



Victoria's Charter of Human Rights and Responsibilities in Action

Case studies from the first five years of operation

March 2012

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Freedom. Respect. Equality. Dignity. **Action.**

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About the Human Rights Law Centre

The Human Rights Law Centre is an independent, non-profit, non-government organisation which protects and promotes human rights.

We contribute to the protection of human dignity, the alleviation of disadvantage, and the attainment of equality through a strategic combination of research, advocacy, litigation and education.

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About this publication

This publication is a compilation of case studies extracted from the various submissions made to the Victorian Government's 2011 review of the Victorian Charter of Human Rights and Responsibilities. The first section of this publication contains an overview of the key findings based on an analysis of the 101 case studies collected. The second section contains the case studies arranged into three categories: examples of when the Victorian Parliament has considered human rights; examples of when Government Departments and Public Authorities have taken action; and examples of when individuals have been empowered to take action.

The HRLC would like to thank Rebekah Farrell for her assistance with the preparation of this publication.

A message from the Human Rights Law Centre

Respect for human rights is essential for a community that is fair, just and inclusive. There is strong evidence that where human rights are protected in law they are more likely to be respected in practice.

In 2006, Victoria became the first Australian state to enact a Charter of Human Rights. It did so after a significant and considered public consultation led by constitutional lawyer Professor George Williams and including former Liberal Attorney-General Haddon Storey QC. The consultation demonstrated very strong support for the legal protection of human rights, with 94% of submissions supporting the enactment of a Charter. This support was affirmed in the 2009 National Human Rights Consultation when 87% of submissions supported the introduction of a federal Human Rights Act.

The *Charter of Human Rights and Responsibilities Act 2006* entered into full force on 1 January 2008 and, after four years of operation, is still in its early days. Nonetheless, clear benefits of the Charter's operation can be identified. These benefits are likely to increase over time as both understanding of the Charter develops and its implementation is enhanced.

As the case studies outlined in this publication demonstrate, these benefits include greater government accountability, more responsive public services, and a better deal for some of Victoria's most vulnerable groups, such as people with disability, people with mental illness and people experiencing homelessness.

This publication presents evidence collated during the first five years of the operation of Victoria's Charter of Human Rights. It reveals that the language and ideas of Charter-based rights are being used by a broad array of people, groups and institutions and employed in a variety of ways. The strength of the Victorian Charter in protecting and promoting human rights is reflected not only in the richness of the individual cases themselves but also in the overwhelming number of case studies collected.

We hope this publication is a useful resource for the various individuals and organisations working to promote and protect human rights. We acknowledge and thank the authors of the various submissions from which the case studies have been taken.

For further information about the operation of the Victorian Charter in its first five years, please see the HRLC's submission to the review of the Charter which can be found online at www.hrlc.org.au.

Overview of the Victorian Charter

The Victorian Charter enshrines a body of civil and political rights derived from the *International Covenant on Civil and Political Rights*. These rights include:

- right to equality before the law;
- right to life;
- right to protection from torture and cruel, inhuman or degrading treatment or punishment;
- freedom from forced work;
- freedom of movement;
- right to privacy and protection of reputation;
- freedom of thought, conscience religion and belief;
- freedom of assembly;
- right to peaceful assembly and freedom of association;
- right to protection of families and children;
- right to take part in public life;
- cultural rights;
- property rights;
- right to liberty and security of person;
- right to humane treatment when deprived of liberty;
- right to a fair hearing;
- certain rights in criminal proceedings;
- right not to be punished more than once; and
- protection from retrospective laws.

The Charter establishes a 'dialogue model' of human rights protection which seeks to ensure that human rights are taken into account when developing, interpreting and applying Victorian law and policy without displacing current constitutional arrangements. The dialogue between the various arms of government — namely, the legislature, the executive (which includes 'public authorities') and the courts — is facilitated through a number of mechanisms.

First, prior to introduction to parliament, bills must be assessed for the purpose of consistency with the human rights contained within the Charter, and a Statement of Compatibility tabled with the Bill when it is introduced to Parliament.

Second, all legislation, including subordinate legislation, introduced to Parliament, must be considered by the Scrutiny of Acts and Regulations Committee for the purpose of reporting as to whether the legislation is compatible with human rights.

Third, public authorities must act compatibly with human rights and also give proper consideration to human rights in any decision-making process.

Fourth, so far as possible, courts and tribunals must interpret and apply legislation consistently with human rights.

Fifth, the Supreme Court can declare that a law cannot be interpreted and applied consistently with human rights and issue a Declaration of Inconsistent Interpretation. The Government must respond to such a Declaration within six months.

Finally, the Victorian Equal Opportunity and Human Rights Commission has responsibility for monitoring and reporting on the implementation and operation of the Charter.

Methodology

The case studies in this publication have been extracted from submissions made to the 2011 Review of the Charter. The Review was conducted by the Scrutiny of Acts and Regulations Committee (SARC) and submissions were invited to provide examples of the effects of the Charter on, among other things:

- the development and drafting of statutory provisions;
- the provision of services, and the performance of other functions, by public authorities; and
- the availability to Victorians of accessible, just and timely remedies for infringements of rights.

Of the total 3,834 public submissions made to the Review, 95% support retaining or strengthening the Charter, while just 5% support weakening or repealing the Charter.¹ This is the highest level of support for a Charter of Human Rights disclosed by any inquiry or poll in Australian history.

Submissions to the review came from a variety of sectors including: government bodies; local councils; non-government organisations; and interested individuals. The breadth of this authorship has resulted in a collection of case studies which reflect diverse experiences.

Overview of Key Findings

The case studies demonstrate the various ways in which the Charter has operated to protect and promote human rights in Victoria.

The Charter plays a crucial preventative role, stopping human rights abuses (and the associated social and economic costs) before they occur. This preventative role is illustrated by the various impacts of the Charter outside of the court room; whether it is through government policies, local council projects or the affording of Charter-protected rights to vulnerable individuals and groups.

Contrary to claims from anti-Charter commentators that the Charter would be 'a lawyers picnic', the case studies in this publication present compelling evidence of the Charter making a positive difference to the everyday work and lives of Victorians beyond its influence in the courtroom.

The case studies show that the Victorian Charter has had substantial impacts in the following five areas.

¹ This analysis has been conducted by the HRLC based on the submissions and information available on the SARC website at <http://www.parliament.vic.gov.au/sarc/article/1447>.

The Victorian Charter has required the Victorian Parliament to more fully consider and safeguard human rights in legislation.

The Victorian Charter's mechanisms for promoting the compatibility of new legislation with human rights – namely, the preparation of Statements of Compatibility and the review by SARC of all Bills introduced into Parliament – have improved the transparency and accountability of the Victorian Parliament and Government. Formal scrutiny processes have also ensured that the needs of all Victorians are more appropriately considered in legislative and policy formulation and that, generally speaking, limitations on rights have only been imposed after careful consideration as to their reasonableness, necessity and proportionality.

An example is the *Family Violence Prevention Act 2008*. The accompanying Statement of Compatibility states that the Act promotes the right to protection of families and children and “indirectly” promotes the right to life (case study 4). Reviews of existing Acts, such as the *Guardianship and Administration Act 1986* have also been undertaken to ensure Charter compatibility (case study 2). As a result of the reviews, changes have been made to specific legislation, which has been identified as incompatible. An illustration of this is the *Superannuation Legislation Amendment Act 2010*, which amended seven superannuation Acts and five Acts related to the judiciary, to ensure, among other things, that they did not discriminate on the grounds of sexual orientation or age and were compatible with the rights to non-discrimination and equality (case study 6). Several compatibility reviews have resulted in the creation of new Acts. For example, the *Supported Residential Services (Private Providers) Act 2010* was introduced following the review of the *Regulation of Supported Residential Services Act 2008* and ensures the accordence of rights to persons living in private residential areas (case study 4).

The Victorian Charter has encouraged and enabled government departments and public authorities to undertake organisational and cultural change to embed the principles of freedom, respect, equality and dignity in their work.

The Victorian Charter has had its greatest practical impact in influencing the development and delivery of public services, particularly to marginalised or disadvantaged individuals and groups. The Charter has exerted a positive and significant influence on the way that public authorities undertake their functions. This influence is particularly evident in three key areas:

- (a) prompting early identification of potential human rights issues;
- (b) as an effective platform for advocacy around existing human rights issues; and
- (c) as an impetus for cultural change.

Early identification of potential human rights issues

The Victorian Charter has played a significant role in prompting early identification of potential issues and through this, influencing policy development and decision making processes. In order to achieve this, public authorities are bringing key strategic documents into line with the Charter. For example:

- (a) Corrections Victoria worked to ensure that their law reform and policy development initiatives for the criminal justice system were premised upon human rights principles (case study 25);

- (b) The Department of Premier and Cabinet has reviewed their public documents to ensure that human rights principles enshrined in the Charter are properly considered, including in their annual report, corporate plan and disability plan (case study 25);
- (c) Victoria Police have conducted policy and practice audits into a range of units. The outcomes of these audits have resulted in the development of protocols, which aim to ensure that the risk of Charter violations is minimised (case study 13).
- (d) Glen Eira City Council was encouraged by the Charter to find ways in which minority groups can be included in its discussion and decisions regarding urban design. The Council stated that the greatest contribution of the Charter is its assurance 'that the diverse range of people in the municipality have a voice and know that their life experiences directly influence Council's work, both strategically and operationally' (case study 40).

A platform for effective advocacy around human rights issues

The Charter has influenced the response of public authorities to advocacy and potential litigation, which has led to better outcomes and, on occasion, systemic changes in policy or service delivery. For example, raising Charter arguments resulted in a better outcome for a 40 year old man, suffering from a brain injury, who was living within an aged care home. With assistance, the man's grandparents communicated their grandchild's rights to the Transport Accident Commission who within 12 hours accepted responsibility for the omission and revisited its decision and ensured it gave proper consideration to the man's human rights (case study 75).

The Charter's ability to influence policy change was demonstrated in the case of a physically disabled resident living in a shared supported accommodation unit who objected to his mail being opened by the workers at the unit. In response to the resident invoking the Charter to claim that his right to privacy and reputation were being breached, the unit's policy was changed and the resident was allowed access to his own mail (case study 67).

