

SUBMISSION

Review of the Victorian Charter of Human Rights
Attorney General of Victoria
Parliament, Melbourne 3000

June 2011

Introduction

Women's Legal Service Victoria (WLSV) is a state-wide not for profit organisation providing free and confidential legal information, advice, referral and representation to women in Victoria. WLSV specialises in issues arising from relationship breakdown and violence against women. In addition to delivering services to women, WLSV develops and implements preventative family violence programs and influences the development of legal policy and law reform. WLSV also provides education, training and professional development on the law and related areas.

Terms of Reference

The Victorian government is conducting a review of the first four years of the operation of the *Charter of Human Rights and Responsibilities Act 2006* (the 'Charter'). We are the only state-wide women's legal service in Victoria providing specialist legal services to women in the areas of violence against women and relationship breakdown. We shall respond to the following terms of reference that are most relevant to our work:

1. Whether the Charter should include additional human rights under the Charter, including but not limited to, rights under the -
 - a. International Covenant on Economic, Social and Cultural rights; and
 - b. Convention on the Elimination of All forms of Discrimination against Women?
2. Whether there should be mandatory regular auditing of public authorities to assess compliance with human rights?
3. Overall benefits and costs of the Charter?

1. ADDITIONAL RIGHTS – ICESCR and CEDAW

In Victoria women and men do not enjoy equal human rights. Women experience inequality in large part due to entrenched systemic and cultural barriers. Incorporating the International Covenant on Economic, Social and Cultural Rights ('ICESCR') and the Convention on the Elimination of all forms of Discrimination Against Women ('CEDAW') into the Charter will promote a gendered analysis of policies and laws that will promote substantive equality. This will encourage courts, public authorities and the government to apply a gendered analysis in law and policy development.

Human rights are inherent to the dignity of all people. Human rights are indivisible and intertwined. Women's civil and political rights are best secured by ensuring protection of ESCR and CEDAW rights. Some of the rights that have the greatest relevance to women are enshrined in ICESCR and CEDAW. These include the right to the highest attainable standard of health, adequate housing and education. The Victorian Equal Opportunity and Human Rights Commission's (VEOHRC) consultation in 2009 found that the Charter was having little impact on improving women's rights. The main barrier was seen to be insufficient protection of economic and social rights and the lack of a systemic approach to ensuring women's substantive equality.¹

In the following section we discuss the key human rights issues facing our client group. As our work specifically relates to family violence and relationship breakdown, our comments will relate back to how our client's rights are protected and advanced in these two areas.

Violence Against Women

Violence against women is a fundamental violation of women's human rights. Recent research has found that²:

- a woman is killed almost every week in Australia by a male partner or ex-partner;
- 1 in 3 women experience physical violence and almost 1 in 5 women experience sexual violence over their lifetime;
- sexual assault is vastly under-reported, under-investigated and under-convicted. According to the Australian Bureau of Statistics, of those women sexually assaulted in Victoria every year, only 15 per cent report the crime to the police;
- 1 in 4 children have witnessed violence against their mother or step-mother; and

¹ Victorian Equal Opportunity & Human Rights Commission, occasional paper 'Advancing Women's Rights – Exploring the relationship between the Charter of Human Rights and Responsibilities and the Convention on the Elimination of All Forms of Discrimination Against Women' 2010 page 16

² A Snapshot to Time for Action: The National Council's Plan for Australia to Reduce Violence Against Women and their Children March 2009, page 4

- family violence leads to more women seeking assistance from homelessness services than for any other reason.

Violence against women can be exacerbated by a lack of support services and inadequate resources. CEDAW General Recommendation provides that States have an obligation to take positive measures to eliminate all forms of violence against women. By incorporating CEDAW and ICESCR in the Charter, governments and public authorities will need to consider laws and policies from a gendered perspective. Such an approach recognises that women's experience of violence is inherently different from that of men.

Incorporating CEDAW and ICESCR in the Charter will ensure a preventative approach to violence against women. At present, when a Bill is introduced into the Victorian Parliament under the Charter, it must be accompanied with a statement of compatibility, setting out with reasons whether the Bill complies with Charter rights. Such an approach should be maintained as it will then have to include a statement of compatibility with CEDAW and ICESCR. This will ensure that consideration of how a Bill will impact upon women is given at the front end of the process, rather than waiting for a negative or discriminatory impact once the Bill is proclaimed. Early consideration of how proposed laws will discriminate against women can ultimately save the government money. Current figures show that the cost of violence against women to Victoria is approximately \$3.4 billion annually.³

Right to Health

Good health is essential to women being able to exercise the right to participate in society and the workforce. Health is a state of physical, mental and social well being, not merely the absence of disease or infirmity.⁴

Intimate partner violence is the leading contributor to death, disability and illness in Victorian women aged 15 to 44.⁵ Alarming, in one Australian survey of 400 pregnant women, 27 percent of these women reported that they had experienced violence during pregnancy.⁶ Numerous studies have demonstrated the connection between family violence and mental illness.⁷ Depression is the most common consequence of sexual and physical violence against women, and such women have a higher risk of stress, anxiety disorder and post traumatic stress disorder.⁸ A history of victimisation is a strong risk factor for developing chronic mental health concerns.

