

CURRAN CONSULTING: ENHANCING: ENHANCING JUSTICE AND HUMAN RIGHTS
ABN 17509929143 RBN B2384236M
Email: legalaidhumanrights@gmail.com
Phone Mobile: 0404 106 614

1 July 2011

Mr Edward O'Donohue
The Chair
Scrutiny of Acts Committee
Parliament of Victoria
charter.review@parliament.vic.gov.au

Dear Mr O'Donohue,

SUBMISSION ON THE VICTORIAN CHARTER OF RIGHTS AND RESPONSIBILITIES TO THE SCRUTINY OF ACTS COMMITTEE, 1 JULY 2011.

Background

I write this submission from the perspective of someone who has utilised the Charter since its implementation to advance the human rights of ordinary Victorians. I have done this whilst working as a community lawyer but also in a voluntary capacity often after-hours and on weekends, as I am strongly committed to realising the human rights protection and enforcement that the Charter provides.

My experience as a community lawyer, working with people at a grass roots level to resolve their problems, legal and non-legal, has shown starkly that people's experience of the realisation of their human rights differs strongly the view often held by politicians and the media. The Charter, in my view, gives politicians and media an opportunity to better engage and be responsive to the day to day realities of people's lives.

Issues such as a lack of knowledge of rights, a fear of reprisal if they complain about human rights infringements and a lack of capacity or sense of a lack of power in brokering better human rights outcomes and a lack of recourses are inhibitors to people attaining their human rights. The Charter has provided the beginnings of the opportunity to rectify this which did not exist prior to its introduction. There is still along way to go as the Charter has been in force for a short time and the 'culture of human rights' that former High Court judge Sir Ronald Wilson spoke of, takes time to develop. A legislative instrument assists greatly in this process.

I have recently moved interstate at least until the end of 2011 and luckily am currently working in a jurisdiction which also has human rights protection, namely the ACT.

It is my view that when the Victorian Parliament introduced the Charter of Rights and Responsibilities it was one of the most important and progressive moves in my adult lifetime to improve the rights of Victorians.

In considering any review of the Charter, it is my submission, that the Scrutiny of Acts Committee (SARC) consider the National Consultation on Human Rights¹ outcomes in light of the fact that the Committee received 35 014 written responses—the largest number ever for a national consultation in Australia.

Even though the Federal Government's response was, in my view, inadequate as it has not given the legislative protections that public submissions revealed were favoured, it is important for the SARC to take on board the widespread support for legislative protection that demonstrates that the Victorian Charter is a positive watershed for Victoria.

The failure of the Federal Government to take action in legislating better protection of human rights as suggested in the Committees Report may serve to highlight the gap in perceptions between the public view on the adequacy of human rights protection and that of some in political life.

According to the Committee's Report submissions to the National Committee were analysed to extract information and for statistical purposes. In addition, about 6000 people registered to attend the 66 community roundtables, which were held in 52 locations around Australia. Colmar Brunton Social Research was commissioned to carry out two research projects. The first, involved focus group research followed by a national telephone survey to ascertain attitudes towards human rights and their protection among a random sample of Australians. The second task was to conduct focus group research in order to cast light on the experiences and opinions of marginalised and vulnerable groups who might otherwise not participate in the Consultation. The Committee also commissioned The Allen Consulting Group to provide an economic analysis of options for the protection and promotion of human rights in Australia.² I will refer to the National Human Rights Consultation throughout this submission.

Operation of the Charter – Need for the Strengthening the Charter and People's Knowledge of it

As noted in your Terms of Reference. The rights set out in Part 2 of the Charter have no legal operation on their own. Rather, they are given effect by other parts of the Charter and in other Victorian statutes. Part 3 sets out rules:

- requiring statements of human rights compatibility for all bills, human rights certificates for most regulations and reports on human rights compatibility by the SARC
- for interpreting Victorian laws in a way that is compatible with human rights and for court declarations where Victorian laws cannot be interpreted consistently with human rights
- obliging all Victorian public authorities to act and make decisions compatibly with human rights.