Impetus for cultural change

The Charter has influenced culture and behaviour within public authorities. Various Government Departments have stated that they are promoting cultural change in their workplace through a consciousness of the Charter (case study 32). Departments are also incorporating the Charter into their organisational culture and taking steps to ensure that service providers are engaged within a human rights framework (case study 33).

The Victorian Charter has initiated Human Rights Education and Empowerment Programs to create a better awareness of Charter rights and empower people to take action.

The Charter has encouraged the provision of human rights training and education programs across a range of sectors, with a view to ensuring that individuals have an understanding of the Charter in operation and its relevance to their lives.

Programs to deepen knowledge and understanding of the Charter have been established in various governmental departments. For example, the Department of Treasury and Finance (DTF) have conducted a department-wide survey in order to determine employees' knowledge of the Charter and how it applies to DTF employment. Subsequent to conducting the surveys, DTF are providing their

staff with training sessions on the Charter and its relevance to the daily operations of the DTF (case study 31).

The Department of Human Services and the Department of Health are also taking steps to ensure that employees are provided with a greater understanding of the Charter and how it relates to their everyday work. To this end, a "Charter Component" is incorporated into staff progression, performance and development plans to ensure that employees are equipped with practical methods by which they can approach their daily activities in a Charter complicit manner (case study 32).

In addition to providing Charter based education programs to their general community, local councils have developed specific training on the Charter for their councillors. In fact, almost two-thirds of councils have provided this training and a number of these councils are further providing ongoing professional development programs in this regard (case study 43).

There are several examples of non-governmental organisations engaging with members of the community, through outreach and educative training programs and projects. Women's Health West has established a project which supports migrant women in understanding their rights and empowering them to exercise leadership and facilitate change within newly-arrived migrant communities. The project is developing a series of workshops, which aim to enhance women's knowledge and engagement with the Charter (case study 93).

Fitzroy Legal Service (FLS) coordinates public events to educate marginalised members of the community about Charter related rights. Further, FLS works with community advocates and workers in assisting them to understand Charter rights (case study 98).

The Eastern Community Legal Service Centre has established a project aimed at engaging young persons in the forum of both schools and at community festivals. The project revolves around an Aussie Rules theme and enhances young people's understanding of human rights principles through the rules of sport. This Project enhances the way in which young members in the community see the Charter as relevant in their every-day lives (case study 94).

The Victorian Charter has provided a framework of language and ideas by which human rights can be more effectively articulated and realised without the need for litigation.

Community organisations have found the Victorian Charter to be a valuable tool in promoting and protecting the rights of vulnerable persons, minority groups and aggrieved individuals. The Charter has assisted these organisations, by providing them with a framework within which they can articulate human rights when advocating for individuals. Such a framework is particularly important for community legal centres in communicating the rights of their client.

The Fitzroy Legal Service (FLS) has found this to be the case, considering the Charter to provide a useful structure within which advocates can engage councils in discussion about issues associated with use of public space, freedom of association and freedom of expression. The Charter enables an approach whereby competing interests can be considered and balanced. The FLS stated that in all cases, the Charter principles were formally recognised by the councils with which they were negotiating (case study 96).

An example of the Charter providing a framework for communicating the rights of an individual is the case of a woman who was considered ineligible for disability services and who sought to be moved

into more appropriate living conditions, having been robbed and sexually assaulted in the special residential services where she lived. The Charter enabled her advocate to frame the woman's issues with regard to her rights and communicate these in a more effective way to the departments involved. As a result, the woman was appointed a case worker, will soon be moved into appropriate housing and now receives 15 hours per week of one-to-one support at her current residences (case study 53).

In a similar example, a single mother living with cerebral palsy was at risk of having her daughter taken from her by Child Protection and needed to demonstrate that with the appropriate assistance she would be competent to care for her. The advocate in this case used the Charter principles to communicate the woman's rights to Child Protection through mediation in the Children's Court. These rights included recognition and equality before the law and protection of families and children. Consequently, the woman was able to demonstrate her capability of mothering her child and Child Protection is no longer involved (case study 55).

In another case, the Homeless Persons Legal Clinic used the Charter to frame their advocacy campaign against a proposed law which criminalises sleeping in cars. The Clinic based the advocacy campaign on the fact that it was incompatible with the rights pertaining to homeless persons as encompassed in the Charter; namely freedom of movement, right to life and right to security and liberty. The campaign was successful, with the resulting arrangement to be a redrafting of the law and development of implementation guidelines (case study 79).

The Victorian Charter has had a notably beneficial impact in the courtroom where, although seldom employed, it has been successfully used to challenge arbitrary or unjust policies and decisions.

Courts and tribunals have played an important, although not to be overstated, function in the operation of the Charter to date. Courts and tribunals have ensured that the Charter has served its purpose to generate a 'dialogue' about human rights and to ensure that laws, policies and practices are developed with appropriate consideration to human rights.

Relatively speaking, there have only been a small number of decisions by courts and tribunals that have substantively considered the Charter. However, in instances where this has occurred, the Charter has played an important role in ensuring that Victorian legislation is interpreted consistently with human rights and that acts and decisions of public authorities give due consideration to human rights.

Instances in which the Charter has been raised predominantly fall within the following areas:

- (a) **Access to justice:** The Charter has been raised most often in cases relating to access to justice and the right to a fair-hearing, In the case of *Materials Fabrication Pty Ltd v Boulderstone Pty Ltd* the Court held that that the common law enshrines a right to commence legal proceedings and that this right is reinforced by the Charter. A dispute resolution clause in a commercial contract which aimed to limit parties' access to the court was held inconsistent with this right and therefore invalid. The Court held that such a clause may severely inhibit, if not preclude, the exercise of a legitimate right for a party to a dispute to conduct a trial of its cause before a court. This case illustrates the Charter's important role in assisting vulnerable or considerably weaker parties to access justice and receive a fair trial – a fundamental aspect of the operation of the legal system itself.

- (b) **Homelessness:** Many of the cases raising the Victorian Charter relating to housing and homelessness issues have involved challenging eviction orders that have been sought by public housing authorities. In the case of *Homeground Services v Mohamed*, for example, the Victorian Civil and Administrative Tribunal held that a non-profit welfare agency acted unlawfully pursuant to the Charter in seeking to evict a young tenant from transitional housing in accordance with a 'youth tenancy policy' in circumstances in which it was likely that the tenant would thereby become homeless.
- (c) **Mental health:** Cases relating to mental health that have considered obligations under the Charter include the review of compulsory medical treatment, the involuntary administration of medication and the human rights issues engaged by the incarceration of someone found not guilty of a criminal offence. The latter is demonstrated in the case of *R v White*, where the incarceration of a person with a severe psychiatric condition found not guilty of murder was considered by the court to be contrary to the spirit of the Charter. It was submitted that imprisonment in these circumstances raised various issues under the Charter including the right to freedom from cruel treatment, the right to liberty and security and freedom from arbitrary detention, and the right to humane treatment when deprived of liberty.

For further examples and details of court cases involving the Charter can be found in the HRLC's case law database at www.hrlc.org.au.

Index of Case Studies

Consideration of human rights by the Victorian Parliament	14
1. Mental Health Bill reviewed to protect Charter rights	14
2. Guardianship and Administration Act reviewed in consideration of Charter requirements	14
3. Severe Substance Dependence Treatment Act framed by Charter	14
4. Victorian Government ensures consideration of Charter in legislative drafting process	15
5. Amendments made to legislation containing potentially incompatible provisions	15
6. Amendments to allow older same sex couples access to superannuation reversionary benefits	16
Actions taken by Government Departments and Public Authorities.....	17
7. Charter informs operation of Victorian public transport system	17
8. Victorian Code of Conduct for community sport promotes equal opportunity	17
9. Improved accessibility for Consumer Affairs Victoria	18
10. State Revenue Office takes Charter rights-based approach to tax collection	18
11. Corrections Victoria establishes diversion program for Koori males	18
12. Coroner's Court takes a human rights approach to the investigation of deaths	19
13. Victoria Police identifies human rights areas of concern	19
14. Charter guides development of new briefing note in Office of Housing	20
15. Department of Human Services ensures client's right to privacy	20
16. Department of education and early childhood development encourages inclusion of Charter in schools	20
17. Department of Innovation, Industry and Regional Development assist international students	21
18. Victoria's plan to prevent violence against women 2010-2020	21
19. Human rights-based framework for agreements between state and traditional owner groups	21
20. Department of Education and Early Childhood Development develop Schools Reference Guide in line with Charter	22
21. Aboriginal Affairs Victoria uses the Charter to direct the Indigenous Family Violence Strategy	22
22. Health Services Commissioner considers the Charter necessary to respond to complaints in an effective and accountable manner	22
23. Office for Youth requires Charter compatibility in funding agreements and services	23
24. Office of the Child Safety Commissioner highlights positive impact of Charter	23
25. Public Authorities assume Charter responsibilities in their key strategic documents	23
26. Improved outcomes for young Aboriginal people framed by Charter	24
27. Department of Health takes Charter based approach to reducing female genital mutilation	24
28. Charter encourages Department of Health to review mental health service practices	24
29. Administration of the Working with Children Act guided by Charter principles	25
30. Department of Transport takes steps to ensure new legislative provisions are in compliance with Charter rights	25
31. Surveys conducted to determine knowledge and applicability of the Charter	25
32. Charter-based approach taken to daily work of DHS/DOH employees	25

