7 June 2011

Mr Edward O’Donohue MLC
Chairperson
Scrutiny of Acts and Regulations Committee
Parliament of Victoria
Melbourne Vic 3002

Dear Mr O’Donohue


We have pleasure in submitting the attached for consideration as part of the Review of the Victorian Charter of Human Rights and Responsibilities Act 2006.

Should you require further information please feel free to contact Anne Barton, Community Planner on 9205 5094.

Yours sincerely

[Signature]

Craig Kenny
Director
Community Programs
Yarra City Council submission into the Review of the Victorian Charter of Human Rights and Responsibilities Act 2006 by the Parliament of Victoria's Scrutiny of Acts and Regulations Committee

Overall

Yarra City Council commends Parliament for reviewing the Charter and considering how it can be improved. It is unfortunate that so little time has been made available for submissions as this has precluded Council from engaging the community in developing this submission. Broad community feedback would have added more detail to the submission as to how the Charter has benefited the Yarra community.

The Charter provides a positive framework for Council and the community to consider and address the issues and needs facing Yarra. In 2010 the Neighbourhood Justice Centre, based in the municipality, undertook an innovative project Everyday People Everyday Rights which set up forums to get locals talking about rights as part of everyday life. More information on the project can be found at http://www.neighbourhoodjustice.vic.gov.au/site/page.cfm?u=117.

A dialogue-based approach is more constructive than an absolute model of rights, supporting a critical analysis of the often complex issues that a local community must address. It does not shortcut decision making but does ensure that the needs of the whole community are assessed and considered by Council.

The dialogue model is key to the Charter's effectiveness where, like most public authorities, diverse workforces from diverse backgrounds have considerable differences in their approach to rights. The Charter is a guide for all staff to consider human rights and move towards a shared understanding of rights issues within the local community.

The overwhelming response to the 2005 Charter consultation, with over 90% of submissions supporting strengthening protection of human rights in Victoria, shows a high level of community awareness that rights are a part of a democratic and inclusive society which values diversity and expects public authorities to act with respect to the rule of law, dignity, equality and freedom.

Council Plan
The importance of Human Rights in Yarra can be seen in the Council Plan 2009-13. The Strategic Objectives of Serving Yarra's Community states:

"Council has a strong commitment to achieving social justice outcomes for our residents: improving the opportunity and capacity for citizens to participate equally in our society. Council will continue its work with the community sector and other levels of government to challenge discrimination, and address disadvantage, whether based on income, age, gender, cultural background or different abilities.

In particular, Council has been working with existing and emerging migrant communities as well as Yarra's indigenous community. Through local projects, Council's Community Grants Program and building the relationships between residents, service providers and Council, more opportunities are available for residents to be active in their community.

The Victorian Charter of Human Rights and Responsibilities, alongside other State and Commonwealth legislation such as the Disability Act provides clear values and processes to guide Council and the community. Programs such as A Fairer Victoria and the Commonwealth's work on social inclusion are providing support to community projects."
Further, the Strategic Objectives of *Supporting a Diverse and Dynamic Yarra* notes:

"The greatest job growth in developed countries is in highly skilled, creative or innovative work. Creative / knowledge workers want diverse, tolerant and vibrant communities, with a strong sense of neighbourhood and identity.

A diverse community is better able to match local employment needs and support a vibrant local economy. This diversity includes a mix of business types and sizes (including local services and organisations) as well as residents across the range of ages, incomes, skills, abilities, interests or cultural backgrounds."

**Terms of Reference**

1 – **Additional rights**

Yarra City Council supports the broadening of the Charter to encompass economic, social and cultural (ESC) rights as well as the explicit acknowledgement of the rights of women and children. Consideration of the full realm of rights will strengthen the Charter and assist in decision making and setting effective and efficient policy. Moreover it will enhance existing mechanisms for protection of ESC rights, such as the Victorian Equal Opportunity Act. Several policies and agreements to which Council is a party, such as the Multicultural Strategy, the UNESCO Coalition of Cities Against Discrimination, and the Aboriginal Partnership Plan, commit Council to the protection of ESC rights of Yarra residents.

2 – **Right to self-determination**

Self-determination can be defined as the right to participate in the democratic process of governance and to influence one’s future. It is a useful framework to deliver social justice for groups such as Aboriginal residents, homeless people, and people from culturally and linguistically diverse backgrounds.