Requiring statements of human rights compatibility for all bills, human rights certificates for most regulations and reports on human rights compatibility by the Scrutiny of Acts Committee is important and should remain in tact. It enables an assessment of these instruments that focus on the human rights of people and allows opportunity for reflection on human rights' impacts and adaptation to avert undue

¹ *National Human Rights Consultation Report to the Government*, 30 September 2009
<http://www.humanrightsconsultation.gov.au/www/nhrcc/nhrcc.nsf/Page/Report>

² *Summary, National Human Rights Consultation Report to the Government*, 30 September 2009
<http://www.humanrightsconsultation.gov.au/www/nhrcc/nhrcc.nsf/Page/Report>, page 1.

interference with human rights that may be unintended by the legislative process. It also enables further reflection which can only lead to improvements in public policy making. It also provides elected Parliamentarians a further opportunity to protect Victorians.

In the 'wash up' of the National Human Rights Consultation, there was substantive support for the 'Federal Government adopting a more coordinated approach to the protection and promotion of human rights, including by adopting a strategic framework within which human rights legislation, policy and practice could be developed and implemented...A number of submissions expressed support for adopting measures designed to promote a human rights culture in the public sector. Among the suggestions were incorporating respect for human rights in public sector values and codes of conduct; amending the *Administrative Decisions (Judicial Review) Act 1977 (Cth)* to make human rights a relevant consideration in government decision making; requiring public sector agencies to develop human rights action plans, conduct or comply with annual human rights audits, and prepare annual reports on human rights compliance; and amending the *Acts Interpretation Act 1901 (Cth)* to require that, as far as it is possible to do so consistently with an Act's purpose, federal legislation is to be interpreted consistently with human rights.'

Such views support the last two bullet points above and the need for their ongoing inclusion in the Charter to bolster human rights compliance.

The Scope of this Submission

My main exposure to the Charter has been related to the last two bullet points above. Most of my work has been concentrated at a community level and their dealings with public authorities. I have worked with community members, their workers and public authorities to either empower them to take action on their own behalf or to negotiate better outcomes that take into consideration the effect of decisions often made in isolation from people's individual life circumstances. For this reason, my submission will deal with this level of the operation of the Victorian Charter rather than its operation at the litigation end of the spectrum. I have had the benefit of reading the Human Rights Law Resource Centre's 'Position Paper' on the Charter and the contents of this Paper seem to enhance human rights protection and so I would endorse the suggestions contained therein and respect their expertise in the area of human rights.³

It is my firm view, that the legislative requirement on public authorities to comply with the Charter is imperative if they are to be held to account and for a serious culture change to occur.

The Victorian Charter (in the areas of the three bullet points above) is critical especially when so many people's rights are governed and controlled by government bureaucracies. This applies equally at a national level in areas such as Centrelink, which, unfortunately, still lacks a streamlined legislative human rights instrument despite a significant number of Australians in the National Consultation on Human Rights indicating that they felt better human rights protections was needed.

Feedback on the Experience of Using the Charter and Involving the Community

The Charter presents real opportunities for awareness-raising and training of both members of community and advocacy agencies to better enable them to better negotiate and mediate

³ Human Rights Law Resource Centre <http://www.hrlrc.org.au>

for improved treatment by agencies⁴ who control much of their lives in terms of housing, health, human services and income support⁵ and so on. Examples of some successes in the United Kingdom highlight the vital role of training and community advocacy.⁶ Strong local advocacy, support on the ground that is linked into and (where appropriate) located in neglected communities so as to assist in identifying and responding to inappropriate conduct or practices and positioned to educate and empower people to negotiate better outcomes and treatment, identify abuses and respond proactively to them, are not as prevalent as they could be.

As vulnerable and disadvantaged groups are reliant on government agencies for support and subsistence they are more susceptible to infringements of their rights. Having spent some time in the United Kingdom in late 2007, I took on board the lessons of the British Institute's suggestion that grass roots communities needed to be involved and empowered to know about human rights by deciding to spend time training and capacity building agencies and communities. International research (including my own) has revealed that vulnerable and disadvantaged groups have significant lack of knowledge and capability to litigate and/or enforce their rights.⁷ Addressing this is necessary if human rights are to become a reality for people on the ground. The barriers for vulnerable and disadvantaged people in obtaining advice in general for their problems are significant, even before these new human rights laws come into operation (see discussion in the section 'Reform or Improvement of the Charter' below).