33. Public authorities take steps to ensure that service providers are engaged within a human rights framework	26
34. Magistrates' Court reviews Charter activity in the court system	26
35. Department of Human Services takes a holistic approach to human rights	27
36. City of Darebin prioritises ESC Charter rights amongst their youth	27
37. Review of Greater Shepparton City Council's Charter Compliance Policy	27
38. City of Whittlesea ensures community engagement and participation	27
39. Mansfield Shire Council establishes community group	28
40. Glen Eira Council works towards inclusion of minority groups	28
41. Department of Planning and Community Development requires Local Councils to be Charter complicit	28
42. Boroondara City Council ensures that the rights of persons with disabilities are protected	29
43. Councillors provided with Charter training	29
44. Councils support third parties in achieving Charter compliance requirements	29
45. Charter provides framework to consider ban on alcohol consumption in public places	30
Empowering individuals to take action	30
46. Housing Dispute matter resolved to ensure protection of young man's rights	30
47. Charter protects single mother of three from homelessness	31
48. Young girl protected from having to testify against offender	31
49. Wheelchair bound tenant protected from eviction	31
50. Newly arrived refugee siblings protected from eviction	32
51. Charter used to protect intellectually disabled person	32
52. Rights of man living with cerebral palsy protected by raising the Charter	32
53. Woman afforded appropriate disability services thanks to Charter	33
54. Charter used to protect disabled man from sister	33
55. Mother free to care for her daughter	33
56. Young boy not expelled thanks to Charter	34
57. Guardian upholds Charter rights	34
58. Balancing of competing Charter rights leads to best solution	34
59. Guardian employs Charter to ensure continued access to care	34
60. Man removed from prison to more appropriate accommodation	35
61. Charter rights raised to ensure Mental Health Board procedures met	35
62. Man with vision impairment protected from having to sign a works order that could not be verified	35
63. Man with physical disability allowed to continue living in family home	36
64. Man with physical and mental disability receives facilitation of community integration	36
65. Man deprived of aids in correctional facility	36
66. Man denied appropriate support worker	37
67. Charter allows disabled man access to his own mail	37
68. Tenant's freedom of religion protected in housing works dispute	37
69. Charter used to ensure best interests of young person in criminal process	37
70. Refugee afforded appropriate secure housing	38
71. Young woman living with cerebral palsy provided with disability support services	38
72. Charter enables woman to receive urgent treatment	38
73. Rehabilitation centre agree to consider Charter obligations when discharging patients	39
74. Charter reopens court matter to protect victim of domestic violence	39

75.	Charter invokes understanding and response from TAC	39
76.	96 year old woman protected from eviction and homelessness	40
77.	Guardianship revoked due to incompatibility of decisions with Charter rights	40
78.	Charter gives young woman opportunity to find appropriate housing	40
79.	Charter used to prevent criminalisation of sleeping in cars	41
80.	Family of seven protected from homelessness	41
81.	Young man protected from homelessness	41
82.	Charter assists in affording 66 year old woman appropriate accommodation	42
83.	Homelessness avoided by teenage sisters separated from family	42
84.	More information requested to ensure the right to a fair hearing	42
85.	Charter prevents eviction of parents and newborn twins	43
86.	Charter used to mitigate decision to evict single mother and children	43
87.	Young woman caring for siblings protected by Charter	44
88.	Somali refugee provided protection by Charter from eviction	44
89.	Primary school redevelopment conducting in accordance with Charter-based rights	44
90.	Centre for Human Rights and Social Justice established in Warrnambool	45
91.	Salvation Army develops responses to incorporate Charter	45
92.	Women's health organisation believe that Charter makes all the difference	45
93.	Empowering migrant women through Charter education	46
94.	Using Aussie Rules to educate the community about the Charter	46
95.	Using the Charter to combat racism in Ringwood	46
96.	Charter used as framework to make council submissions	47
97.	Charter used to make submissions to Department of Human Services	47
98.	Charter used in community education about human rights	47
99.	Bail applications based on Charter rights	47
100.	Charter assists Good Shepherd Youth and Family Service in a variety of ways	48
101.	Charter used to empower and assist with articulating rights arguments	48

Consideration of human rights by the Victorian Parliament

Case Study 1:

Mental Health Bill reviewed to protect Charter rights

The Department of Health has reviewed the *Mental Health Act 1986* with a view to taking a rights-based approach to the regulation of mental health services. More specifically, the DOH aim to bring the Act in line with the Charter and Australia's human rights obligations more generally. The process of review will include community consultations in order to address any human rights issues brought to light by the Exposure Draft.

Source: Victorian Equal Opportunity and Human Rights Commission - Submissions to the Four Year Review of the Charter of Human Rights and Responsibilities Act 2006 (1 July 2011), Appendix J.

Case Study 2:

Guardianship and Administration Act reviewed in consideration of Charter requirements

The *Guardianship and Administration Act 1986* has been reviewed to ensure compliance with both the Charter and the United Nations *Convention on the Rights of Persons with Disabilities*. Specifically, decisions must be made in accordance with a rights-based approach and give effect whenever possible to the person's wishes.

Source: Victorian Equal Opportunity and Human Rights Commission - Submissions to the Four Year Review of the Charter of Human Rights and Responsibilities Act 2006 (1 July 2011), Appendix J.

Case Study 3:

Severe Substance Dependence Treatment Act framed by Charter

Proposed legislative reform which enables the detainment and treatment of person suffering from substance dependence in the absence of committing an offence, has been contested by members of the community sector. In lobbying to frame the legislation, organisations such as the Fitzroy Legal Service used the Charter to provide a principled approach by which various interests could be considered and balanced. The two most important interests being the safety and welfare of persons with substance dependence and the protection of fundamental human rights such as freedom of movement, freedom from forced treatment and right to a fair trial. Fitzroy Legal Service states that engagement with principles espoused in the Charter greatly assisted with their negotiations.

Source: Fitzroy Legal Service: Submission for Review of the Victorian Charter of Human Rights and Responsibilities Act 2006.

Case Study 4:**Victorian Government ensures consideration of Charter in legislative drafting process**

Examples which demonstrate that the Charter has been considered in the legislative drafting process include the following:

- The *Family Violence Prevention Act* recognises the importance of the Charter. In its statement of compatibility, it expressly states that it promotes the protection of children and families and the right to life.
- The *Supported Residential Services (Private Providers) Act 2010* was introduced following the review of the Regulation of Supported Residential Services in 2008 to ensure Charter compliance. In particular the new piece of legislation protected the rights to be accorded to residents who live in residential areas.
- The *Severe Substance Dependence Treatment Act 2010* was enacted in response to the review of the *Alcoholics and Drug Dependents Persons Act 1986* in an attempt to ensure that that treatment of individuals under the Act is Charter compliant. In particular, the new legislation aimed to reflect the Charter principle that the least rights-restrictive means to achieve a purpose should be employed.

Source: Victorian Government: Submission for Review of the Victorian Charter of Human Rights and Responsibilities Act 2006.

Case Study 5:**Amendments made to legislation containing potentially incompatible provisions**

The Victorian Government has enacted various amendments to legislation containing provisions which may potentially be incompatible the Charter. Seven laws were amended through the Statute Law Amendment (Charter of Human Rights and Responsibilities) Act 2009 and are summarised in the table below:

Legislation amended	Section(s) amended	Purpose of amendment
<i>Australian Grand Prix Act 1994</i>	51(5)(a), 51(5)(b)	To change the onus on the defendant from being legal to evidential in relation to an offence against a regulation made under the Act
<i>Education and Training Reform Act 2006</i>	2.4.31(2)	To remove age discrimination
<i>Fair Trading Act 1999</i>	4, 14	To change the onus from being legal to evidential in relation to an offence of

		making a representation about a future matter and false testimonials
<i>Forests Act 1958</i>	59, 61	To remove reverse onus provisions contained in offences relating to protected forests
<i>Project Development and Construction Management Act 1994</i>	43	To change the wording of an offence relating to the disclosure of confidential information to make it consistent with the freedom of expression
<i>Transport Act 1983</i>	2288ZL, 228ZN	To change the onus from being legal to evidential in relation to an offence of failing to comply with a direction of, or to give an address to, a transport safety officer
<i>Victorian Urban Development Authority Act 2003</i>	72	To change the wording of an offence relating to the disclosure of confidential information to make it consistent with the freedom of expression

Specific legislation, which was also subject to amendments include the following:

- The *Superannuation Legislation Amendment Act 2010* amended 7 laws and 5 Acts related to the judiciary in order to protect human rights. The major focus of these amendments was to ensure that the laws did not discriminate on the basis of sexual orientation or age.
- The *Major Sporting Events Bill 2009* contained a provision which prohibited any actions at sporting events that disrupted the event. This was revised in order to ensure that to right to freedom of expression was not being unreasonably limited. The amendment to the provision requires the disruption to be related to safety concerns, thereby minimising the limitation to one which is more reasonable.
- *Transport Legislation Miscellaneous Amendments Bill 2009* amended a number of Acts to ensure that they were compliant with the Charter. An example of this was the amendment to the *Marine Act 1988*, which now requires disclosure of information regarding vessels to be only for the purposes of monitoring or bringing proceedings for an offence in line with the right to privacy under the Charter.

Source: Victorian Government: Submission for Review of the Victorian Charter of Human Rights and Responsibilities Act 2006.

Case Study 6:

Amendments to allow older same sex couples access to superannuation reversionary benefits

The *State Superannuation Act 1966* was amended by the Statute Law Amendment Relations Act 2001, in order to ensure that same sex relationships could see the passing of reversionary benefits

from one partner to the other upon death. The Act operates prospectively only, thereby discriminating older people in same sex relationships. A woman in this circumstance approached PILCH. Together they wrote to the Human Rights Unit at the Department of Justice advocating for an amendment to this law based on the claim that it cannot be read in a way that is compatible with the Charter and human rights principles more generally. As a consequence of PILCH and the woman's activities, an amendment to the Act was made so that same sex couples could access reversionary superannuation benefits both retrospectively and prospectively.

Source: Public Interest Law Clearing House: Submission for Review of the Victorian Charter of Human Rights and Responsibilities Act 2006.

Actions taken by Government Departments and Public Authorities

Case Study 7:

Charter informs operation of Victorian public transport system

A stakeholder meeting to address the Transport Integration Act 2010 saw much attention drawn to the link between the operation of public transport and human rights issues. In this regard, the Department of Transport (DOT) considered the Charter to be an important tool for informing the Victorian transport system and relevant legislation of the applicable human rights. The DOT reported that the Charter played a crucial role in 'the development of legislation that incorporates objectives of equity, access, affordability and social inclusion...[to] assist in ensuring the protection of the rights outlined in the Charter.'

Source: Victorian Equal Opportunity and Human Rights Commission - Submissions to the Four Year Review of the Charter of Human Rights and Responsibilities Act 2006 (1 July 2011), p128, citing Victorian Equal Opportunity and Human Rights Commission, Talking Rights: compilation report: Resource materials to accompany the 2010 report on the operation of the Charter of Human Rights and Responsibilities, 2011, p.30

Case Study 8:

Victorian Code of Conduct for community sport promotes equal opportunity

The Victorian Code of Conduct for Community Sport was developed jointly by both governmental and non governmental bodies. It aims to promote inclusion and equal opportunity of all persons to engage in community sporting activities regardless of age, gender, sexual orientation, race, culture or religion. VicSport and VicHealth, as well as various sporting bodies in Victoria have been encouraged by the Charter to ensure that human rights inform their decision making.

