

4 June 2015

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Dear Mr Michael-Young,

GIPPSLAND COMMUNITY LEGAL SERVICE SUBMISSION TO THE 2015 REVIEW OF THE CHARTER OF HUMAN RIGHTS AND RESPONSIBILITIES ACT 2006 (VIC)

Gippsland Community Legal Service (**GCLS**) is grateful for the opportunity to make this submission.

GCLS, a programme of Anglicare Victoria, is a rural, regional, and remote community legal service. GCLS offers free legal assistance and services to people who live, work, or study in any of Gippsland's six local government areas. Our focus is on assisting vulnerable and disadvantaged members of the community.

GCLS provides legal education, advice, and casework in relation to a wide range of legal matters, and legal representation in family violence litigation. GCLS' work is done with a human rights advocacy approach.

Examples of matters for which clients regularly seek GCLS' assistance include family violence, family law, infringements, debt, insurance, neighbourhood disputes, tenancy, victims of crime assistance, wills, and powers of attorney.

1. Ways to enhance the effectiveness of the Charter

1.1 Expand the role and available methods of the Scrutiny of Acts and Regulations Committee (SARC)

The *Charter* must be meaningful for everyday people, not merely lawyers. Reform in this respect must include review of the current processes by which the Scrutiny of Acts and Regulations Committee (**SARC**) appraises statements of *Charter* compatibility and actions alleged to be incompatible with the Charter.

Recommendation one: the statutory functions of SARC under section 17 of the *Parliamentary Committees Act 2003* (Vic) should be expanded to include a compulsory community consultation phase.

Recommendation two: Bills raising serious human rights concerns should not be passed until SARC has had sufficient opportunity to assess them, and this assessment should include input garnered through community consultations.

2. Any desirable amendments to improve the operation of the Charter

2.1 Clearer means for organisations to self-identify as 'public authorities'

It is the experience of GCLS lawyers that certain Victorian organisations, for example State Trustees, plainly meet the definition of 'public authority' under the *Charter* but remain unaware this is the case.

Recommendation three: the definition of 'public authority' as it appears in the *Charter* should be reviewed for clarity, and promulgated.

In this context GCLS notes one means of implementing recommendation three would be to create and maintain a register of current Victorian organisations which meet the definition of public authority under the *Charter*.

2.2 Expanded Ombudsman role

Recommendation four: The Victorian Ombudsman's jurisdiction should be expanded to enable the Victorian Ombudsman to review the compliance of public authorities, including functional public authorities (that is, non-governmental agencies contractually performing governmental work) with their *Charter* obligations.

2.3 Expanded VHREOC role

Recommendation five: The Victorian Human Rights and Equal Opportunity Commission (VHREOC) should be resourced to do more *Charter* work. In particular, VHREOC should be vested with powers of an auditing nature, similar to the Victorian Ombudsman's own-motion interventions in the context of perceived systematic concerns.

2.4 Legal proceedings in relation to public authority actions

Recommendation six: The Charter should be amended to confer power on the Supreme Court of Victoria to grant relief including damages in legal proceedings in which a public authority is found to have breached the Charter.

2.5 Free-standing VCAT cause of action

Recommendation seven: the Charter should be amended to include a free-standing cause of action allowing alleged violations of human rights to be brought in the Victorian Civil and Administrative Tribunal (VCAT), thus doing away with the current need to link causes of action to administrative law, negligence, a particular piece of legislation, and so on.

GCLS notes it is reasonable to think this reform would lead to an accumulation of complaints, and therefore attendant clarification of the general operation and utility of the Charter.

3. A recommendation, under section 45(2) as to whether any further review of the Charter is necessary

Recommendation eight: section 45 of the Charter should be amended to provide for the Charter to be comprehensively reviewed by 1 October 2019, and separately before 1 October 2024.

Conclusion

GCLS welcomes the opportunity to discuss the contents of this submissions further.

Yours faithfully,



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lawyer,

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