In my experience in negotiating better outcomes with departmental officials, the Charter has added an important safety valve enabling government officials to think through the often personal ramifications of bureaucratic decision-making that they had not considered. It enables the public to be heard and, in my experience, has led to better outcomes as a result of being able to use the Charter as a tool for opening dialogue and lateral thinking. Because of the language being framed similarly to international instruments it enables flexibility and adaptability to make it relevant with the passage of time.

The Charter's articulation of some rights, for instance, the right not to be treated in a cruel, degrading or inhumane manner, has enabled these to become benchmarks in our daily lives and how we treat each other. Significant effort, energy and resources need to be committed by the Commonwealth, State and Territory governments to equip those in the civil service, service delivery and infrastructure support to make the laws enforceable, and enable and

⁴ See *The Human Rights Act – Changing Lives*, The British Institute of Human Rights (2006), 7-14.

⁵ It is noted that income support is a Federal sphere of responsibility and that minimal legislative human rights frameworks govern the Federal sphere, however the State governments do deliver some emergency relief to the community.

⁶ See *The Human Rights Act – Changing Lives*, The British Institute of Human Rights (2006), 7-14.

⁷ P Pleasence, A Buck, N J Balmer, R O'Grady, H Genn and M Smith, 'An Integrated Approach to Social Justice', *Causes of Action: Civil Law and Social Justice*, Legal Services Commission (2004a) 105-107; A Buck, N Balmer and P Pleasence, 'Social Exclusion and Civil Law: Experience of Civil Justice Problems Among Vulnerable Groups' (June 2005) 39 (3) *Journal of Social Policy and Administration* 302, 318-320 and see C Cournarelos, Z Wei and A Zhou, *Justice Made to Measure: New South Wales Legal Needs Survey in Disadvantaged Areas*, New South Wales Law and Justice Foundation <<http://www.lawfoundation.net.au/report/survey2006>>; M Noone and L Curran, 'Access to Justice and Human Rights: An Exploration of the Experiences of Social Security Recipients in Postcode 3081' (Conference paper delivered to the W G Hart Legal Workshop, Access to Justice, London, June 2007) and R Moorhead, M Sefton and G F Douglas, 'The Advice Needs of Lone-parents' (2004) 34 *Family Law* 667; A Buck, P Pleasence, N Balmer, A O'Grady and H Genn, 'Lone-parents and Civil Law: An Experience of Problems and Advice-seeking Behaviour' (2004) 38(3) *Journal of Social Policy and Administration* 253-269 and L Curran, 'Ensuring Justice and Enhancing Human Rights: A Report on Improving Legal Aid Service Delivery to Reach Vulnerable and Disadvantaged People', La Trobe University and the Victorian Law Foundation, December 2007.

facilitate community capacity-building and empowerment – in a respectful and sensitive manner – of vulnerable and disadvantaged communities whose rights are often most at risk.⁸ Having an actual right articulated such as the right not to be treated in a cruel, degrading or inhumane manner provides a benchmark. The Victorian Parliament is to be commended for introducing a legislative Charter as it has led the way in starting this process where people's rights are articulated and compliance is required.

It has been my experience that public authorities can often operate in a vacuum and within a set of inflexible settings and that some can be ignorant of the laws, their context and intent, lazy or inflexible. Such impediments can only be dealt with where there is a legislative backing and framework within which Victorians can converse about their experiences and point to. Often when the Charter rights are identified and the ability the Charter allows for personal application of the Charter to be considered, it is only then that these authorities become more prepared to engage in a constructive discussion.

I can testify to the fact that, in my almost two decades in legal practice, that prior to the Charter's enactment it was very difficult to get public authorities to engage in active problem solving. Since the Charter's enactment this has changed. This is exceedingly refreshing. The reality is that, the teeth of a legislative framework are needed to bring public authorities to the table. The Charter, in my view enables a building block for engagement and greater respect to operate. Departmental training and 'Policies and Procedures' whilst important, are not enough in my experience to enable community members to receive the responsiveness that is required.