Source: Victorian Equal Opportunity and Human Rights Commission - Submissions to the Four Year Review of the Charter of Human Rights and Responsibilities Act 2006 (1 July 2011), p150.

Case Study 9:**Improved accessibility for Consumer Affairs Victoria**

Consumer affairs have engaged with the Charter to ensure improved accessibility to their services. This includes ensuring that marginalised consumers such as persons with disability, indigenous persons, seniors and young persons are supported through a broadened range of information accessing mechanisms. These mechanisms include advocacy and outreach services, various modes of written and electronic communication and revised curriculum for schools.

Source: Victorian Equal Opportunity and Human Rights Commission - Submissions to the Four Year Review of the Charter of Human Rights and Responsibilities Act 2006 (1 July 2011), p151.

Case Study 10:**State Revenue Office takes Charter rights-based approach to tax collection**

The State Revenue Office (SRO) has been encouraged by the Charter to take a more flexible approach in order to ensure that the various needs of individuals are duly accounted for. Examples of this include the SRO seeking to ensure that affected by the Global Financial Crisis or tragedies such as the 2009 bushfires are provided the flexibility to pay taxes over a longer period of time and in some cases at a reduced rate. In addition, full or partial tax exemptions were given to persons needing to replace vehicles.

Source: Victorian Equal Opportunity and Human Rights Commission - Submissions to the Four Year Review of the Charter of Human Rights and Responsibilities Act 2006 (1 July 2011), p151.

Case Study 11:**Corrections Victoria establishes diversion program for Koori males**

Corrections Victoria has engaged the Charter as a key source in informing the decision making process behind establishing the *Wulgunggo Ngalu Learning Place* – a diversion program for adult Koori males. The program provides a holistic rehabilitative program in which residents can complete their community orders while being supported with training and rehabilitative services. A key component of the program is the protection of cultural rights evidenced by the integration of the Learning Place with community organisations and the community elders program.

Source: Victorian Equal Opportunity and Human Rights Commission - Submissions to the Four Year Review of the Charter of Human Rights and Responsibilities Act 2006 (1 July 2011), p155, citing Victorian Equal Opportunity and Human Rights Commission, Talking Rights: compilation report: Resource materials to accompany the 2010 report on the operation of the Charter of Human Rights and Responsibilities, 2011, p.30.

Case Study 12:

Coroner's Court takes a human rights approach to the investigation of deaths

Having regard to the Charter's protection of the right to life, the Coroner's Court has taken a human rights approach into investigating the occurrence of deaths by a particular cause. An example of this is the investigation into level crossing deaths, in which it was found that inherent in the right to life is responsibility of public authorities to protect life. With regard to this particular case, an inquest into the number of deaths at level crossings and prevention issues was required.

Source: Victorian Equal Opportunity and Human Rights Commission - Submissions to the Four Year Review of the Charter of Human Rights and Responsibilities Act 2006 (1 July 2011), p156.

Case Study 13:

Victoria Police identifies human rights areas of concern

The Charter has played a significant role in 'prompting identification of potential issues in advance' and through this, influencing policy development and decision making processes. As an example, The Victoria Police Human Rights Unit Project has identified various policies and practices, which have the potential to result in human rights violations. They have conducted policy and practice audits into a range of units within the agency including:

- the Aboriginal Advisory Unit;
- the Gay and Lesbian Liaison Unit;
- the Multi-Cultural Advisory Unit;
- the Prisoner Management Unit;
- the Witness Security Unit; and
- the Strategic Research Unit.

The outcome of these audits in some units resulted in the development of protocols, which aim to ensure that the risk of Charter violations is minimised.

In addition, Victoria Police have:

- audited police cells and holding rooms and reviewed its persons in custody policy to ensure complicity with human rights standards;
- referenced the Charter in Operational Safety and Tactics training guides; and
- ensured that complaints handling procedures are in line with human rights standards.

Source: Victorian Equal Opportunity and Human Rights Commission - Submissions to the Four Year Review of the Charter of Human Rights and Responsibilities Act 2006 (1 July 2011), p158.

Case Study 14:**Charter guides development of new briefing note in Office of Housing**

The Office of Housing has demonstrated its commitment to the Charter by developing a new briefing note, which requires staff to take a rights-based approach to making recommendations with regard to VCAT proceedings. Specifically, staff must consider the relevant human rights impacts when determining the reasonableness of imposing limitations or restrictions upon individuals and in turn whether a less restrictive alternative is more appropriate. Additionally, the Office of Housing has increased the transparency and accessibility of the appeals process.

Source: Victorian Equal Opportunity and Human Rights Commission - Submissions to the Four Year Review of the Charter of Human Rights and Responsibilities Act 2006 (1 July 2011), p159.

Case Study 15:**Department of Human Services ensures client's right to privacy**

An officer of the Department of Human Services, upon observing that a client in a residential service was not been afforded the right to privacy when showering, provided information to the carers on the potential breaches of the Charter. Consequently, the residential service reviewed the client's living environment and made necessary alterations to guarantee the privacy and dignity of the client.

Source: Victorian Equal Opportunity and Human Rights Commission - Submissions to the Four Year Review of the Charter of Human Rights and Responsibilities Act 2006 (1 July 2011), p156, citing Victorian Equal Opportunity and Human Rights Commission, Talking Rights: compilation report: Resource materials to accompany the 2010 report on the operation of the Charter of Human Rights and Responsibilities, 2011, p.31.

Case Study 16:**Department of education and early childhood development encourages inclusion of Charter in schools**

The Department of Education and Early Childhood Development has encouraged schools to include the Charter in their induction process. Teachers are required to educate young persons of their legal rights and responsibilities and are aided by the "*What's The Deal?*" kit- an educational resource developed by Victoria Legal Aid and Youthlaw. Additionally, teachers and students are being trained in relation to Charter rights.

Source: Victorian Equal Opportunity and Human Rights Commission - Submissions to the Four Year Review of the Charter of Human Rights and Responsibilities Act 2006 (1 July 2011), p192.

Case Study 17:**Department of Innovation, Industry and Regional Development assist international students**

The Charter has provided a valuable framework to assist The Department of Innovation, Industry and Regional Development (DIIRD) in improving the delivery of their services in consideration of human rights principles. DIIRD have established various services with the aim to better assist international students. The International Student Care Service was opened to provide assistance to international students including crisis support, counselling, legal advice and welfare assistance. Information sessions are being held, focusing on the rights of international students, including those related to personal safety, work rights, visas and the Australian Health system. In addition, an information desk for international students has been established at the airport.

Source: Victorian Equal Opportunity and Human Rights Commission - Submissions to the Four Year Review of the Charter of Human Rights and Responsibilities Act 2006 (1 July 2011), Appendix I.

Case Study 18:**Victoria's plan to prevent violence against women 2010-2020**

The Charter enables authorities to view programs and policies from a human rights perspective. This is demonstrated by The Victorian Government's plan to address violence against women by taking a human rights approach to challenge the underlying causes of violence. In practice, this means taking measures to promote leadership and equality between men and women in all work, school and social environments. The human rights principles of participation and empowerment play a crucial role in the protection of women's rights, resulting in the adoption of activities and programs, which in themselves build knowledge and confidence in women. This broad approach recognises the collective responsibility across all sectors to work together in protecting Charter rights.

Source: Victorian Equal Opportunity and Human Rights Commission - Submissions to the Four Year Review of the Charter of Human Rights and Responsibilities Act 2006 (1 July 2011), Appendix I.

Case Study 19:**Human rights-based framework for agreements between state and traditional owner groups**

The Victorian Government has passed an Act which creates a framework for agreements to be made between the state and traditional owner groups. The first agreement under this Act was made between The Victorian Government and the Gunai/Kurnai people, recognising them as traditional owners land in the Gippsland region. The most progressive element of this Act is that it affords traditional land owners essential cultural rights as protected by the Charter. Specifically, it recognises the rights of traditional land owners to enjoy their culture and identity and to maintain a spiritual relationship with the land and its resources. The further advantage of this Act is that it ensures that native title disputes can be resolved in a time and cost effective manner.

Source: Victorian Equal Opportunity and Human Rights Commission - Submissions to the Four Year Review of the Charter of Human Rights and Responsibilities Act 2006 (1 July 2011), Appendix I.

Case Study 20:

Department of Education and Early Childhood Development develop Schools Reference Guide in line with Charter

The Department of Education and Early Childhood Development has developed a schools reference guide, which demonstrates how schools can shape their policies in line with human rights principles. Specifically, the guide concentrates on policies regarding dress and appearance of students. The Guide expressly states that under the Charter, schools must balance the rights of individual students against the best interests of the school community as a whole, meaning that schools must accommodate an individual's right within their broader policy.

Source: Victorian Equal Opportunity and Human Rights Commission - Submissions to the Four Year Review of the Charter of Human Rights and Responsibilities Act 2006 (1 July 2011), Appendix I.

Case Study 21:

Aboriginal Affairs Victoria uses the Charter to direct the Indigenous Family Violence Strategy

Aboriginal Affairs Victoria combines both the United Nations Declaration on the Rights of Indigenous Persons and the Charter in developing the Indigenous Family Violence Strategy and the 10-year plan, '*Strong Culture, Strong People, Strong Families: towards a safer future for Indigenous families and communities*'. The engagement of the Charter demonstrates the importance of protecting cultural rights, specifically through community action and participation between local communities and government bodies.

Source: Victorian Equal Opportunity and Human Rights Commission - Submissions to the Four Year Review of the Charter of Human Rights and Responsibilities Act 2006 (1 July 2011), Appendix I.

Case Study 22:

Health Services Commissioner considers the Charter necessary to respond to complaints in an effective and accountable manner

The Office of The Health Services Commissioner recognises that the Charter plays a crucial role in ensuring that complaints are handled effectively in the health sector to ensure patient's rights are put first. The Office states that 'if the complaints are dealt with effectively in accordance with the spirit of the Charter, they can provide an opportunity for healing and improvements in the quality of care for everyone.'

