Mr Edward O’Donohue MLC  
Chairperson  
Scrutiny of Acts and Regulations Committee  
Parliament House  
East Melbourne VIC 3002

Dear Mr O’Donohue


Thank you for your letter of 11 May 2011 inviting me to comment in relation to your committee’s inquiry and review of the Charter of Human Rights and Responsibilities Act 2006 (the Charter).

As you would be aware, the enactment of the Charter amended the Ombudsman Act 1973 to bestow on the Ombudsman the additional function of enquiring into or investigating whether any administrative action is compatible with a human right set out in the Charter.

This additional function has not provided me with any additional powers nor altered the range of matters I can investigate. It is notable that the variety of conclusions that section 23 of the Ombudsman Act already permitted me to reach following an investigation are not dissimilar to some of the rights included within the Charter. For instance section 23(1)(c) enables me to form an opinion that “... a rule of law or a provision of an enactment or practice ... may be unreasonable unjust oppressive or improperly discriminatory”.

However the Charter has provided an additional framework through which to consider matters which have been investigated by my office. For instance I have considered the compatibility of the actions of agencies with rights included in the Charter in several reports, including:

- Ombudsman Investigation - Assault of a Disability Services Client by Department of Human Services Staff (March 2011)
- *Whistleblowers Protection Act 2011* - Investigation into the failure of agencies to manage registered sex offenders (February 2011)

- *Whistleblowers Protection Act 2001* - Investigations into conditions at the Melbourne Youth Justice Precinct (October 2010)

- Own Motion investigation into child protection – out of home care (May 2010)

My Annual Reports have also included examples of complaints where I have considered whether the actions of an agency were compatible with the rights protected by the Charter.

I note the Inquiry’s terms of reference include considering the availability to Victorians of accessible, just and timely remedies for infringements of rights. I also note the Inquiries interest in the costs attached to the operation of the Charter.

The services of my office are free to all Victorians. I have implemented a number of initiatives to assist Victorians to access the services of my office including the availability of interpreter services, accessible web-site services and a program of outreach activities targeting groups within the community who may not be aware of my role.

In my view the effectiveness of the Charter could be enhanced by public authorities improving the quality of their complaint handling practices. Public authorities should identify complaints which engage the rights protected by the Charter and consider whether they have acted compatibly with relevant rights when responding to the complaint. Public authorities should also be required to inform a complainant that they may complain to me if they do not consider the matter resolved.

A further matter for consideration by the Inquiry is the extent of my jurisdiction to deal with complaints related to the Charter. The Charter imposes responsibilities on a broader range of bodies than my traditional jurisdiction under the provisions of the Ombudsman’s Act. In my view this indicates Parliament’s intention to broaden my jurisdiction so that I am able to investigate or enquire into the compatibility of administrative actions with the Charter. However my interpretation has not yet been tested and may be subject to challenge.

Unless Parliament brings certainty to this matter it is foreseeable that the extent of my jurisdiction will ultimately be resolved through time consuming
and expensive litigation. I do not consider that this would be in the public interest.

If your officers would like to discuss this matter further they are welcome to contact my Director of Investigations, Mr Stephen Mumford, on 9613 6205.

Yours sincerely

[Signature]

G E Brouwer
OMBUDSMAN