Yarra has a generally affluent community, with a proportion of residents who are marginalised or disadvantaged. The municipality includes traditional meeting sites of significance to Victorian Aboriginal people and is the location for many Aboriginal services and the local Aboriginal Land Council. The right to self-determination supports actions to enable the existing cultural right (s. 19) to be upheld and guides Council in its obligations towards the holders of those rights.

Some residents housed in rooming houses, community housing and public housing have poor literacy, poor health and well-being, are socially isolated, and can meet significant challenges in accessing support and services due to language, mental health issues, and cultural barriers. Over 5000 Yarra residents have no or little proficiency in spoken English. A rights framework, responsive to the positive obligation on public authorities to act in ways that comply with a person’s rights, creates opportunities for inclusive practices. Two local examples are when staff trained in the use of interpreters can communicate with non-English speaking residents around Council’s regulatory actions and provision of universal services; and when staff, after cultural awareness training, understand how their actions may impact on the cultural rights of local Indigenous and CALD communities.

3 – **Mandatory regular reporting**

There is no added value in shifting the Charter to a compliance model. As noted in Council’s initial comments, the existing dialogue-based approach is very effective in supporting open discussion within the community.

A compliance model is likely to move attention and effort to completing forms or registers than it is in engaging the most important issues. As such it will be less effective than the current model as it is likely to be less accessible for many marginalised people with few resources. In particular, people experiencing homelessness or mental health issues may find using legal processes
distressing, with the result that they will forgo their rights rather than engage in a compliance model.

4 – Provision for legal proceedings and remedies
Consideration of the Charter, and an expanded set of rights, is most effective through the dialogue model. One of the strengths of the Charter is its emphasis on engagement around issues relating to rights rather than providing remedies through legal proceedings. Intelligent and robust debate on human rights protection is more effective when located within the public realm rather than in the justice system.

5 – Effects of the Charter (c) on the provision of services, and the performance of other functions, by public authorities
Again, a useful framework for Council to consider the wide implications of our policies and services on the broad community. Aligns with the objectives of a Council under the Local Government Act 1986 ‘to endeavour to achieve the best outcomes for the local community having regard to the long term and cumulative effects of decisions’.

Generally the Charter adds to Council’s policy and is consistent with Yarra’s strategies and plans, particularly a focus on the importance of inclusion and freedom from violence and discrimination. A key concern of many of Yarra’s vulnerable and disadvantaged communities is their ability to participate fully in public life. Consistency between Council’s policy and State legislation supporting the rights of all sends a strong message to both the vulnerable as well as the wider community.

Case Study 1
Human rights were an important issue raised during Council’s decision to introduce a Local Law to ban the consumption of alcohol in public places. The Charter did not prescribe an outcome nor did it predetermine Council’s decision, rather it provided a framework to balance the rights of the broader community with the rights of particularly vulnerable groups in the Yarra community.

Yarra faces major problems with public drinking, both daytime drinking by a small number of people with a long-term alcohol addiction as well as large numbers of younger adults drinking at night in and around Yarra’s entertainment precincts.

A Local Law was introduced at the request of Victoria Police as a tool that would assist them to engage people drinking in public, request that they either tip out their drink or re-seal it and to issue a Penalty Infringement Notice where a person fails to comply. Council also exempted responsible drinking in public parks and reserves between the hours of 9am and 9pm, and developed a Memorandum of Understanding with Victoria Police as to how the law would be enforced.

Yarra’s Local Law intends to decrease the problematic behaviour associated with drinking in public which will support the rights of the wider community to enjoy public space free from violence and aggressive behaviour.

The use of a warning process reduces the likelihood that individual Police officers will unfairly target anyone, either because they were unaware of the Local Law (many people travel from outside to Yarra’s entertainment precincts) or because they are struggling with alcohol addiction and associated mental illness or other drug problems.

Similarly the exemption of public parks respects the rights of the broad community to responsibly consume alcohol as part of enjoying public space and acknowledges the harm reduction approach which considers responsible drinking of alcohol in public can be safer for vulnerable individuals / groups and assist them to engage with health and community services than being isolated in a private residences.

The Charter of Human Rights and Responsibilities was a useful framework for Council and the Yarra community to consider and respond to a complex social issue in contested public spaces.
Evidence from evaluations of the Local Law have found no negative impact on vulnerable communities and Victoria Police report that it is a useful tool to engage people drinking in public before resorting to stronger powers under the Summary Offences Act.

Case Study 2
Council is currently consulting the community around initiatives to reduce smoking in Yarra and thereby improve health and wellbeing.