Source: Victorian Equal Opportunity and Human Rights Commission - Submissions to the Four Year Review of the Charter of Human Rights and Responsibilities Act 2006 (1 July 2011), Appendix I.

Case Study 23:

Office for Youth requires Charter compatibility in funding agreements and services

The Office for Youth has ensured that funding agreements and services for youth participation services are in compliance with the Charter.

Source: Victorian Equal Opportunity and Human Rights Commission - Submissions to the Four Year Review of the Charter of Human Rights and Responsibilities Act 2006 (1 July 2011), Appendix I.

Case Study 24:

Office of the Child Safety Commissioner highlights positive impact of Charter

The Office of the Child Safety Commissioner has stated that the Charter has assumed a meaningful role, impacting positively on children. More specifically, they believe that governments are 'increasingly examining issues relating to children through a human rights lens'. To evidence this, the Office cites the Victorian Law Foundation's consultation with young people as to how the Children's court should be reformed.

Source: Victorian Equal Opportunity and Human Rights Commission - Submissions to the Four Year Review of the Charter of Human Rights and Responsibilities Act 2006 (1 July 2011), Appendix I.

Case Study 25:

Public Authorities assume Charter responsibilities in their key strategic documents

Various public authorities have ensured that their key strategic documents are in line with the Charter. The following are examples of this:

- Corrections Victoria ensured that their law reform and policy development initiatives for the criminal justice system were premised upon human rights principles.
- The Department of Justice has prioritised the promotion of social inclusion and review of the operation of the Charter as part of their strategic priorities statement for 2010-2011.
- Department of Premier and Cabinet reviewed their public documents to ensure that human rights were being considered, including in their annual report, corporate plan and disability plan.
- The Department of Education and Early Childhood Development used the Charter to develop a reference guide of *CORE Values*- (CORE being; Collaborative and knowledge sharing, Outcomes, Respect and diversity and Empowerment.) These values create an expectation of upholding human rights, which all staff members are expected to adhere to in their everyday work.

- The Disability Services Commissioner has ensured that its strategic plan is in compliance with the Charter and the UN Convention on the Rights of Persons with Disabilities (CRPD).

Source: Victorian Equal Opportunity and Human Rights Commission - Submissions to the Four Year Review of the Charter of Human Rights and Responsibilities Act 2006 (1 July 2011), Appendix J.

Case Study 26:

Improved outcomes for young Aboriginal people framed by Charter

The framework for the Victorian Government and community commitment to improved outcomes for Aboriginal young people has been developed by Dardee Boorai and has a great emphasis on human rights. A 10-year plan is being developed in order to implement the framework.

Source: Victorian Equal Opportunity and Human Rights Commission - Submissions to the Four Year Review of the Charter of Human Rights and Responsibilities Act 2006 (1 July 2011), Appendix J.

Case Study 27:

Department of Health takes Charter based approach to reducing female genital mutilation

According to the Charter, 'every child has the right without discrimination to such protection as in his or her best interests and is needed by him or her by reason of being a child'. The Department of Health, through their *Family and Reproduction Rights Education Program* has taken a human rights based approach, premised on the rights of children in the Charter, to address female genital mutilation.

Source: Victorian Equal Opportunity and Human Rights Commission - Submissions to the Four Year Review of the Charter of Human Rights and Responsibilities Act 2006 (1 July 2011), Appendix J.

Case Study 28:

Charter encourages Department of Health to review mental health service practices

The Department of Health has reviewed procedures in mental health services in light of Charter requirements. Consequently, efforts have been made to reduce the use of restraint and seclusion. This process is being achieved through:

- involvement in the National Safety Priorities Action Plan;
- the review of guidelines on seclusion published by the Chief Psychiatrist (2006);
- the development of state-wide training and education programs; and
- the establishment of a clinical audit program.

Source: Victorian Equal Opportunity and Human Rights Commission - Submissions to the Four Year Review of the Charter of Human Rights and Responsibilities Act 2006 (1 July 2011), Appendix J.

Case Study 29:

Administration of the Working with Children Act guided by Charter principles

The administration of the *Working with Children Act* is annually reviewed by the Office of the Child Safety Commissioner. The review and subsequent amendments are conducted in line with the Charter principles, namely that of acting in the best interests of the child.

Source: Victorian Equal Opportunity and Human Rights Commission - Submissions to the Four Year Review of the Charter of Human Rights and Responsibilities Act 2006 (1 July 2011), Appendix J.

Case Study 30:

Department of Transport takes steps to ensure new legislative provisions are in compliance with Charter rights

The Scrutiny of Acts and Regulations Committee expressed concerns regarding the intrusiveness of seizure powers enabled by the *Firearms and Other Amendments Act 2010*. The Committee claims that these provisions do not satisfy the reasonable limitation test set out in section 7(2) of the Charter. In response, the Department of Transport (DOT) states that they are taking steps to ensure that the effect of the legislative provisions on human rights will be limited. Specifically, DOT assures that the seizure powers will only be used by a small number of authorised officers who have received appropriate training.

Source: Victorian Equal Opportunity and Human Rights Commission - Submissions to the Four Year Review of the Charter of Human Rights and Responsibilities Act 2006 (1 July 2011), Appendix J.

Case Study 31:

Surveys conducted to determine knowledge and applicability of the Charter

The Department of Treasury and Finance (DTF) have conducted a department-wide survey in order to determine employees' knowledge of the Charter and how it applies to the DTF. Subsequent to conducting the surveys, DTF are providing their staff with training sessions on the Charter and its relevance to the daily operations of the DTF.

Source: Victorian Equal Opportunity and Human Rights Commission - Submissions to the Four Year Review of the Charter of Human Rights and Responsibilities Act 2006 (1 July 2011), Appendix J.

Case Study 32:

Charter-based approach taken to daily work of DHS/DOH employees

The Department of Human Services (DHS) and The Department of Health (DOH), through their Human Rights Community of Practice are taking steps to ensure that employees are provided with a

greater understanding of the Charter and how it relates to their everyday work. To this end, a "Charter Component" is incorporated into staff progression, performance and development plans to ensure that employees are equipped with practical methods by which they can approach their daily activities in line with the Charter.

Source: Victorian Equal Opportunity and Human Rights Commission - Submissions to the Four Year Review of the Charter of Human Rights and Responsibilities Act 2006 (1 July 2011), Appendix J.

Case Study 33:

Public authorities take steps to ensure that service providers are engaged within a human rights framework

Various public authorities have taken actions to ensure that contractors and other third parties engaged are operating within a human rights framework. Examples include the following:

- The Department of Human Services Disability Services Senior Practitioner has taken a Charter-based approach to ensure that its services are in line with Charter Principles. The guidelines focus on the implications of human rights considerations for the external service provider and directly reference provisions of the Charter.
- The Department of Justice's Health unit inserted a requirement into the Health Service agreements that the Charter must be complied with by external service providers.
- Victoria Police have made efforts to ensure that the Melbourne Custody Centre will be operated in accordance with human rights principles. Specifically, Victoria Police have incorporated clauses within their contract, which require the contractor to refrain from acting in a manner which is incompatible with the Charter.

Source: Victorian Equal Opportunity and Human Rights Commission - Submissions to the Four Year Review of the Charter of Human Rights and Responsibilities Act 2006 (1 July 2011), Appendix J.

Case Study 34:

Magistrates' Court reviews Charter activity in the court system

A review conducted at The Magistrates' Court into Charter activity has produced three recommendations. First, that staff should receive education and training on Charter principles. Second, an audit of existing procedures should be conducted in which current non-compliance with the Charter could be identified. Third, an assessment framework should be developed to ensure that the Court's policies and procedures are in line with Charter requirements. The Court is now undertaking actions to meet these recommendations.

Source: Victorian Equal Opportunity and Human Rights Commission - Submissions to the Four Year Review of the Charter of Human Rights and Responsibilities Act 2006 (1 July 2011), Appendix J.

Case Study 35:

Department of Human Services takes a holistic approach to human rights

The Department of Human Services has developed a human rights approach to their activities in the Southern Metropolitan Region. The practice transcends various sectors and consists of social inclusion projects, human rights training focused on youth justice, profiling of human rights issues, appointment of human rights officers and promotion of human rights for the programs staff at regular meetings.

Source: Victorian Equal Opportunity and Human Rights Commission - Submissions to the Four Year Review of the Charter of Human Rights and Responsibilities Act 2006 (1 July 2011), Appendix J.

Case Study 36:

City of Darebin prioritises ESC Charter rights amongst their youth

In response to the introduction of the Human Rights Charter, the City of Darebin conducted a Youth Summit to give young persons in the community the opportunity to discuss economic, cultural and social rights as well as the Convention on the Rights of the Child as encompassed by the Charter. The youth cohort identified their priorities to be the need for awareness raising and the provision of human rights education in schools.

Source: Victorian Equal Opportunity and Human Rights Commission - Submissions to the Four Year Review of the Charter of Human Rights and Responsibilities Act 2006 (1 July 2011)

Case Study 37:

Review of Greater Shepparton City Council's Charter Compliance Policy

VEOHRC undertook a review of Greater Shepparton City Council's Charter compliance policy in order to assess its compatibility with the Human Rights Charter. VEOHRC made submissions as to how the Council can take steps to ensure its local policies comply with its obligations under the Charter.

Source: Victorian Equal Opportunity and Human Rights Commission - Submissions to the Four Year Review of the Charter of Human Rights and Responsibilities Act 2006 (1 July 2011)

Case Study 38:

City of Whittlesea ensures community engagement and participation

A local member of the Whittlesea community raised issues concerning equal opportunity with regard to accessing the Council's consultation processes. This was due to the Council's requirement that all questions be put in writing. In response and in compliance with human rights, the Council assisted the resident in attending the council meeting by providing transport, a hearing device and carer support.

Further, the Council considered ways in which it could enable participation of persons with disabilities during meetings.

Source: Victorian Equal Opportunity and Human Rights Commission - Submissions to the Four Year Review of the Charter of Human Rights and Responsibilities Act 2006 (1 July 2011), Appendix I.

Case Study 39:

Mansfield Shire Council establishes community group

The Mansfield Shire Council has responded to feedback from residents who state they feel isolated or neglected because of their cultural/ linguistic background. The Council has addressed this issue by establishing a community based Mansfield Multi Cultural group. The Council's action demonstrates a commitment to upholding cultural rights.