My main criticism of the implementation of the Charter is that it was not adequately explained to the community members early enough in its operation to enable them to understand and work out how to use it to improve circumstances. This was because the focus on awareness-raising was largely done at the top end of senior and middle management but often not those in the public authorities who have the direct dealings with community members and the community members themselves were ignored. For those who might need to utilise the Charter it remained, for a time, a well kept secret with most of the resources being used to skill and train at a government level when this should have complimented the capacity building of the community to use the legislation. I view both as important. I along with others have tried to rectify this imbalance.

To this end, after running capacity building sessions for professionals, workers, and community members and community groups in a voluntary capacity up until 2009, I devised a funding proposal to remedy the situation and received a small grant on behalf of the West Heidelberg Community Legal Service from the Victoria Law Foundation of \$5,000 to run training and capacity build community members. Overall, I ran at least 58 training/capacity building sessions from 2008- end 2010 whilst at West Heidelberg Community Legal Service, in voluntary capacities or pro bono.

The funding from the Victorian Law Foundation ran out in early 2010 but the demand for the training, as word spread, was immense. The requests were from some of the most vulnerable groups – carers for people with an intellectual disability, the blind and the deaf. Although the modest funding ran out, the sessions continued as a response to a clear community need and were often run in a voluntary capacity, in conjunction with the Federation of Community Legal Centre's Human Rights Working Group; as a work commitment; or as a volunteer or pro bono. Groups receiving the training included workers

⁸ A Buck, N Balmer and P Pleasence, 'Social Exclusion and Civil Law: Experience of Civil Justice Problems Among Vulnerable Groups' (June 2005) 39 (3) *Journal of Social Policy and Administration* 302, 318-320

in the community health, allied health and community sector; over 65 year old Diabetes Groups, people with a significant intellectual disability and their carers, women whose husbands had problems with gambling, residents of public housing, social work and youth work students, the homeless, people with sight and hearing impediments, people with a disability and many more community members.

There were concrete outcomes for participants who utilised the training and some additional guidance and support was offered when they needed tips on proceeding to navigate often difficult and complex bureaucratic processes. People subsequently felt empowered enough to advocate for themselves or for those who were not able to do so. I will mention a few of these outcomes later in this submission.

Tackling some of the criticism of the Charter

Some people's arguments against a Charter stem from an ideological position rather than one based on a 'public good' model. They have made little effort to enquire into the realities of the Charter in operation and run arguments to support their fixed positions which are not borne out in the reality of the Charter's terms or its operation.

In some of the heated debate around the Charter I have heard discussion of a 'human rights industry' and intrusions on the sovereignty of Parliament. I have also heard criticism about the Charter being too generally worded. I will deal with these broader and in my view often unfair and ideological criticisms of the Charter up front.

It is my experience that, many of those in the so-called 'industry' (that is often referred to) undertake work in the human rights domain either pro bono or as a fundamental part of their community work as part of their role in advocating and supporting community members whose rights have been compromised/effected, or, as volunteers. Describing people who strive for human rights as an 'industry' is clearly a misnomer and deliberately obscures the fundamental desire of these people to improve the human condition through human rights adherence.

The other criticism levelled is that some rights trump other rights. The Charter has clearly set out a mechanism for the balancing of rights that come into conflict that is dialogue based and often leads to innovative discussion about how to accommodate different rights and operate in a way that least interferes with them.

In response to criticisms that the Charter impinges on Parliamentary sovereignty I note that the Charter was deliberately modelled on the Canadian Charter, not the American 'Bill of Rights' and that the Canadian model tackles the issues around Parliamentary sovereignty by leaving it to the Parliament to make the final response to Declarations of incompatibility/inconsistency but their response is one that is informed by the courts and based on a dialogue model between the courts, the Parliament, the legislature and the real live cases that come before the court.

I would argue this is the model that befits a participatory democracy such as ours.