While some other Victorian Councils have pushed through bans on smoking in public places, Yarra City Council has taken a ‘community planning’ approach with a focus on encouraging the community to develop local responses to reduce smoking. A community planning approach respects the creativity of the community and their ability to understand local issues and develop appropriate local responses.

Consistent with a human rights sensitivity, Council is aware of the significantly higher incidence of smoking in vulnerable and disadvantaged communities. Yarra is home to:

- around 8,000 public housing tenants and 1 in 3 of all high-rise public housing in Victoria
- an estimated 1,200 homeless people including many rough sleepers
- many Rooming Houses
- over 300 residents living in Community Housing (and another 200+ by the end of 2011)
- 28% of residents born overseas
- a significant number of people, resident or visiting, with long-term drug and alcohol addictions and / or poor mental health

The March 2011 report by the VEOHR Commission showed that the time that public authorities have invested in building human rights principles into their work is now beginning to make a genuine difference in the business of government and in the lives of Victorians. Use and application of the Charter is increasingly sophisticated. Some public authorities are moving from training and reporting on the Charter, to using the Charter to enhance their business planning and decision-making processes, to raise service standards and to foster greater accountability. As a result, public authorities are achieving fairer, more inclusive and better services for all Victorians.

Yarra’s customer responsiveness guarantee and guidelines for frontline staff were reviewed using a rights framework. Since that review, Yarra’s community surveys have shown consistently higher levels of community satisfaction in services from Council.

One of the benefits to public authorities of embedding a human rights based approach is higher staff productivity, retention and motivation, linked to more respectful and ethical relationships with partners and community members, and improved relationships across the board which deliver more successful projects and programs.

6 – Overall benefits and costs of the Charter
Continued resourcing and support to implement the Charter and to continue to evaluate its success is required. While giving individual Councils the opportunity to be innovative in how they approached the Charter has been effective in responding to the different levels of understanding of rights, applying the Charter more consistently would better equip public authorities to provide client-focused services and deliver improved outcomes for all Victorians. The benefits generally for the Victorian community would be more even, were resources to implement the Charter targeted to resource poor communities.

Education and training has been important in promoting understanding and compliance amongst staff in public authorities. Movement towards a rights culture is a slow process, and while there has been significant change over the last four years, the process needs to continue for the Victorian community to reap the full benefits of a rights culture within public authorities.

The results from the 2010 community consultation undertaken on behalf of VEOHRC show that:

- the Charter was perceived to have helped bring about a positive cultural shift in
government, especially at senior and strategic levels. There was a strong sense that training, guidelines and the obligations of the Charter have changed the way that policy issues are analysed, created opportunities for advocacy and made government more transparent and accountable.

- The Charter was perceived to have contributed to greater transparency and dialogue in law making, even when legislation may not fully comply with the Charter.
- those who had been involved with Charter cases before Victorian courts and VCAT believed the Charter was having a positive impact on the way that laws are being interpreted by the courts and breaches remedied. Those with legal training noted that the number of cases raising the Charter was “literally miniscule” and this was seen as appropriate.
- among organisations in particular, the Charter was credited with delivering better, fairer outcomes for Victorians, with approximately 60 per cent of respondents agreeing or strongly agreeing that this was the case.

Raising community awareness in the Charter is also important. The community sector in Yarra comprises many organisations working with some of the most marginalised and socially excluded groups in Victoria. Their capacity to work for the best outcomes for their service users is expanded by using the Charter as a tool for advocacy.

7 – Options for reform
- broaden the rights included in the Charter
- continue providing resources towards raising communities' awareness of the Charter and how it supports their rights and those of others
- continued support for implementing the Charter, including learning from how different agencies have approached implementation.

Due to the complexity and variety of roles within local governments, it is essential that sufficient time is allowed for councils to incorporate human rights into substantive business. The use of the Charter will be more readily taken up by areas of councils that connect to social planning and service delivery. Respondents to the EOHRCC report acknowledged that the transition to a rights-based culture within government will require ongoing education, training and leadership.

Yarra City Council believes that a human rights based approach aligns with the many other covenants, conventions, and declarations to which Australia is a signatory, as well as the government's focus on affordable, accessible justice and fair outcomes for Victorians. As such the Charter provides a basis for building a viable and sustainable municipality of diverse and dynamic communities, served by a public authority which is responsive to the needs of residents while ensuring its internal capacity and performance. It assists Council to respond creatively and innovatively to external threats and opportunities in order to achieve the best outcomes for the local community.