Source: Victorian Equal Opportunity and Human Rights Commission - Submissions to the Four Year Review of the Charter of Human Rights and Responsibilities Act 2006 (1 July 2011), Appendix I.

Case Study 40:

Glen Eira Council works towards inclusion of minority groups

The Glen Eira City Council has been encouraged by the Charter to find ways in which its minority groups can be included in its discussion and decisions regarding urban design. The Council stated that the greatest contribution of the Charter is its insurance 'that the diverse range of people in the municipality have a voice and know that their life experiences directly influence Council's work, both strategically and operationally'.

Source: Victorian Equal Opportunity and Human Rights Commission - Submissions to the Four Year Review of the Charter of Human Rights and Responsibilities Act 2006 (1 July 2011), Appendix I.

Case Study 41:

Department of Planning and Community Development requires Local Councils to be Charter complicit

The Department of Planning and Community Development has established a set of guidelines titled "*Guidelines for Local Laws*" to ensure that council laws comply with the Charter. The guidelines are supported by a training program and pilot project to assist Councils in reviewing their local laws to ensure that they are in line with the Charter.

For examples, the Guidelines initiative led to the revision of several local laws by Campaspe Shire Council to increase community participation. These included increasing community involvement in decision making and enhancing transparency.

Source: Victorian Equal Opportunity and Human Rights Commission - Submissions to the Four Year Review of the Charter of Human Rights and Responsibilities Act 2006 (1 July 2011), Appendix I.

Case Study 42:

Boroondara City Council ensures that the rights of persons with disabilities are protected

The Charter had a 'discernible impact' on the policies and practices of Boroondara City Council which undertook extensive planning to ensure that their pedestrian precinct was accessible for people with disabilities. This required the involvement of their Disability Action Group and the engagement of various third parties to ensure that the rights of all persons with varying disabilities were met.

Source: Victorian Equal Opportunity and Human Rights Commission - Submissions to the Four Year Review of the Charter of Human Rights and Responsibilities Act 2006 (1 July 2011), Appendix I.

Case Study 43:

Councillors provided with Charter training

Almost two-thirds of councils have provided their councillors with training on the Charter. A number of these councils are further providing ongoing professional development programs in this regard.

Source: Victorian Equal Opportunity and Human Rights Commission - Submissions to the Four Year Review of the Charter of Human Rights and Responsibilities Act 2006 (1 July 2011), Appendix J.

Case Study 44:

Councils support third parties in achieving Charter compliance requirements

Numerous councils have taken steps to ensure that third parties adhere to Charter compliance requirements when engaging their services. This is predominantly achieved by building the Charter requirements into the terms of the contracts and agreements. Some examples include the following:

- Southern Grampians Shire Council have incorporated into their procurement policy a clause entitled "Charter of Human Rights and Responsibilities", which requires all activities related to procurement to be compatible with human rights;
- Campaspe Shire Council have ensured that Charter obligations are incorporated into tender documents; and
- Hume City Council will only consider funding applications which comply with its Social Justice Charter 2007 – a document which incorporates the principles of the Charter.

Source: Victorian Equal Opportunity and Human Rights Commission - Submissions to the Four Year Review of the Charter of Human Rights and Responsibilities Act 2006 (1 July 2011), Appendix J.

Case Study 45:

Charter provides framework to consider ban on alcohol consumption in public places

Yarra City Council engaged the Charter as a framework by which they were able to better balance the rights of the community with those of vulnerable individuals. In response to the issues faced by Yarra City with public consumption of alcohol, the Council invoked a local law at the request of Victoria Police. This law requires persons to either tip out or reseal their alcoholic beverage and upon failure to comply, to be issued with a penalty infringement notice. The interests of the community are accounted for in this regard by enabling the community to enjoy public space without alcohol induced violence and aggressiveness. However, the Charter-based framework provided the flexibility to consider a broader range of interests. As a consequence, the law provides for the issuing of warning notices to persons thereby ensuring that those who are unaware of the law or are suffering from mental illness or alcohol addiction are not unfairly treated. Further, responsible drinking in public parks is exempted for a 12 hour period between 9am and 9pm. This allows for responsible consumption of alcohol to form part of the community's right to enjoy public places. Adopting a Charter based framework enabled the Council to implement laws, which were able to account for the interests of a broad range of members of the community.

Source: City of Yarra Submission for Review of the Victorian Charter of Human Rights and Responsibilities Act 2006.

Empowering individuals to take action

Case Study 46:

Housing Dispute matter resolved to ensure protection of young man's rights

A young male's house was threatened to be possessed by the Office of Housing following the death of his partner. His application to have the tenancy transferred into his name was rejected but thereafter appealed by the Homeless Person's Legal Clinic who used the Charter to submit that the circumstances of his situation and the hardship which he had suffered should be accounted for when determining whether or not he should be evicted. The matter was settled without going to VCAT and the young man was relocated to an alternative unit.

Source: Victorian Equal Opportunity and Human Rights Commission - Submissions to the Four Year Review of the Charter of Human Rights and Responsibilities Act 2006 (1 July 2011), Appendix I.

Case Study 47:

Charter protects single mother of three from homelessness

A single mother was prevented from being evicted from public housing after it was found that her boyfriend was growing marijuana plants on the premises. The Ministry of Housing issued an eviction notice and further denied requests to reconsider it. An application was brought in VCAT but rejected. The tenant then appealed to the Supreme Court and the ruling required that the Ministry reconsider its decision, having specific regard to Section 38 of the Charter. In particular, the Ministry had to consider the tenants right to property, right to privacy and right to family life. As a result, the Ministry withdrew the eviction notice.

Source: Michael Pearce SC: Submission for Review of the Victorian Charter of Human Rights and Responsibilities Act 2006.

Case Study 48:

Young girl protected from having to testify against offender

Fitzroy Legal Service (FLS) has protected a young girl from having to testify against her alleged perpetrators in a criminal trial. The young girl and her family believed that testifying and being cross examined would cause her serious harm. FLS advocated in favour of her choice not to testify and was successful in doing so. They achieved this by raising section 17 of the Charter, which enshrines the protection of families and children. They argued that protection of her rights as a child and protection of the family should be given due regard when determining whether or not the young girl would be required to provide witness testimony. The Tribunal agreed that she should not testify and consequently provided her with financial assistance in recognition of the trauma suffered by her.

Source: Fitzroy Legal Service: Submission for Review of the Victorian Charter of Human Rights and Responsibilities Act 2006.

Case Study 49:

Wheelchair bound tenant protected from eviction

The Department of Human Services (DHS) recently attempted to evict a wheel-chair bound man from his premises. The man suffered from mental illness and spoke a limited amount of English. The DHS used information gathered from police as to a drug related allegation against the tenant in order to gain an order for possession. The eviction was on the basis of illegal activity, although at the time the man had not been charged with any offence. The FLS argued that the man's rights under the Charter were not being considered, in particular that DHS were acting contrary to the presumption of innocence and with no consideration of procedural fairness. The arguments led to a successful settlement of the matter and the tenant was relocated to alternative accommodation.

Source: Fitzroy Legal Service: Submission for Review of the Victorian Charter of Human Rights and Responsibilities Act 2006.

Case Study 50:

Newly arrived refugee siblings protected from eviction

MetroWest intended to evict two siblings who had recently arrived in Australia as refugees on a residential notice to vacate for no specified reason. The Director of Footscray Housing services, upon hearing of the circumstances engaged the assistance of PILCH in challenging the eviction. MetroWest eventually agreed that they were bound by the obligations contained within the Charter and withdrew the application for eviction.

Source: Fitzroy Legal Service: Submission for Review of the Victorian Charter of Human Rights and Responsibilities Act 2006.

Case Study 51:

Charter used to protect intellectually disabled person

Action for More Independence and Dignity in Accommodation (AMIDA), along with Tenants Union Victoria (TUV) used the Charter in a VCAT dispute to protect the rights of an intellectually disabled tenant who had been given a notice to vacate based upon his behaviour at a rooming house. The tenant's behaviour had been as a consequence of his disability. Use of the Charter enabled AMIDA and TUV to open up discussion with the landlord as to his/her obligations as a Public Authority. Consequently, the landlord was able to consider the Charter and agree to an alternative course of action, which upheld the obligations contained within it. The final agreement meant that the tenant could occupy the premises for a period of 6 months while looking for alternative accommodation, so long as his behaviour was appropriate during this time. At the end of the 6 months, the tenant had not been in breach of any house rules and the landlord allowed for him to remain in the premises.

Source: Action for More Independence and Dignity in Accommodation: Submission for Review of the Victorian Charter of Human Rights and Responsibilities Act 2006.

Case Study 52:

Rights of man living with cerebral palsy protected by raising the Charter

A man living with cerebral palsy and vision impairment was suffering great anxiety with regards to security in the housing commission where he lived. He requested the addition of a mesh screen to his door, offering to pay for it. This was rejected by the Community Housing Authority without reason. The advocate contested the decision on his behalf raising rights under the Charter. In particular, it was stated that the screen would not only assist with security but would also give him more privacy in his home. In response the community housing authority decided to arrange for the screen within two weeks.

Source: Leadership Plus: Submission for Review of the Victorian Charter of Human Rights and Responsibilities Act 2006.

Case Study 53:

Woman afforded appropriate disability services thanks to Charter

A woman living with dual disability was ineligible for assistance in accessing services because neither of her disabilities when considered separately met the requirements of the relevant government departments. The woman sought to be moved into more appropriate living conditions as she had been robbed and sexually assaulted in the special residential services in which she lived. The advocate for her case wrote to the relevant government departments raising various issues of breach of the Charter, these being recognition and equality before the law, protection from inhuman and degrading treatment, right to liberty and security of persons. The Charter enabled the advocate to frame the woman's issues with regard to her rights and communicate these in a more effective way with the departments. As a result, she was appointed a case worker, will soon be moved into appropriate housing and receives 15 hours per week of one-to-one support.

Source: Leadership Plus: Submission for Review of the Victorian Charter of Human Rights and Responsibilities Act 2006.

