

# National Human Rights Consultation Submission

AGWW-7RZT7F

**Organisation:** West Heidelberg Community Legal Service

**Submission Text:**

RECEIVED BY EMAIL

Dear National Consultation,

Please find attached our written submission to the National Consultation on Human Rights. It is in part based on our oral submission of 14 April 2009 but is more comprehensive.

We give consent to its publication.

Thanks  
Regards,  
Dr Liz Curran  
Director  
West Heidelberg Community Legal Service

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12 May 2009

Father Frank Brennan  
The Chair  
National Consultation on Human Rights

Dear Frank,

Re: Written Submission of the WHCLS

This written submission is partly based on our oral submission in April 2009 in Melbourne but is more comprehensive.

The Government is to be commended for placing the issue of human rights and their protection on the Australian agenda for discussion and we welcome this National Consultation.

1. Background to the West Heidelberg Community Legal Service (WHCLS) and its community

The WHCLS commenced operation in 1975 with the volunteer legal services of John Cain, the former Premier of Victoria. Informed of the high levels of legal need in the area he offered his services to the newly established West Heidelberg Health Service on a Monday night. The legal service is based within the Olympic village of 1956, the facilities of which were handed over for public housing. Today, due to tightly targeted, segmented waiting lists many but not all of the clients of the service often come from significantly disadvantaged social backgrounds including families fleeing domestic violence, newly arrived and older migrant communities with a large proportion of people from the Horn of Africa, people with some form of disability or mental health issues and people with poor income support or on social security benefits.

In the early days of the legal service the health service would refer clients who had legal problems. After discussion with the nearby university, La Trobe University, a lecturer in Legal Aid, Phil Molan was appointed (in addition to his lecturing role at the university) to deliver legal services to clients along with the students at the West Heidelberg Legal Service. This was the commencement of the three-way partnership between the legal service, the health service and the university. In 1979 the legal service received its first government funding and now employs staff alongside the La Trobe Law Lecturer/Solicitor who delivers legal

services to the community through a student law clinic.

The legal service operates on a holistic model of problem-solving, appropriate referral, representation and advice, and active involvement in law reform and community education emerging out of identified client problems and emerging systemic issues. It is co-located with the health service which uniquely enables the legal service to operate within an integrated service delivery model with other health and social services in the same building. The health service also provides allied health and social welfare services. It employs doctors, nurses, nutritionists, dentists, psychiatrists and psychologists and also broader professionals including drug and alcohol counsellors, problem gambling support services, financial counsellors and neighbourhood renewal personnel.

The main areas of assistance of the legal service relate to criminal law with some representation, debt, fines, social security law and domestic violence. The legal service however does not perhaps do as much outreach as is needed but this is mainly due to limitations on staff and resources. Where resources permit, the legal service may take on test cases to improve outcomes for community members. The WHCLS sees clients mainly from the West Heidelberg area but extends its catchment to include referrals made from other areas. It has to limit its coverage as it receives very modest funding and as indicated above there are high levels of need.

West Heidelberg is one of the most disadvantaged communities in Victoria, Australia. In research into social disadvantage in Victoria conducted in 2006, West Heidelberg was ranked twentieth in the 40 highest-ranking postcodes (out of a total of 726) for general disadvantage. This level of disadvantage was similar in 1999 and 2004. This research looked at 24 indicators, the major ones being computer use, internet access, low-income families, post-school qualifications, disability/sickness support, interventions by State child protection agencies, early school leavers, low work skills, year 12 incomplete, dependency ratio and criminal convictions.

It is the legal service's experience that many people fall through the cracks, and that interlinked services on one site, such as those that the West Heidelberg Community Legal Service and the array of professionals in health and social service disciplines at the BCHS has provided, have enabled access for people who might not otherwise have received help so they can address their problems more effectively.

This interaction with other services and within a multi-disciplinary context in which we operate has increased our awareness and insights into range of areas where the human rights of clients are infringed and where protection and remedies for such breaches either do not exist or where their are significant barriers to people's human rights being attained.

In our community, the first barrier is around people's lack of awareness of their human rights but also often their sense that they are not entitled to human rights because they feel so marginalised or socially excluded. Some clients have come to expect poor treatment by agencies of government.