The Victorian Charter should incorporate ICESCR and CEDAW to ensure that women are able to enjoy the highest attainable standard of physical and mental health without discrimination. Incorporating these rights into the Charter will encourage the government and public authorities to:

³ Violence Against Women Policy Statement: Reforming and Preventing, Office of Women, Department of Planning and community development, Policy Statement 2010, page 2

⁴ Committee on Economic Social and Cultural Rights definition of health – using World Health Organisation definition of health.

⁵ The Health Costs of Violence: Measuring the Burden of Disease Caused by Intimate Partner Violence, VicHealth (2004)

⁶ Violence Against Women in Australia as a determinant of mental health & well being: Research Summary 4, VicHealth (2008)

⁷ e.g. Krug et al., 2002; Roberts et al., 1998; Carlson et al., 2002, referred to in 'Collaboration between Mental Health and Domestic Violence' by Australian Centre for HealthCare Innovation <http://www.archi.net.au/e-library/coordination/access/collaboration-domestic>

⁸ <http://www.womenshealthsection.com/content/gynmh/gynmh008.ph>, page 3

- take a gendered approach to laws and policies that target the underlying causes of poor health (including family violence);
- recognise the interconnectedness between good health and enjoyment of other rights; and
- develop strategies that address the systemic barriers that women face when accessing health services (in particular CALD, RRR and other vulnerable groups).

Right to Economic Security

The VEOHRC's consultation found that the Charter is not actively protecting women's economic rights or making a substantial contribution to women's economic security in Victoria.⁹ Economic security is a pre-condition for women being able to exercise their other human rights. Economic insecurity affects women's ability to live with dignity and participate fully in social, cultural and political spheres. It impacts on their standard of living, access to shelter, food, clothing and their health status.¹⁰

Some of the underlying reasons for economic inequality and insecurity are stated below.¹¹

- *Undervaluing of women's unpaid work.* There is no formal recognition of the unpaid work that women do and how this contributes to the economy. Further, cultural norms and expectations still demand that women do more house work and caring work than men, therefore they are less able to engage in paid work. The Committee on ESCR in its concluding comments on how Australia is meeting its obligations, was concerned that homemakers, who are predominantly women, do not enjoy any form of social protection.¹²
- *Undervaluing of women's paid work and work insecurity.* Workplaces with a higher proportion of female employees (e.g. in feminised occupations like child care) receive lower rates of pay.
- *Workplaces do not reflect women's experiences.* Workplaces do not adequately support women to balance career progress and caring responsibilities. As a result more women leave the workforce or move into casual and part time roles and are less able to advance in their careers. Female workers comprise 2/3 of casual employees, and of these, three-quarters work part time.¹³ Also a lack of women in senior decision making roles means that workplaces often do not reflect women's experiences.

⁹ Victorian Equal Opportunity & Human Rights Commission, occasional paper 'Advancing Women's Rights – Exploring the relationship between the Charter of Human Rights and Responsibilities and the Convention on the Elimination of All Forms of Discrimination Against Women' 2010' page 12

¹⁰ http://www.hreoc.gov.au/sex_discrimination/publication/gender_gap/index.html#s5 page 3

¹¹ http://www.hreoc.gov.au/sex_discrimination/publication/gender_gap/index.html#s5

¹² *Concluding Observations of the Committee on Economic, Social and Cultural Rights: Australia*, UN Doc E/C.12/1/Add.50 (2000)

¹³ Victorian equal opportunity and Human Rights commission, Women, Rights and equality: What do they want now? March 2008, Page 6

- *Lack of support for working mothers.* Australian mothers have one of the lowest employment rates among OECD countries.¹⁴ There is also a lack of affordable and quality child care to support a mother returning back to work.
- *Violence, discrimination and harassment greatly impact on women's ability to engage in paid work.* 22 percent of women aged 18-64 have experienced sexual harassment in the workplace in their lifetime.¹⁵ Further, long term violence impacts on a woman's ability to participate in workforce. Estimated cost of domestic violence to business each year is \$500 million.¹⁶

Women later on in their lives are more likely to be reliant on the aged pension than men. This is because of the structural disadvantages against women as shown above. In 2007, the average superannuation balance for Australians with superannuation cover is \$87,589 for men and \$52,272 for women.¹⁷

Women are disproportionately worse off economically than men after a relationship break down and are therefore more likely to rely on social security parenting payments for their livelihood.¹⁸ Our clients find themselves in economically precarious situations because of some of the underlying reasons set out below.