Outcomes of some community use of the Charter in Victoria

Representative Feedback from human rights workshop evaluations:

- 'Examples were great'; 'My client group (are) very acquiescent, presentation made me feel more confident in advocating on their behalf';
- 'Feel motivated on how I can advocate for clients';

- 'Case studies provided relevance for my work';
- 'Need for more training'; 'seems there's scope to advocate on client issues and maybe get a good outcome';
- 'It was simplified so I understood- looking forward to learning more and having supporting handouts in my specific field';
- 'Excellent, I developed awareness for arguing human rights for clients'; 'I think I could use it but would need support in the first few instances where I use it, talk it through';
- 'The session was well pitched for our clientele who are so vulnerable';
- 'Really impressed with the way the information was relevant to our group and our clients challenges, it showed through preparation and perception about our people';
- 'Seeing issues where human rights legislation might work opened my eyes';
- 'The presenter empowered me in gaining confidence to use the charter and discuss things more with my colleagues';
- From the information imparted I feel much better informed which will give me the confidence to argue people's legal rights';
- 'Made rights more understandable good examples for us to scrutinize actions of those in authority for those without authority'.

Case Studies on Outcomes of Use of the Charter

Case Study 1 Disability

Protection from cruel, degrading, inhumane treatment, right to liberty and security, right to public participation, right the freedom of movement

An elderly couple's grandson was in his 40s and had a brain acquired injury as a result of a car accident. He was in a nursing home with people often forty years older than himself. He was deeply troubled by his surroundings. More suitable supported residential accommodation with people his age was found and a place was made available which he had to take up within the month or it would be offered to someone else on the waiting list.

The Transport Accident Commission (TAC) was informed by the grandparents, but TAC failed to serve notice on private nursing home provider in the requisite time. On being asked why there was a delay TAC told grandparents they would have to wait a further 30 days to serve notice. With the delay they risked losing the place in residential facility. The grandson was beside himself with distress that he would miss out. The grandparents who were very articulate had argued with TAC but they said they had to follow the process and seemed un-phased that the grandson would lose his place because of their inaction in serving the Notice.

After seeking support, the grandparents drafted an email using Charter to require that the TAC responded to their son's need to be moved quickly. They also insisted on immediate removal and indicated any additional costs incurred ought to be borne by TAC including any costs arising due to private provider not having full notice. They noted that TAC's failure to act or accommodate grandson's right put them as a public authority in breach of the legislation (cruel inhuman and degrading treatment, freedom of movement; rights to public participation.) The TAC conceded their omission and the need to adhere to the rights of the grandson within 12 hours of receipt of email.

Case Study 2 Access to healthcare for asylum seeker

The right to life; protection from cruel, inhuman or degrading treatment; right to non-discrimination, right to security of person.

On the same day as receiving advocacy training on how to use the Charter, a community nurse who had been trying to assist a very ill asylum seeker access a hospital used the Charter to remedy the refused treatment. The hospital was refusing treatment on the basis the asylum seeker could not afford to pay and did not have a Health Care card. The woman who had children was at risk of haemorrhaging due to a rupturing caused by significant organ damage acquired from previous brutality in a refugee camp. Whilst a more senior person had assured the nurse the asylum seeker would be able to have access to the hospital's health service, when it came to receive the access it was indicated the service would be denied unless the patient paid, insisting on prior proof of capacity to pay from the lady.

On questioning the staff member on whether this 'contravened the Charter', the staff member said she did not know. The community nurse then sent an email to senior staff at the hospital raising the Charter rights. On receiving her email a further email from the hospital was sent out to all hospital staff in Victoria. This email directed staff to follow a DHS directive stating all asylum seekers and refugees were to receive free services from the hospitals and alerting them to the Charter obligations. The woman received treatment which saved her life.

Case Study 2 Housing ***Right to participation and protection of family***

An Occupational Therapist used the Charter on behalf of a woman unable to leave her house because of a departmental refusal to provide a ramp by a local authority on the grounds of cost and argument between departments about who had the responsibility. The woman was in a wheel chair and without a wheel chair was effectively imprisoned in her small house. The woman had been trapped in her house for six months and could not visit her two children who lived away from home and they had significant disabilities as well.

The lady became increasingly depressed and distressed about not being able to leave the home. Sections 12 (freedom of movement), 18 (right to take part in public life), section 17 (right to protection of families and children) and 10 (inhuman and degrading treatment) were used to argue that a ramp was required. After Charter arguments, the department reconsidered their position.

