statement of Intent, a review mechanism should be included to examine the feasibility of entrenching it as a Constitutional Bill of Rights at a later date.

VC OSS and the Federation recommend that reviews on regular intervals be included in the Victorian Charter of Human Rights in order to reappraise the Act ensure that government departments are incorporating systematic human rights considerations into major policy and law planning in Victoria.

A Government action plan to protect human rights would be beneficial to allow a holistic, systemic approach to be taken to human rights. This would include planning and evaluation of the existing measures, and strategies for further change.

Some specific strategies not already discussed included:

- Advanced directives: similar to a ‘living will’ for people undergoing forced treatment. In it, a person can say in advance that if they find themselves hospitalised, they agree or disagree to a certain drug, treatment or doctor. Under an advanced directive, it would also possible to nominate a specific advocate in advance.

- Linking rights to the existing public service charter.

- Looking for creative, practical solutions to ordinary problems:

  ‘There’s this lady who runs a shop and she’s got a step on her shop, and she’s made a little wooden ramp, so if someone wants to get in a wheelchair, she puts it out. If she can do it, why can’t the others?’

  ‘If it’s against the law, then everyone would do it.’

  ‘Make them close their doors until it’s fixed!’

- Information provided in various media: Some participants found the Legal aid help line very helpful. In Bendigo, participants Legal Aid offer small sessions every few months covering topics like handling divorce, or what intervention or restraining orders mean. Community legal centres across Victoria specialise in imparting information about rights through face-to-face community legal education.
If Victoria introduced a Charter of Human Rights, what should happen next?

In the light of the significant interest and enthusiasm for human rights expressed by the participants VCOSS and the Federation strongly recommend that a community based review process of any human rights mechanisms be introduced.

A reporting process by which government could outline measures taken to implement compliance with human rights criteria would help to document the success of the human rights reforms. A Human Rights Commissioner could supervise the process, with submissions from community organisations.

If Victoria introduced a Human Rights Act, a coordinated strategy is needed to ensure that all Victorians are aware of, and understand the legislation and its implications. The experience of VCOSS and the Federation in undertaking the community education and consultations was that there was a high level of community ignorance about the proposed Charter, and a great deal of misunderstanding about what rights are and are not protected in Australia.

The response and interest from organisations and individuals, however, was overwhelmingly enthusiastic. VCOSS and the Federation received a number of requests from community organisations to run consultation sessions, which we were unable to meet due to time and resource restrictions.

A number of participants requested more information, and most of the groups expressed an interest in ongoing training sessions.

'It feel like I've had a good brief introduction. I feel like I've managed to say a few things. I have to say that I don't think its finished. I'd like to recommend that there be more days spent on this.'

It is clear that the level of interest and enthusiasm for human rights knowledge and education in the community is not matched by the information available.

It is crucial that the community needs to be involved at each stage of development or review, and that any further changes are informed by a consultative process. Each person needs to have the opportunity to be involved in a participatory process of decision-making in areas that affect their lives.

VCOSS and the Federation recognise that a Charter of Human Rights is the first stage in a process that should be informed by the needs and wishes of Victorians. Some measures to promote and evaluate this process have been suggested above. As such, VCOSS and the Federation believe that given the desire of the community, as evidenced by project participants, to be involved in developing human rights protections, legislation is the most appropriate form for a Victorian Charter to take at this point in time. Enshrining the Charter in the Victorian Constitution should be seen as the ultimate objective once a sufficient dialogue has taken place and any appropriate changes have been made.
Is there anything else you would like to tell us about how human rights should be protected in Victoria?

VCOSS and the Federation commend the Victorian Government for taking this important step, and reiterate the importance of an ongoing, meaningful, participatory dialogue with all sections of the Victorian community, particularly those who experience disadvantage. A wider, ongoing process of consultation will give more people the opportunity to be involved.

The process must be transparent.

Rights protection should be systemic, and not dependent on individual ability to enforce rights.

The intention of a Charter of Human Rights should be to prevent abuse and inequity, and provide a clear statement that the Victorian government accepts a duty of care to its citizens, to enable everyone to participate meaningfully in their community.

‘There are always groups within society that will attempt to subdue/repress/violate other groups with economic, political, personal or physical power. Human rights legislation is needed to ensure equality and power in participation’

The Charter of Human Rights needs to be in language accessible to all.

A Charter of Human Rights provides important protection against possible future infringements. It is a clear statement of the values our society holds.

VCOSS and the Federation refer the Department of Justice and the Victorian Human Rights Consultation Committee to the submissions of each of the community education and consultation sessions for further comments.
Endnotes

2 *The Human Right to Housing in Australia*, p. 28.
3 See individual submissions for greater detail.
4 *Sisters Inside, A Campaign to End the Sexual Assault of Women by the State*, Sisters Inside, Brisbane, 2005.
8 ... p.99-101, provides a listing of waiting times for primary and community health services.
11 ICCPR Article 23 (1)
12 Source: ABS Customised data tables from the ABS 2001 Census of Population and Housing in Housing Research for a Fairer Victoria, p. 57.
17 *Sisters Inside, A Campaign to End the Sexual Assault of Women by the State*.
18 ‘Close Personal Advocacy in Involuntary Treatment for Mental Illness’