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Registered No. A8T  
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4 June 2015

Dear Mr Young,

### **Submission to 8 Year Review of *Charter of Human Rights and Responsibilities Act 2006***

Peninsula Community Legal Centre is pleased to have the opportunity to make a submission to the 8 Year Review of the *Charter of Human Rights and Responsibilities Act 2006* ("the Charter").

#### **About Peninsula CLC**

Peninsula Community Legal Centre is an independent, not-for-profit organisation that has been providing free legal services to Melbourne's south east communities since 1977. The Centre is one of the largest community legal centres (CLCs) in Australia, spanning a catchment of over 2,600 square kilometres, six local government areas and almost one million people, with a larger catchment area for some programs. The Centre's Head Office is in Frankston, with branch offices in Bentleigh, Cranbourne, Rosebud and Pines (Frankston North), plus visiting outreach services in Hastings and Chelsea. In addition to its general legal services, the Centre operates specialist programs in family law, child support, family violence intervention orders, tenant and consumer advocacy and rooming house outreach. Our clients overwhelmingly experience disadvantage, with around three-quarters reporting no or low income (less than \$26,000 per annum).

The Centre also has a strong commitment to empowering the broader community through community development and community legal education activities. The Centre is regarded by the local community as its key legal resource, organising and participating in forums about legal issues, providing customised workshops and reporting on policy issues that affect the community through local media. Across the community, the Centre endeavours to improve understanding of legal issues through its education activities, as well as supporting community groups and participating in relevant law reform activities.

#### **Comments on the Charter**

Peninsula CLC has long campaigned for the protection and promotion of human rights in Victoria and federally. We made a submission to the Human Rights Consultation Committee in August 2015 and contributed to the Review of the Charter in June 2011.

We make the following comments in relation to this Review of the Charter:

1. We believe that the Charter is an important mechanism for promoting human rights considerations in the decisions of government and public institutions and authorities. It also has the potential to improve awareness of human rights and responsibilities in the broader community.
2. A clear benefit of the Charter has been the requirement to consider human rights concerns in the drafting of new legislation and policy. However, we are

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concerned that the term “exceptional circumstances” in Section 31 may be interpreted too broadly, allowing unwarranted “override declarations” and undermining human rights protections in Victoria.

3. The Charter should be expanded to include additional human rights within its ambit. The inclusion of all rights contained in the *International Covenant on Economic, Social and Cultural Rights (1966)*; the *Convention on the Rights of the Child (1989)*; and the *Convention on the Elimination of All Forms of Discrimination against Women (1979)*, would contribute to the creation of the necessary conditions for all members of our community to participate fully and equally. We also consider the right to self-determination is both relevant and important for inclusion in the Charter as its inclusion provides further acknowledgement of the unique rights and status of Indigenous members of our community, in so far as the right doesn’t derogate from other rights.
4. The Charter could be further strengthened through the recognition of absolute rights, such as the right to protection from torture and cruel, inhuman or degrading treatment. These rights are recognized as absolute under the *International Covenant on Civil and Political Rights* and should similarly be recognized within section 7 of the Charter. We submit that rights which are considered absolute should be clearly defined in section 7 and these rights must not be subject to limitation under any circumstance.
5. A free standing cause of action should be introduced, enabling an affected person to bring a complaint for breaches of human rights, for which a remedy is available.
  - a. We note that the *International Covenant on Civil and Political Rights* includes the right to an effective remedy, pursuant to articles 2(3)(b) and (c), which require the availability of accessible, enforceable, judicial remedies where a breach has occurred. The Charter therefore should be amended to provide accessible, effective and affordable remedies where there have been breaches of human rights.
  - b. Such a cause of action must be enforceable in the appropriate court or tribunal and empower the court or tribunal to make an order, or grant relief or remedy, as the court or tribunal considers just and appropriate. This should include an award of damages if this is considered appropriate by the court or tribunal.
  - c. Instead of providing a judicial remedy from the outset, the Charter could provide for the Victorian Equal Opportunity and Human Rights Commission to receive complaints and provide dispute resolution for individuals who allege a breach of their rights, thereby providing an accessible and affordable means for enforcing the Charter.
6. Clarification of which “public authorities” are bound by the Charter may also be useful, as there appears to be some confusion about this issue in practice.
7. Further to the above paragraph, we suggest that improved education and training is required for public institutions and authorities to improve understanding and compliance.
8. In our experience, the Charter is little known in the broader community, and we are concerned that this important opportunity to raise awareness and help create a widespread, positive human rights culture is being missed. We believe that increased community legal education is required about the operation of the Charter and importance of human rights generally.



Peninsula Community  
Legal Centre inc

9. It is also essential that access to timely and free legal services be available for those who have experienced a possible breach of their human rights but who cannot afford private legal representation. CLCs are well placed to respond to this need, given their strong community connections and experience assisting marginalised community members. However, CLCs are struggling to meet the need for free legal services with stretched resources and urgently need an increase in funding.
10. We support ongoing periodic reviews of the Charter, as an important mechanism for monitoring its effectiveness in improving rights protections in Victoria and to consider possibilities for its enhancement.

We thank you for the opportunity to contribute to this consultation, and await your report with much interest.

Yours faithfully,

**PENINSULA COMMUNITY LEGAL CENTRE INC.**

JACKIE GALLOWAY  
CHIEF EXECUTIVE OFFICER