- 83 percent of sole parents in Australia are women therefore the inadequacy of parenting payments disproportionately affects women.¹⁹
- The overall income of those reliant on social security is close to, but often below the poverty line estimates.²⁰
- Women have accrued less superannuation than men because they take more time out of the paid labour force due to their carer role and when they return, they are more likely to have casual or part time jobs.²¹ Given women's experience of economic disparity, we strongly recommend that ICESCR and CEDAW be incorporated in the Charter so that the reality of women's experiences is taken into account when policy and laws are being made.

2. MANDATORY REGULAR REPORTING OF AUTHORITIES

We encourage a stronger focus on the front end of a human rights regime as an effective preventative measure rather a stronger emphasis on the remedial regime for human rights infringement. An effective preventative tool for human rights breaches would be to have a

¹⁴ *ibid*

¹⁵ http://www.hreoc.gov.au/sexualharassment/serious_business/SHSB_Report2008.pdf, page 1

¹⁶ Human Rights and equal opportunity Commission, The Listening Tour Report, Gender equality: What matters to Australian women and men , 2008, page 3

¹⁷ <http://www.fahcsia.gov.au/sa/women/pubs/general/womeninaustralia/2009>

¹⁸ Smyth, Bruce and Weston, Ruth (2000) "Financial Living Standards after Divorce; A recent snapshot" research paper No 23, December 2000; Australian Family Institute of Family Studies: Melbourne

¹⁹ Women in Australia 2009, Office for Women at <http://www.fahcsia.gov.au/sa/women/pubs/general/womeninaustralia/2009>

²⁰ *ibid*

²¹ *ibid*

mandatory auditing and reporting framework to identify and remedy systemic and structural issues. This framework could also be used to evaluate the implementation of these rights in provision of services and development of policy and laws.

3. OVERALL BENEFITS AND COSTS OF THE CHARTER

The overall benefits and costs of the Charter are stated below.

1. Increased parliamentary dialogue about human rights.
2. Statements of compatibility:
 - a. strengthen parliamentary scrutiny of new laws for consistency with human rights and encourage early consideration of human rights in policy and legislative formulations;
 - b. increase transparency and accountability and encourage community consultation in developing policy and legislation; and
 - c. put the focus on the front end of policy and legislative development reducing the likelihood of human rights breaches or poor practices and inadequate service provision by public authorities.

1. **Economic Social and Cultural Rights protected under ICESCR (International Covenant on Economic, Social, Cultural and Social Rights):**
 - a. The right to enjoy economic, social and cultural rights without discrimination;
 - b. The right to equality between men and women in the enjoyment of Economic, Social and Cultural rights (“ESC” rights);
 - c. The right to work;
 - d. The right to just and favourable conditions of work;
 - e. The right to form trade unions and the right to strike;
 - f. The right to social security;
 - g. The obligation to protect the family and an obligation to provide special protection for mothers and children;
 - h. The right to an adequate standard of living including food, clothing and housing;
 - i. The right to education;
 - j. The right to free primary education;
 - k. The right to take part in cultural life, enjoy the benefits of scientific progress and receive protection for scientific, literary or artistic productions.

2. **Convention on the Elimination of all forms of Discrimination against Women (CEDAW)** requires all appropriate measures be taken to eliminate discrimination against women in the following areas:
 - a. Sex role stereotyping
 - b. Trafficking and exploitation;
 - c. Politics and public life;
 - d. Nationality;
 - e. Education;
 - f. Employment;
 - g. Health;
 - h. Economic life, sport and culture;
 - i. Women living in remote and rural areas;
 - j. Equality before the law;
 - k. Marriage and family relations; and
 - l. Violence against women.

Contact Details

This submission was prepared by Zione Walker-Nthenda, Parvathi Suriyakumaran and Eila Pourasgheri on behalf of Women's Legal Service Victoria to:

Mr Edward O'Donohue MLC
Chairperson, Scrutiny of Acts and Regulations Committee
Parliament of Victoria
Melbourne VIC 3002

Charter.review@parliament.vic.gov.au

For further information please contact:

Eila Pourasgheri
Legal Educator/Law Reform & Policy Lawyer
Women's Legal Service Victoria
3/43 Hardware Lane
Melbourne VIC 3000

Phone: 03 9642 0877

Fax: 03 9642 0232

Email: eila@womenslegal.org.au