Case Study 3 Disability

A Healthcare Coordinator sought strategy advice around how to use the Charter to ensure improved hospital care for a man. As a result of being made aware of Charter rights and how to make the relevant arguments for a man who was at serious risk she felt better positioned to call a meeting. Feedback from the coordinator after the meeting was that "They went armed and ready, but were able to negotiate without having to "bring out the big guns" because of the Charter. "So, I think I will take this as a win. The man is now at home with services and rehabilitation in the home has now been provided after long delays and refusals to help him meet his care plan as set by his health workers. The client was able to outline what he wanted and was entitled to with the help of the social work team, and the medical team were able to compromise. It was a good outcome from the clients view point and from us as their case worker."

Case Study 4 ***Inhuman and degrading treatment***

A Drug and Alcohol Counsellor (after she had done the training) worked with trainer to develop a strategy to use the Charter for a tenant client of hers. Positive outcomes resulted that without raising the Charter rights would not have otherwise been discussed.

Case Study 5
The right to life

An elderly woman who was refused treatment at a hospital because of her age received treatment after one of the participants in training used the 'cheat sheet' handed out to broker a better outcome for her friend. She argued the right to life (section 9) and inhuman treatment (section 10).

Case Study 6
Right to life, protection of children and family

After one-on-one training, a worker used the Charter in a letter to the Office of Housing (OoH) to get a health inspection done at OoH's expense prior to a transfer to a new house which was suspected might create further health concerns for her family.

The client who was very poor, had asthma, a baby with asthma, a partner with asthma (caused by their current poor housing) were successful in getting the health inspection done but also at the expense of the OoH.

Case Study 7
Right to liberty and security, right to protection of families and children

An African refugee who in her home country during a civil war, had lost her husband as he had been shot, fled her homeland with a young child walking for three months into Kenya. After a series of brutal attacks she was found to have a 'genuine fear of persecution' and was settled in Australia. She had been applying for a transfer after being re-traumatised by the fear and lack of safety in her allotted public housing. The Office of Housing was unresponsive for a long period of time despite representation that had been made on the woman's behalf. The legal service and her counsellor were able to use the Charter to argue that she had rights to liberty and security (section 21) and a right to protection of children and family (section 17). After much discussion around her human rights the Office of Housing finally agreed to her transfer.⁹

Rights and Responsibilities in the Charter

Further provision for remedies

The experience in the United Kingdom has been that even with a right to compensation; there has not been the much predicted flood-gate of litigation. Compensation or some further restitution process would add a further incentive for the avoidance of the infringing people's rights. The United Kingdom may be a useful source of information in this regard.

I also refer to the submission of the Human Rights Law Resource Centre in this respect.

⁹ Some of these case studies were from work done when I was Director of the West Heidelberg Community Legal Service and I seek to acknowledge the critical importance of this service and others like it which are offered free to the community at times when people have no-where else to turn to. Other case studies were the result of advice given on a pro bono basis. Unfortunately, at the outset I did not formally ask people to report back on how things went. I heard anecdotally of successes but these are the examples I heard back about first hand.

Additional Rights

The National Consultation on Human Rights Report to the Commonwealth Government in 2009 (mentioned above) revealed that 'many Consultation participants argued that economic, social and cultural rights (such as the right to the highest attainable standard of health) should be protected and promoted on the basis that these rights are most important to Australians and are justiciable and that all rights are interrelated and interdependent. The research the Committee commissioned demonstrated that economic, social and cultural rights are at the top of the list of rights that are considered most important to the Australian community. On the other hand, a considerable number of people contended that economic, social and cultural rights should *not* be given legal protection in Australia because parliament alone should make decisions about social and fiscal policy and these rights are not amenable to judicial determination.'

The international covenant governing economic and social rights states that they are to be progressively worked towards. This should not exclude it from being a Charter consideration. One thing that many of my former clients would say is that if they have no food, no shelter, poor health and no social supports then they are unlikely to be in a position to exercise their civil and political rights. This is an important point. Human rights are interdependent and should all be worked towards. It makes sense to include these and other human rights recognised by international covenants and conventions into the Charter. Again, the 'Position Paper' of the Human Rights Law Resource Centre is useful in its discussion in favour of the inclusion of economic social and cultural rights and children's, women's and self-determination rights.