Issues such as a lack of knowledge of rights, a fear of reprisal if they complain about human rights infringements and a lack of capacity or sense of power in brokering better human rights outcomes and a lack of legislatively backed recourses (that do not cost significant money) are inhibitors. Recently, with the arrival of the new Charter governing Victorian activity, we have embarked upon training of both workers and local community on the human rights under the new charter in Victoria. We hope that, as this project continues, local community members and their advocates will be better able to negotiate better human rights outcomes with local agencies who have so much power over their lives. In some instances we have already seen a change in attitude towards clients but the cultural change that this work involves will take time as changing long standing stereotyping of various groups within our community and inflexible and insensitive administration of legislation, policies and services takes

time.

## 2. Why Improved National Human Rights protection is critical for people in communities such as ours

For our clientele, the Charter in Victoria presents an opportunity for our clients, whose rights are so often governed and controlled by government bureaucracies, with real opportunities. These real opportunities reside in awareness-raising, training of both members of community and advocacy agencies enabling them to better negotiate and mediate for improved treatment by agencies who control much of their lives in terms of housing, health, human services and income support and so on. Examples of some successes in the United Kingdom highlight the vital role of training and community advocacy. Strong local advocacy, support on the ground that is linked into and (where appropriate) located in neglected communities so as to assist in identifying and responding to inappropriate conduct or practices and positioned to educate and empower people to negotiate better outcomes and treatment, identify abuses and respond proactively to them, are not as prevalent as they could be. As vulnerable and disadvantaged groups are reliant on government agencies for support and subsistence they are more susceptible to infringements of their rights. International research has revealed that vulnerable and disadvantaged groups have significant lack of knowledge and capability to litigate and/or enforce their rights. Addressing this is necessary if human rights are to become a reality for people on the ground. The barriers for vulnerable and disadvantaged people in obtaining advice in general for their problems are significant, even before these new human rights laws come into operation. With the new human rights protections these could again add another potential layer of laws that are less likely to be enforced by vulnerable and marginalised groups.

If we are serious about the protection of the human rights of people on Australian shores then this should not be an argument against human rights protection, but, rather a realisation that for human rights to become effective benchmarks in our daily lives then significant effort, energy and resources need to be committed by the State and Territory governments to equip those in service delivery and infrastructure support to make the laws enforceable, and enable and facilitate community capacity-building and empowerment – in a respectful and sensitive manner – of vulnerable and marginalised communities whose rights are often most at risk and whose rights this submission focuses on.

## 3. Illustrations of the benefits of greater human rights protection

It is often stated that human rights belong to everyone. The United Kingdom experience of their Human Rights Act reveals that although the Act has improved many facets of life for many people, it has also been used as a public 'whipping boy' and is often being blamed for decisions that do not actually pertain to the Human Rights Act. In Victoria, the Charter is still finding its momentum but it is noted that in Britain (which has ten years of experience of human rights protection under its belt) the potential for the reach of the legislation is being realised in local communities. In Victoria, the Charter has been used in many instances by local advocates to encourage better outcomes. These include pressure on government to accept Autism Spectrum Disorder as a disability under the Act, the prevention of the eviction of a single mother who would have been homeless, and a rehabilitation centre reconsidering its discharge of two young brain acquired injury patients. Here in West Heidelberg we have commenced training workshops for local advocates and community members. We are keen to ensure that knowledge, awareness, confidence, capacity and access to human protections can be afforded. We await further positive feedback about differences taken in approach in the short, medium and longer term. The significant benefit of having national human rights protections contained in one specific document is that it is less piecemeal, the protections are clearer, articulated and that such a document can also be used to promote a culture of human rights that is accessible to and owned by and is not merely the domain of the lawyers. It,

in our experience can become a tool for social inclusion, greater respect and improved administration of policies on the ground.

Term of Reference: Are these human rights currently sufficiently protected and promoted?

#### 4. Gaps left by the Commonwealth Government's non protection of human rights through a holistic human rights framework

Gaps exist because the Commonwealth has failed to provide such a holistic human rights framework. This occurs in areas such as those covered because of joint Commonwealth and state responsibility and in areas such as the social security regime as overseen by Centrelink. The treatment of refugee and asylum seekers and their access to services is a key area lacking in human rights adherence as well as those in our community who experience discrimination. This inadequate protection for human rights at a Commonwealth level was highlighted in focus group research with workers in the City of Banyule and clients of Centrelink which revealed the inappropriate treatment of the public by Centrelink officials and the lack of knowledge of these groups about their rights. Currently there is little or patchy recourse for people who experience human rights infringements in the Commonwealth sphere. There is little dialogue or conversation in the civil service around matters pertaining to the human rights of the people whose lives they manage. A human rights framework would encourage greater dialogue and awareness of the consequences of policy or administrative action/inaction as has been the case in the UK and Canada.

