



1 July 2011

Mr Edward O'Donohue, MLC  
Chairperson  
Scrutiny of Acts and Regulations Committee  
Parliament House  
Spring Street  
EAST MELBOURNE 3002  
[charter.review@parliament.vic.gov.au](mailto:charter.review@parliament.vic.gov.au)

Dear Mr O'Donohue,

**St Kilda Legal Service Submission to the Inquiry into the Charter of Human Rights and Responsibilities**

St Kilda Legal Service welcomes the opportunity to contribute to the the Scrutiny of Acts and Regulations Committee review of Victoria's *Charter of Human Rights and Responsibilities Act 2006* (the Charter). St Kilda Legal Service has also contributed to the submission of the *St Kilda Human Rights Working Group* and endorses that submission. This submission does not address all the terms of reference of the inquiry but addresses those most relevant to the work of St Kilda Legal Service.

**About St Kilda Legal Service**

St Kilda Legal Service provides free and accessible legal services to members of the community within the Cities of Port Phillip, Bayside, Stonnington and parts of Glen Eira. The Legal Service is committed to redressing inequalities within the legal system through casework, legal education, community development and law reform activities. The Legal Service conducts a night service three nights a week, staffed entirely by volunteer lawyers, and employs an administrator, a casework lawyer, a

community legal education lawyer, a volunteer coordinator and a community drug outreach lawyer.

The Legal Service is co-located with other community agencies at the St. Kilda Community Centre. The Centre offers a range of programs that provide support and assistance to some of the most marginalised people in need within our community. St Kilda Community Centre programs provide emergency relief, including provision of food, financial counselling, No Interest Loans (NILs), organises recreational activities, including art groups for people with disabilities or who are isolated, support rooming house residents and public tenants and St Kilda Drop-In provides meals and support for people with a mental illness.

St Kilda Legal Service is a generalist community legal centre that provides legal advice and casework assistance on a broad range of legal issues, and often sees vulnerable clients with legal matters associated with poverty, drug addiction, mental illness and homelessness. St Kilda Legal Service is a member of the St Kilda Human Rights Working Group that is made up of representatives from a range of local community organisations.

### **The overall benefits and costs of the Charter**

St Kilda Legal Service has directly assisted a small number of vulnerable clients to assert their rights under the Charter through the legal process, where the client has had an existing cause of action. That is, where the client had an independent basis on which to take legal action, apart from a human rights argument. It is the view of the Legal Service that access to remedies through the legal process represents an important safeguard for individuals, in particular for some of the most vulnerable in society. The Legal Service has assisted clients seeking to avoid arbitrary eviction where the eviction was likely to result in the client becoming homeless. Apart from the severe impact upon individuals if they become homeless, costs to society of homelessness have also been documented in areas such as the increased demand on health, justice and crisis housing services.<sup>1</sup>

The concrete framework of the Charter informs practise guidelines of public authorities. It is the view of the Legal Service that the obligation of public authorities to consider human rights in their decision-making processes increases the standard of service delivery for individuals as the framework requires that individual circumstances are taken into account in these processes. As many community-based welfare organisations are involved in the delivery of public services they may be defined as functional public authorities and bound by Charter obligations. The Legal Service works directly with many community organisations, being co-located with the Port Phillip Community Group and providing outreach legal services at more than five other community organisations. The Legal Service has observed that it is

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<sup>1</sup> See for example: Paul Flatau, Kaylene Zaretsky, Michelle Brady, Yvonne Haigh and Robyn Martin, “The cost-effectiveness of homelessness programs: a first assessment”, Australian Housing and Urban Research Institute, 2008, pp131-146

has become best practise for community-based organisations to incorporate a human-rights based approach in the delivery of their services.

### **The effects of the Charter on the availability to Victorians of accessible, just and timely remedies for infringements of rights**

The Legal Service believes there should be a range of remedies available under the Charter, both legal and non-legal. The Legal Service sees an important role for courts in reviewing the decisions of public authorities. The Legal Service submits that the Charter should be amended to allow individuals to commence proceedings under the Act without the need for an existing cause of action. That is, the Legal Service believes that individuals should be able to seek legal redress where their human rights that are protected under the Charter have been infringed. The Legal Service sees significant value in such a free-standing cause of action existing under the Charter. The Legal Service does not believe that this would result in a large volume of proceedings being commenced under the Act. If there are effective non-legal pathways for individuals to make human rights complaints directly to the public authority involved or to an independent body, these pathways will generally be attractive to individuals if they are accessible, cost effective and provide access to timely resolution.

The Legal Service has been involved in promoting knowledge of how the Charter can be used as an advocacy tool by individuals and/or support workers assisting individuals who are dealing with public authorities. Individuals are able to access effective non-legal remedies where the legislative structure supports the rights of the individual. For example, section 38 (see s.38(1) below) of the Charter requiring that public authorities are mindful of human rights in their decision-making processes, means that individuals can complain to the public authority if they believe this obligation has not been complied with in relation to their situation.

#### *s. 38 Conduct of public authorities*

*(1) Subject to this section, it is unlawful for a public authority to act in a way that is incompatible with a human right or, in making a decision, to fail to give proper consideration to a relevant human right.*

It is the view of the Legal Service that transparent and sound decision-making processes on the part of public authorities are promoted if an individual can ensure their human rights are protected through the legal process when the non-legal complaints process has failed to or is unable to ensure this protection.

The Legal Service submits that there should be included in the Charter powers of either the Victorian Equal Opportunity and Human Rights Commission or the Victorian Ombudsman to instigate an investigation where the Commission/Ombudsman has identified possible breaches of the Charter, including systemic breaches. The Legal Service believes that this form of oversight would further enhance the standards of service delivery and the decision-making processes of public authorities.

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

The Legal Service supports the inclusion of further rights in the Charter such as social and economic rights as the inclusion of these rights would be consistent with Australia's international obligations as Australia is signatory or has endorsed:

- the International Covenant on Economic, Social and Cultural Rights
- the Convention on the Rights of the Child
- the Convention on the Elimination of All Forms of Discrimination against Women
- the United Nations Declaration on the Rights of Indigenous Peoples

Many clients who access our Legal Service with legal problems have underlying issues in relation to access to housing, health and mental health . The Legal Service recognises that access to housing, education and health services are basic needs that underpin dignified and successful participation in broader community life.

If you have any queries in relation to this submission please contact Emma Asscher at St Kilda Legal Service on 8598 6621 or via email [emma@skls.org.au](mailto:emma@skls.org.au)

Yours faithfully,



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