Reform or Improvement of the Charter

There should be regular mandatory auditing for public authorities to assess compliance with human rights. This should be done by an independent body such as the Human Rights and Equal Opportunity Commission with further resources so it can do so to with greater accuracy. Currently, in my view, reporting by departments and monitoring of them takes a 'tick a box' format in many instances. What is needed is a reality check that tests what the departments say is occurring with the reality of what people's experience of their rights and dealings with public authorities. In order to make the new human rights frameworks a reality for vulnerable and marginalised groups there must be an effective monitoring of performance including research about people's actual experience of their human rights at the hands of agencies, rather than allowing claims by the government and its agents to claim compliance without substantiation.

The real life experiences of human rights on the ground are not part of the reporting. There should be some additional surveying of people's own experiences of the human rights system. I note however, again that many people are so dependent on government for the services that they receive they are often reticent to complain for fear of reprisals, real or perceived.

The National Consultation also noted that,

'Finally, access to justice is a primary concern when it comes to the adequacy of the existing protections. Individuals who are unable to gain access to the protections described will ultimately be unable to enforce their rights...Finally, the community

repeatedly mentioned the need to improve access to justice. Among the suggestions for improving access to legal representation were increasing funding to legal aid and community legal centres and encouraging pro bono work in the private sector. Submissions also highlighted other means of reducing the cost of access to justice—for example, encouraging the use of alternative dispute resolution services, using protective costs orders or making human rights a 'no costs' jurisdiction, and establishing a fund for disbursement costs.'

Research confirms that there is still a huge gulf in people's ability to find, navigate and seek help when and as they need it. People's awareness of the availability of free legal services, capacity of low income to afford to pay for legal services remains an inhibitor. Also people who are disadvantaged often vulnerable and disadvantaged groups have significant lack of knowledge and capability to litigate and/or enforce their rights.¹⁰ Addressing this is necessary if human rights are to become a reality for people on the ground. The barriers for vulnerable and disadvantaged people in obtaining advice in general for their problems are significant, even before these new human rights laws come into operation. Research both here and overseas demonstrates, knowledge, capacity, capability, confidence and access to legal aid services are all currently problematic. With the new human rights protections these could again add another potential layer of laws that are less likely to be enforced by vulnerable and marginalised groups. This additional burden may come to pass unless significant effort, energy and resources are committed by the State and Territory governments to equip those in service delivery and infrastructure support to make the laws enforceable, and unless community capacity-building and empowerment – in a respectful and sensitive manner – of vulnerable and marginalised communities can occur.

One improvement to the Charter is that more could be done to ensure more people are educated about the Charter and its applicability in their day to day lives. Given the Charter is still young, it is my view that the realisation of the importance of this capacity building of the community came only in the last 2 years of the Charter from 2009-2011.

The Charter, as I hope this submission demonstrates, has great potential to improve and enhance the human rights of all Victorians.

Please do not hesitate to email me should you have any questions on the contents of this submission.

Yours Sincerely,

Dr Liz Curran
Curran Consulting: Enhancing Justice and Human Rights
legalaidthumanrights@gmail.com

¹⁰ A Buck, N Balmer and P Pleasence, 'Social Exclusion and Civil Law: Experience of Civil Justice Problems Among Vulnerable Groups' (June 2005) 39 (3) *Journal of Social Policy and Administration* 302, 318-320 and see C Cournarelous, Z Wei and A Zhou, *Justice Made to Measure: New South Wales Legal Needs Survey in Disadvantaged Areas*, New South Wales Law and Justice Foundation <<http://www.lawfoundation.net.au/report/survey2006>>, R Moorhead, M Sefton and G F Douglas, 'The Advice Needs of Lone-parents' (2004) 34 *Family Law* 667; A Buck, P Pleasence, N Balmer, A O'Grady and H Genn, 'Lone-parents and Civil Law: An Experience of Problems and Advice-seeking Behaviour' (2004) 38(3) *Journal of Social Policy and Administration* 253-269 and L Curran, 'Ensuring Justice and Enhancing Human Rights: A Report on Improving Legal Aid Service delivery to Reach Vulnerable and Disadvantaged People', La Trobe University and the Victorian Law Foundation, December 2007