Case Study 54:

Charter used to protect disabled man from sister

A man living with a disability was pressured by his sister and members of his church community group to move in with his sister and allow her access to his \$60,000 savings. The advocate used the Charter to help the man and his church community to understand what his rights. The result of the man better understanding his rights was that he was able to continue living independently, he had an intervention order taken out against his sister, she was further investigated for financial abuse and he recovered his savings. He then appointed state trustees to be his financial administrator. This demonstrates how the Charter can be used to educate people of their rights and empower them to take actions to protect themselves.

Source: Leadership Plus: Submission for Review of the Victorian Charter of Human Rights and Responsibilities Act 2006.

Case Study 55:

Mother free to care for her daughter

A single mother living with cerebral palsy was at risk of having her daughter taken from her by Child Protection. She needed to demonstrate that with the appropriate assistance she would be competent, both emotionally and physically, to care for her daughter. The advocate in this case used the Charter principles to communicate the woman's rights to Child Protection through mediation in the Children's Court. These rights included recognition and equality before the law and protection of families and children. Consequently, the woman was able to demonstrate her capability of mothering her child and Child Protection are no longer involved.

Source: Leadership Plus: Submission for Review of the Victorian Charter of Human Rights and Responsibilities Act 2006.

Case Study 56:

Young boy not expelled thanks to Charter

A male student with a learning disability was threatened expulsion by his school due to his behavioural issues. The advocate outlined to both the school itself and to the Department of Education and Early Childhood Development the student's relevant human rights. As a result of the communication, the boy was provided with the supports, which reduced his behavioural issues and consequently, he was allowed to stay on at the school.

Source: Youth Affairs, Council of Victoria: Submission for Review of the Victorian Charter of Human Rights and Responsibilities Act 2006.

Case Study 57:

Guardian upholds Charter rights

A guardian was questioned in the Magistrate's Court as to why he had not made the decision to place his ward in residential care. The guardian responded that upon deliberating this decision he acted not only in accordance with the Guardianship and Administration Act 1986 but also in line with the Charter. Specifically, the relevant right is that of freedom of movement, which the ward was afforded in being allowed to stay in his current residence.

Source: Office of the Public Advocate: Submission for Review of the Victorian Charter of Human Rights and Responsibilities Act 2006.

Case Study 58:

Balancing of competing Charter rights leads to best solution

A woman living in a nursing home wished to continue receiving visits from her son despite him frequently pestering and at times, threatening her for money. Charter rights were considered in the guardian's decision as to whether the son should be able to contact her. The competing rights were that of freedom of association and protection of the family on the one hand and on the other hand, right to security of person. It was decided that the son could continue contact, however all visits were to be conducted under the supervision of a third party.

Source: Office of the Public Advocate: Submission for Review of the Victorian Charter of Human Rights and Responsibilities Act 2006.

Case Study 59:

Guardian employs Charter to ensure continued access to care

A man was inappropriately discharged from a mental health service, leaving him without access to health services or case management. The guardian informally raised the Charter issues in a letter which stated: 'You are a public authority like OPA and we have obligations under the Charter to consider the potential impact of our decisions on the human rights of our clients. Have you considered whether or not the delay in discharging the client is adversely impacting upon Mr X's rights? To me

the delay may impact Mr X's right to take part in public life, right to the enjoyment of life and protection from degrading treatment.'

The use of the Charter assisted the guardian to focus upon and convey the rights of an individual using the 'universal language' of the Charter.

Source: Office of the Public Advocate: Submission for Review of the Victorian Charter of Human Rights and Responsibilities Act 2006.

Case Study 60:

Man removed from prison to more appropriate accommodation

Following the decision to hold a man with intellectual disability in 23-hour prison lock up, his guardian argued that alternative accommodation should be found for him. There was evidence to suggest that he had been heavily medicated in prison, had not received appropriate services and as a consequence, his state had deteriorated radically. The guardian raised the Charter in arguing that he should be moved to more appropriate accommodation, citing the right to freedom of movement and recognition and equality before the law. The resulting decision led to the man being granted a community supervision order and moved into a 24-hour care at a residential unit.

Source: Office of the Public Advocate: Submission for Review of the Victorian Charter of Human Rights and Responsibilities Act 2006.

Case Study 61:

Charter rights raised to ensure Mental Health Board procedures met

Following 3 adjournments of a Mental Health Review Board hearing, a patient in a mental health facility lodged an appeal. The issue of Charter rights was raised by the community visitor at the Area Mental Health Clinical Service meeting. The ongoing failure to review led to the issue being escalated to the Director of the Mental Health Clinical Services.

Source: Office of the Public Advocate: Submission for Review of the Victorian Charter of Human Rights and Responsibilities Act 2006.

Case Study 62:

Man with vision impairment protected from having to sign a works order that could not be verified

A tenant of the Office of Housing was expected to report maintenance items, however was unable to do so because of his vision impairment, limited mobility and physical disability. The contractors who were engaged to complete the works requested that the tenant sign a worksheet to state that the work had been completed in accordance with the Office of Housing's requirements. The man was unable to verify that this was the case, due to his vision impairment. The advocate invoked the right of freedom from torture and cruel, inhuman and degrading treatment to in order to successfully reverse the policy that requires persons with vision impairment to sign a works order.

Source: Disability Justice Advocacy: Submission for Review of the Victorian Charter of Human Rights and Responsibilities Act 2006.

Case Study 63:

Man with physical disability allowed to continue living in family home

A man suffering from physical disabilities and limited mobility continued to live in his family home after his mother had been admitted in an elderly care unit and placed under a financial administration order by VCAT. In order to prevent the home being sold, the advocate raised the right to property under the Charter. In consideration of this right an agreement was reached whereby the man could continue living in the house as a tenant paying rent.

Source: Disability Justice Advocacy: Submission for Review of the Victorian Charter of Human Rights and Responsibilities Act 2006.

Case Study 64:

Man with physical and mental disability receives facilitation of community integration

A patient in a supported accommodation unit was not been provided appropriate services, in which he was entitled. In particular, he was unable to leave the unit to integrate with the community. The advocate invoked the Charter on his behalf, claiming that failure to provide this service was a breach of his freedom of movement. Consequently, services were provided to enable his integration into the community.

Source: Disability Justice Advocacy: Submission for Review of the Victorian Charter of Human Rights and Responsibilities Act 2006.

Case Study 65:

Man deprived of aids in correctional facility

A physically disabled person in a corrections facility was frequently deprived of his aids while being moved from one part of the correction facility to another. This would result in him being without aids for weeks at a time and consequently suffering a great amount of pain. The advocate invoked the Charter, specifically right to humane treatment when deprived of liberty. As a consequence, the aids were returned to him and it was assured that they would remain for the period of his sentence.

Source: Disability Justice Advocacy: Submission for Review of the Victorian Charter of Human Rights and Responsibilities Act 2006.

Case Study 66:**Man denied appropriate support worker**

A recipient of Home and Community Care services was unable to speak or understand English and was provided with a support worker who was unable to communicate with him in his own language. The council would also not pay for an interpreter to assist with the care services. During negotiations with the council, the advocate raised the Charter. As a consequence, a support worker from the same cultural and lingual background was appointed by the council.

Source: Disability Justice Advocacy: Submission for Review of the Victorian Charter of Human Rights and Responsibilities Act 2006.

Case Study 67:**Charter allows disabled man access to his own mail**

A physically disabled man living in a shared supported accommodation unit objected to his mail being opened by the workers at the unit on the basis that he was capable of opening his own mail and therefore his right to privacy was being breached. The rationale behind the unit's policy was to ensure that any accounts needing payment could be taken care of. The advocate invoked the Charter, claiming that the right to privacy and reputation needed to be upheld. Consequently, the unit's policy was changed and the man was allowed access to his own mail.

Source: Disability Justice Advocacy: Submission for Review of the Victorian Charter of Human Rights and Responsibilities Act 2006.

Case Study 68:**Tenant's freedom of religion protected in housing works dispute**

A physically disabled tenant in public housing objected to work being carried out on his house on a holy day due to his religious beliefs. The contractors threatened to claim breach of the Residential Tenancies Act. The advocate invoked the Charter on the tenant's behalf and claimed that the threat was in contravention of freedom of thought, conscience, religion and belief. As a consequence, the threat was withdrawn and the work rescheduled.

Source: Disability Justice Advocacy: Submission for Review of the Victorian Charter of Human Rights and Responsibilities Act 2006.

Case Study 69:**Charter used to ensure best interests of young person in criminal process**

A youth was charged on two occasions for an offence committed. Police stated that the charge would be withdrawn upon an agreement that the youth would provide a statement and evidence against the co-accused. The charges were re-laid and a hearing was held two years after the alleged offence was committed. Victoria Legal Aid argued that to re-lay the charges was an abuse of process and the

obligation to pursue a process, which will give greatest effect to the child's rehabilitation. The charges were consequently stayed.

Source: Victorian Legal Service: Submission for Review of the Victorian Charter of Human Rights and Responsibilities Act 2006.

Case Study 70:

Refugee afforded appropriate secure housing

A female refugee and her children had been settled in public housing accommodation in Victoria. She applied for alternative accommodation out of fear for her security but was denied this by the Victorian Office of Housing. The legal service used the Charter to communicate with the Office of Housing, their obligation to uphold the woman's rights, including the right to security of persons and protection of families. As a consequence the woman and her children were relocated to more appropriate accommodation.

Source: Public Interest Advocacy Centre: Submission for Review of the Victorian Charter of Human Rights and Responsibilities Act 2006.

Case Study 71:

Young woman living with cerebral palsy provided with disability support services

A 19 year old woman living with cerebral palsy was left in her home, alone and unable to leave, while waiting for the government to determine whether or not she was eligible for disability support services. The advocate communicated with the government that this treatment amounted to a breach of freedom from cruel, inhuman and degrading treatment, as protected by the Charter. Additionally, this was a breach of her right to privacy. The consequence of the communication was that the woman was quickly determined eligible to receive support services and placed on a waiting list for case management.

Source: Public Interest Advocacy Centre: Submission for Review of the Victorian Charter of Human Rights and Responsibilities Act 2006.

Case Study 72:

Charter enables woman to receive urgent treatment

A woman was denied immediate medical assistance to treat contractures in her hand due to her being over 50 years of age. These contractures caused her pain and suffering and over time the deterioration of her hand. The woman had been waiting three years for treatment and failure to access it in the near future could lead to the necessary amputation of the hand. The advocate presented arguments in the form of Charter rights and consequently received funding in order to arrange for immediate treatment.

