7 June 2011

Mr Edward O’Donohue, MLC
Chairperson
Scrutiny of Acts and Regulations Committee
Parliament House
Spring Street
East Melbourne Vic 3002

Dear Mr O’Donohue

Inquiry into the Charter of Human Rights and Responsibilities

We write this joint submission as former members of the Victorian Human Rights Consultation Committee which in 2005 recommended the enactment of the Victorian Charter of Human Rights and Responsibilities.

The purpose of this submission is to set out the process which led to the enactment the Charter. A more extensive treatment can be found in an article by Professor Williams entitled ‘The Victorian Charter of Human Rights and Responsibilities: Origins and Scope’ (2006) 30 Melbourne University Law Review 880.

We hope this information will assist your Committee by providing important background material against which to evaluate proposals for change. In particular, this material shows:

1. An independent committee identified very strong support among Victorians across the State for the better protection of human rights by way of legislation in the form of the Charter.
2. It was recognised that experience would demonstrate how the Charter could be improved over time. The building into the Charter of mandatory reviews reflects this.
3. The community expected that reviews of the Charter would investigate how the Charter could be changed to improve the level of human rights protection. In particular, such reviews were proposed as a means of enabling the list of protected human rights to increase and the mechanisms of human rights protection to strengthen.
Background to the Charter

The Consultation Committee

In April 2005, the Attorney-General announced the appointment of a four-person Consultation Committee. It comprised Rhonda Galbally AO, Andrew Gaze, the Hon Professor Haddon Storey QC and Professor George Williams as the chair. In dealing with legal issues, the Committee received considerable assistance from Victorian Solicitor-General Pamela Tate SC. The Consultation Committee was appointed to operate independently of the Attorney-General and of government.

The Consultation

The Victorian process was very different from how other inquiries, such as parliamentary committees, normally operate. We believed that the way to get people involved was to meet with them in their communities in small groups and to work through their local and peak community organisations. We talked to people ranging from community groups in Mildura, to Indigenous people in Warnambool, to the victims of crime and businesspeople in Melbourne, to the Country Women’s Association in Gippsland.

We paid particular attention to meeting with people who knew little or nothing about human rights and who might be the most distanced from the political and legal system. Rather than focusing upon the ‘converted’, we directed our time and energy to the people least likely to be interested in these issues or to take part in such a process.

On the road, as well as in Melbourne, we held up to four meetings per day, with each typically lasting two hours. These were not open town hall meetings, but meetings with a Consultation Committee member, arranged through community organisations or in some cases through information provided via the local media. The meetings were structured so that a large part of the time was spent listening to people and what they thought about the issues, followed by us providing the basic information they needed to have a say. We then directed the conversation to 10 key questions we needed their help to answer. At the end of the meeting, we encouraged people to reflect on the discussion, to talk to other people in their families and workplaces and to make a submission to the Consultation Committee in writing. We also made a commitment to read every submission we received.

The 10 key questions, as well as important background information, were set out in a 52-page booklet,Have Your Say about Human Rights in Victoria, prepared by the Consultation Committee within a few weeks of its formation. The booklet provided information about issues of governance and law explained, so far as possible, in a way that was accessible to a broad section of the community. Similar information was also set out on a website and shorter booklets and pamphlets prepared for Indigenous people and people speaking other languages.

The 10 key questions that formed the focus of the consultation and these publications were:

1. Is change needed in Victoria to better protect human rights?
2. If change is needed, how should the law be changed to achieve this?
3. If Victoria had a Charter of Human Rights, what rights should it protect?
4. What should be the role of our institutions of government in protecting human rights?
5. What should happen if a person’s rights are breached?
6. What wider changes would be needed if Victoria brought about a Charter of Human Rights?
7. What role could the wider community play in protecting and promoting human rights?
8 What other strategies are needed to better protect human rights?
9 If Victoria introduced a Charter of Human Rights, what should happen next?
10 Is there anything else you would like to tell us about how human rights should be protected in Victoria?

Special materials were also prepared for young people to be used, for example, in schools. The Consultation Committee encouraged submissions from young people by email and through an interactive online submission form on our website. We found that many people who would not have been prepared to come to a community meeting, or to write a letter to the Consultation Committee, or indeed to any government process, were willing to provide their views on these questions, sometimes at great length, via these electronic means.

The Consultation Committee also ran a parallel process of consultation with the Victorian Government. We met with the judiciary, members of Parliament, independent government agencies, the Secretaries of all departments, sometimes on a number of occasions, in order to inform them of the process and to make sure their views were taken into account. In addition, the Department of Justice set up an inter-departmental committee with representatives from across all of Victorian government to shadow our community process so that as ideas emerged, but before our report was written, departments had a chance to comment to ensure that our views were informed by current practice. This made a real and important difference. In many areas the experience and advice of government helped to shape outcomes to produce something that not only had broad community support but which could be implemented effectively and at the lowest cost.

What the Community Said

The consultation process proved extremely successful in engaging with the community. We held 55 community meetings in Victoria as well as 75 more focused meetings with government, peak organisations and the like. In addition, a round table of academic and other experts from Australia and New Zealand was held to provide specific advice on legal questions.

All up, the Consultation Committee received 2524 written submissions from across the community — most from people who had never before made a written submission to any public process. These submissions, whether received via the internet, written on the back of a postcard or set out in a letter, then amounted to the highest number of submissions ever received for a process in Australia that has looked at this issue. By comparison, the New South Wales Parliamentary Standing Committee on Law and Justice that considered a bill of rights for New South Wales over 2000–01 received 141 submissions.

Of the submissions we received:
- 2,341 were from individuals.
- 161 were from organisations. Many of these represented significant memberships. For example, the Law Institute of Victoria had 12,200 members.
- 22 were reports from workshops conducted as part of the devolved consultations (such as with homeless people).

After six months of listening to Victorians of all ages and backgrounds across the State, it was clear that a substantial majority wanted their human rights to be better protected by the law. While Victorians did not want radical change, they did support reform to strengthen their democracy and system of government. Overall, 84 per cent of the people we talked to or received
submissions from (or 94 per cent if petitions and the like are included) said that they wanted to see the law changed to better protect their human rights.

Many people wanted to see their human rights better protected to shield themselves and their families from the potential misuse of government power. For even more people, however, the desire for change reflected their aspiration to live in a society that strives for the values that they hold dear, such as equality, justice and a ‘fair go’ for all. The idea of a community based upon a culture of values and human rights was one that we heard again and again during our consultations. Victorians sought not just a new law, but something that could help build a society in which government, Parliament, the courts and the people themselves have an understanding of, and respect for, basic rights and responsibilities.

The consultation process led to a 232-page report that made 35 recommendations. The report, delivered on 30 November 2005, was entitled Rights, Responsibilities and Respect: Report of the Human Rights Consultation Committee. The report included the Draft Charter of Human Rights and Responsibilities prepared for the Consultation Committee by the Victorian Chief Parliamentary Counsel and his staff. With only minor modifications, this was the Victorian Charter of Rights enacted by the Victorian Parliament.

Yours sincerely

Professor **George Williams** (former Committee Chair)

**Rhonda Galbally AO**

**Andrew Gaze**

The Hon Professor **Haddon Storey QC**