10th June 2011

Mr Edward O’Donohue, MLC
Chairperson
Scrutiny of Acts and Regulations Committee
e-mail: charter.review@parliament.vic.gov.au

Dear Mr O’Donohue,

RE: INQUIRY INTO THE CHARTER OF HUMAN RIGHTS AND RESPONSIBILITIES

The Domestic Violence Resource Centre Victoria welcomes the opportunity to comment to the inquiry into the operation of the Charter of Human Rights and Responsibilities.

The Domestic Violence Resource Centre Victoria (DVRCV) will focus its submission to the Inquiry into the Charter of Human Rights and Responsibilities on the following issues:

1. Whether additional rights should be included in the charter, including economic, social, cultural, children’s, women’s and self-determination rights
2. The availability to Victorians of accessible, just and timely remedies for the infringements of rights

DVRCV welcomed the introduction of the Charter of Human Rights and Responsibilities in 2006 as a tool to support disenfranchised and marginalised members of the Victorian community in the maintenance of basic human rights. However the rights in the Charter are restricted to civil and political interpretation, which limits how the Charter can applied in cases of domestic and family violence:

2.9 Right to life – Victims of domestic violence live in fear, at times experiencing physical abuse which potentially could deprive them of life. Examples of such situations include choking and attack with a weapon.

2.10 Protection from torture and cruel, inhuman or degrading treatment –
Victims of domestic violence are frequently subjected to cruel, inhuman and degrading treatment. Some examples of this manifestation are sexual assault, neglect through inadequate provision of basic nutritional needs and isolation from social contacts.

1. Whether additional rights should be included in the charter, including economic, social, cultural, children’s, women’s and self-determination rights:

DVRCV recommends that stronger provisions be introduced into the Charter to address the prevalence and harm caused by domestic violence in the community.

The 2004 International Violence against Women Survey included data on the prevalence of violence against women in Australia. It surveyed women between the ages of 18-69 about their experiences of physical and sexual violence and found that:

- 57% of women reported experiencing at least one incident of physical or sexual violence in their lifetime
- 34% of women had experienced some form of violence by a current or previous partner
- 29% of women reported they had experienced physical and/or sexual violence before the age of 15 years

Vic Health also found that the top eight risk factors contributing to the disease burden in Victorian women aged 15-44 years attributable to intimate partner violence were:

- depression (33%);
- anxiety (26%);
- suicide (13%);
- tobacco (10%);
- illicit drug use (6%);
- alcohol (6%);
- femicide (2%);
- sexually transmitted diseases (1%);
- eating disorders (1%);
- cervical cancer (1%); and
- physical injuries (0.6%).

The recognition that domestic violence is a violation of human rights in the Charter would strengthen the message in Victoria that violence against women and family violence is not

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1 The 2004 International Violence Against Women Survey
acceptable, and would support provisions in the Family Violence Protection Act 2008 enacted to protect victims and provide a statutory response to situations of domestic violence.

A number of countries have recognised violence against women as a human rights violation in their constitutions. For instance, in the article concerning the right to liberty and security of the person, the South African Constitution states that:

12. (1) Everyone has the right to freedom and security of the person, which includes the right...
   a) to be free from all forms of violence from either public or private sources;

The Brazilian Constitution also includes an obligation on the state to protect women from violence, stating in article 226:

'The State shall ensure assistance to the family in the person of each of its members, creating mechanisms to suppress violence within the family'.

The Constitution of Ethiopia specifically covers the rights of women in article 35. Part four of this article states that:

'The State shall enforce the right of women to eliminate the influences of harmful customs. Laws, customs and practices that oppress or cause bodily or mental harm to women are prohibited.'

Article 63 of the Vietnamese Constitution states that:

'all acts of discrimination against women and all acts damaging women’s dignity are strictly banned.'

International human rights standards have recognised that a range of human rights must be guaranteed in order for women to live free from violence. The list of rights included below have been elaborated in the context of violence against women by the CEDAW Committee, the UN Declaration on Violence against Women and the Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women.

DVRCV recommends that the Victorian Charter of Human Rights should not only guarantee the rights listed below for all people in all circumstances, but should also explicitly acknowledge that these rights must be upheld in order to ensure a woman’s right to live free from violence:

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3 Constitution of Brazil, available in English at: http://www.georgetown.edu/pdla/Constitutions/Brazil/english98.html.


6 CEDAW Committee, General Recommendation 19 para 7; Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women, article 4; UN Declaration on the Elimination of Violence Against Women, art 3.
• the right to life
• the right not to be subjected to torture or to cruel, inhuman or degrading treatment or punishment
• the right to liberty and security of person
• the right to equal protection under the law
• the right to equality in the family
• the right to the highest standard attainable of physical and mental health
• the right to just and favourable conditions of work.

The drafting of clear and detailed provisions will ensure that all people, regardless of gender, culture, religion or age are entitled to protection from all forms of violence, both those perpetrated by public or State sources and those perpetrated by private sources (that is, those acts which occur in the home or amongst family members).

In order to attain these provisions, DVRCV recommends that economic, social, cultural, children’s, and women’s rights be included in the Victorian Charter.

Women are often trapped in domestic violence situations due to financial dependence, lack of employment skills and lack of affordable housing. Government and public institutions need to develop policies and practices that would support:

• the right to safe and affordable housing
• the right to access fair employment

Community attitudes towards women have become more positive over recent decades; however there remains a strong sense of male entitlement in the Victorian community, illustrated by the continued prevalence of violence and abuse directed at women. The male-dominated world of football continually throws up examples of abuses against women. Women are still in the minority on company boards and as decision makers within the public and private sectors. A right within the charter that addresses community perception and gender inequality could address this ongoing inequity, by including:

• the right for gender equality

Children involved in family violence situations have for a long time been silent witnesses with inadequate responses available for their care and protection. Children growing up in situations where family violence is prevalent can experience developmental delays, mental health issues, interrupted education, negative behaviour modeling and major self-esteem issues. It is paramount that children’s rights are recognized and that appropriate supports and responses are available to them in a child-focused way, rather than the maintenance of the current approach within community supports which consider the child as adjunct to the mother or family. A right within the charter which could address children’s needs:

• the right for children to live in a nurturing and safe environment

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7 Homicide statistics across Australia demonstrate that women who experience family violence are at risk of being killed by their violent partners: see for example Jenny Mouzos and Catherine Rushforth ‘Family homicide in Australia’ Australian Institute of Criminology Trends and Issues in Crime and Criminal Justice no 255, June 2003. This article notes that in Australia 40% of homicides occur between family members, and three-quarters of intimate partner homicides involve men killing their female partners.
DVRCV have referred to the rights elaborated by the CEDAW committee above. These rights must be upheld to ensure the safety and protection of women. We recommend that a specific right be included:

- the right for women to live free from violence

2. The availability to Victorians of accessible, just and timely remedies for infringements of rights

The further development of the Charter must be accompanied by a process which will hold accountable those who breach the rights of others and provide an opportunity for redress, for those whose rights have been breached.

Community education and awareness-raising are necessary to ensure that the Charter is well understood and applied within the government and the wider community. After four years of operation, we believe that the Charter needs to be expanded and its profile raised, and the provisions enshrined within all institutions and organizations.

The process to address the infringement of rights must be further developed within existing structures within the Victorian community, and made accessible to all Victorians. It is vital that the Charter and its accountability process ensures just and satisfactory outcomes for victims, and acts as a strong deterrent for violators.

Yours sincerely

Philippa Bailey
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For the Domestic Violence Resource Centre Victoria