Term of Reference: Identify key issues raised by the community in relation to the protection and promotion of human rights

#### 5. Poverty

Poverty is degrading and demoralising and exclusionary. Although here in West Heidelberg we daily witness the resilience and courage of members of our community, this is not enough. Over time and with great numbers of problems the strain on people's health and ability to withstand the often daily obstacles can wear the community down. This can often occur, in our experience, because the dignity and inherent human rights of our clients are trampled upon by some unthinking, unmoving civil servants who sometimes favour convenience over respect for people whose lives they largely control, who place people in pre-determined stereotypes or pigeon holes based on where they live or their cultural backgrounds (often uninformed by reality or individual case circumstances). With improved national human rights protection in the form of a dialogue model such as the Charter in Victoria, more thoughtful, inclusive, considered, flexible and responsive, even creative ways can be found for enhancing human rights of the community. As we see with more training, advocacy and support in communities more awareness of human rights infringements can occur so that new respectful ways forward can be negotiated which leads to community participation in decision-making as befits a democracy.

Term of Reference: Which human rights (including corresponding responsibilities) should be protected and promoted?

#### 6. Economic, Social and Cultural Rights, ICCPR and the Convention on the Rights of the Child at a minimum

The West Heidelberg Community Legal Service believes that economic, social and cultural rights of people along with civil and political rights (CPR) should be incorporated in any framework for the protection of human rights adopted nationally. We also argue that the Convention on the Rights of the Child should be part of any human rights protection nationally for children facing Commonwealth law impacts. Our experience of clients however is that if their needs around economic security, housing, health are not met then their ability to access civil and political rights is less likely. Economic, social and cultural rights are therefore interconnected and dependent on civil and political rights and those most vulnerable to having

their civil and political rights interfered with are often likely to put up with such intrusions as they are too busy putting their energies into surviving and dealing with an array of other problems.

Term of Reference: How could Australia better protect and promote human rights?

Recommendations: We believe a model along the lines of Victoria's Charter would be good.

We submit that the Victorian model has been diminished by the non inclusion of economic social and cultural rights. We note that such inclusion has been recommended in the review of the ACT Human Rights Act.

The dialogue model, such as the Victorian Charter, not only brings together human rights protection into the one document (whereas currently the position of human rights is unclear and piecemeal) but it also means that rights are considered in the drafting and development of legislation, by the courts in their consideration of cases and at a policy level in how policies are administered. It moves discussions at the highest levels from a random discussion of human rights implications of what they are proposing into the need for them to actually think through the human rights implications with clear guidelines and factors to consider. We would warn that such considerations of human rights implications should not be merely a 'tick a box' thought process by policy makers and administrators, but a genuine consideration of how policies will roll out with forethought being given to any amelioration of negative human rights impacts before they ever occur. This will lead to improved policy outcomes.

A Charter like that in Victoria also provides a benchmark of local agencies such as housing, Centrelink, the Department of Immigration and others on how they need to treat people and renders certain inappropriate behaviors unlawful thereby ensuring accountability and humanity. Furthermore, a Charter such as the Victorian Charter has started cultural change in Victoria through the dialogue and discussion of rights and how these are balanced. In Victoria, it has given local communities a document that provides them and their advocates some leverage in their pursuit of human rights at the local level. In the limited time that the Charter has been in force in Victoria, it may have caused some inconvenience to government but for community member at risk of homelessness, losing contact with members of their family, being excluded from school because of a disability, experiencing significant delay by a tribunal in rights to review of the involuntary status as a mental health patient and so on, it has great value.

Recommendation: The Commonwealth needs to ensure that the resources needed for an effective human rights model are put in place. This includes comprehensive and ongoing training for all levels of government, the judiciary, the agencies funded by government and for local communities so that they can be empowered to participate in society and how it advances human rights adherence for all. Without such resources human rights will struggle to become a living reality for the community.

Should you have any queries or questions please do not hesitate to contact the writer.

Yours faithfully,

Dr Liz Curran  
Director

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