Source: Public Interest Advocacy Centre: Submission for Review of the Victorian Charter of Human Rights and Responsibilities Act 2006.

Case Study 73:**Rehabilitation centre agree to consider Charter obligations when discharging patients**

A disabled centre was seeking to discharge a number of young people suffering from brain injury on the basis that their two-year term in the Centre had come to an end. The plan was to relocate them to an aged care facility, which would not provide the appropriate services or environment for the young persons. The disability advocate raised Charter rights in negotiations with the Care Centre and as a result, the Centre agreed to take into consideration their obligations under the Charter when determining what action should be taken with regard to these young persons.

Source: Australian Lawyers for Human Rights: Submission for Review of the Victorian Charter of Human Rights and Responsibilities Act 2006.

Case Study 74:**Charter reopens court matter to protect victim of domestic violence**

A VCAT matter regarding the payment of rent and repairs to a property was reopened despite falling outside of its limitation period. The woman involved suffered from mental illness and had been forced to flee the property due to domestic violence. The advocate successfully used the Charter in arguing for the reopening of the matter to protect the woman's rights.

Source: Australian Lawyers for Human Rights: Submission for Review of the Victorian Charter of Human Rights and Responsibilities Act 2006.

Case Study 75:**Charter invokes understanding and response from TAC**

A 40 year old man suffering from brain injury was living within an aged care home. An opportunity arose for him to assume residence within a more appropriate care facility. However, this needed to be accepted within a 30 day period. His grandparents wrote to the Transport Accident Commission (TAC) for them to service notice on the aged care facility but they failed to do so and the time limit lapsed. Upon appealing to the TAC, the grandparents were told that the Commission was simply required to follow procedure. The grandparents were then assisted to communicate with the TAC the Charter rights of their grandchild. Within 12 hours of receipt of this communication, the TAC accepted responsibility for the omission and recognised the need to uphold the man's rights.

Source: Liz Curran: Submission for Review of the Victorian Charter of Human Rights and Responsibilities Act 2006.

Case Study 76:**96 year old woman protected from eviction and homelessness**

A 96 year old woman was given a 60 day notice to vacate the home within which she had lived for 21 years. She was unable to find alternative accommodation in this period of time. The notice was contested in VCAT with the advocate arguing that it was a breach of Charter rights. As a consequence, she was given an additional 30 days and was assisted in finding appropriate accommodation.

Source: Hanover Welfare Services: Submission for Review of the Victorian Charter of Human Rights and Responsibilities Act 2006.

Case Study 77:**Guardianship revoked due to incompatibility of decisions with Charter rights**

A woman contested the decision of her guardian to have her moved into a residential facility where no workers spoke her language, understood her cultural and religious beliefs or would prepare food prepared in a way which was required by her religion. The woman and her family wished for her to stay primarily with them in her family home. PILCH assisting in challenge the guardian's decision. The advocates argued that the requirements under the Guardianship and Administration Act were not met by this decision, such as least restrictive measures employed etc. They also raised the argument that the decision was in breach of the Charter, namely protection of families and children, cultural rights and the right to freedom of religion. The resulting decision of VCAT was that the guardianship be revoked.

Source: Public Interest Law Clearing House: Submission for Review of the Victorian Charter of Human Rights and Responsibilities Act 2006.

Case Study 78:**Charter gives young woman opportunity to find appropriate housing**

A young woman who had settled in Victoria under refugee status was given a notice to vacate at the end of her three-month fixed-term tenancy agreement in transitional housing operated by a private provider. Despite having engaged a caseworker and lodging an application for public housing, she had not received assistance to find appropriate accommodation. Following the expiry of the notice period the private provider applied for a possession order for eviction. HPLC argued that this would be incompatible with the Charter, namely the right not to have home or property unlawfully or arbitrarily interfered with. As a consequence, the provider withdrew the application for possession and signed a second 3-month lease. After this second lease period ended, the young woman had still not found appropriate alternative accommodation. However, with the assistance of HPLC, she was approved for public housing and further, through negotiating with the private provider, was able to stay in the property during the application process.

Source: Homeless Persons Legal Clinic: Submission for Review of the Victorian Charter of Human Rights and Responsibilities Act 2006.

Case Study 79:

Charter used to prevent criminalisation of sleeping in cars

The Homeless Persons Legal Clinic (HPLC) recently drew upon the Charter in their advocacy campaign against the criminalisation of sleeping in cars. The Shire of Yarra Ranges proposed to pass a law, which prohibited persons sleeping in cars with the desired effect of preventing back packers who were using parks without paying a fee. However, the consequence of such law would be to penalise homeless persons sleeping in their cars due to the lack of available appropriate accommodation. The HPLC based the advocacy campaign against the proposed law on the fact that it was incompatible with the rights encompassed in the Charter, namely freedom of movement, right to life and right to security and liberty. The campaign was successful, with the resulting arrangement to be a redrafting of the law and development of implementation guidelines. This process was conducted in conjunction with HPLC and local community service providers. Specifically, the aim of the redrafting was to ensure that persons experiencing homelessness would not be penalised and this was further given effect by including an obligation upon officers suspecting a person to be homeless to contact a support agency.

Source: Homeless Persons Legal Clinic: Submission for Review of the Victorian Charter of Human Rights and Responsibilities Act 2006.

Case Study 80:

Family of seven protected from homelessness

A family of seven had experienced great difficulty in receiving financial support and secure housing since arriving in Australia. They were given permission to sublet a public housing property but were required to vacate it upon the original tenant returning. The property later became vacant due to being damaged by fire and the family, left with no other options, moved back in. They contacted The Office of Housing (OOH) to discuss the situation but the Office stated they would have them removed. HPLC contacted the OOH, stating that the family's removal would be in breach of rights contained in the Charter, including protection of children and families, the right to property and the freedom from interference with a person's home. Negotiations between HPLC and OOH led to an arrangement allowing the family to sign a tenancy agreement for the property.

Source: Homeless Persons Legal Clinic: Submission for Review of the Victorian Charter of Human Rights and Responsibilities Act 2006.

Case Study 81:

Young man protected from homelessness

A young man was given a 'no reason' notice to vacate by a community housing organisation. He was unable to find alternative accommodation during this period of time. The landlord consequently applied to VCAT for a possession order. HPLC claimed that the housing organisation was acting in breach of the Charter by issuing the notice. A settlement was negotiated and the young man was afforded an additional two months to find alternative accommodation and was successful in doing so.

Source: Homeless Persons Legal Clinic: Submission for Review of the Victorian Charter of Human Rights and Responsibilities Act 2006.

Case Study 82:

Charter assists in affording 66 year old woman appropriate accommodation

A 66 year old woman, suffering various nervous state-type disorders had been applying for alternative accommodation as her public housing property was exacerbating her health conditions. She was told by the Office of Housing (OOH) that a transfer would not be possible for three years. The HPLC communicated with the OOH to remind them of their obligations under the Charter, namely the right to security and the right to life. They requested that the transfer to appropriate accommodation be prioritised. This was successful, with the OOH transferring the woman within 2 weeks.

Source: Homeless Persons Legal Clinic: Submission for Review of the Victorian Charter of Human Rights and Responsibilities Act 2006.

Case Study 83:

Homelessness avoided by teenage sisters separated from family

Two teenage sisters were studying full time and living in public housing with their parents. The Office of Housing (OOH) granted the parents a temporary absence to return to Lebanon. They were unable to come back to Australia due to the father's ill health. The sisters, who had remained in Victoria, were unable continue with rent payments and were issued with a notice to vacate for rental arrears. HPLC were unable to negotiate a suitable agreement with the OOH and sought an order from VCAT. The submissions argued that human rights had not been properly considered as there were less restrictive means to achieve the OOH's purpose (including by entering into a Local Agreement). A local Agreement was reached before the submissions were made at VCAT and the sisters were able to avoid eviction.

Source: Homeless Persons Legal Clinic: Submission for Review of the Victorian Charter of Human Rights and Responsibilities Act 2006.

Case Study 84:

More information requested to ensure the right to a fair hearing

The Director of Housing applied for a possession order to evict a family living in public housing. The application was based upon alleged breaches of a compliance order. Eviction would have had serious negative effects on the family, including risk of homelessness. The HPLC requested evidence of the breaches from the DOH but they refused, stating that it would be provided at the hearing. Consequently, HPLC submitted at the hearing that the DOH had breached the right to a fair hearing under the Charter by failing to provide the requisite evidence. Further, they argued that the DOH had not considered the family's right to privacy and reputation and the protection of families and children under the Charter when applying for the order. VCAT adjourned the hearing until the evidence was

produced. DOH withdrew the application for possession and agreed to negotiate with the family to determine a more appropriate solution.

Source: Homeless Persons Legal Clinic: Submission for Review of the Victorian Charter of Human Rights and Responsibilities Act 2006.

Case Study 85:

Charter prevents eviction of parents and newborn twins

A refugee from Somalia was unable to attend a bail hearing due to the birth of his twin daughters. The man suffered from serious drug dependency and the hearing was in relation to drug related offences. As a consequence of these events, he had to serve a one month custodial sentence during which time he was sent a notice of hearing as the DOH had applied for a possession order of his house. He did not receive the notice nor attend the hearing and consequently the DOH set a date to evict the family in two months. The man tried to explain his situation to the OOH and was referred to a support program worker. HPLC represented the family at VCAT and submitted the DOH had failed to give consideration to the family's rights under the Charter and further that their actions were not a justifiable limitation on the Charter rights. An agreement was reached that the possession order be set aside and that the family pay a lump sum and rent on an ongoing basis. HPLC stated that the Charter played a crucial role in conveying the family's situation. This led to a higher level of understanding and compassion on the behalf of DOH to the family's circumstances.

Source: Homeless Persons Legal Clinic: Submission for Review of the Victorian Charter of Human Rights and Responsibilities Act 2006.

Case Study 86:

Charter used to mitigate decision to evict single mother and children

A woman and her three children had been living in a two bedroom public housing unit for 15 years. She had been placed on a waiting list to be transferred to more suitable accommodation for 6 years. Her partner, who did not live at the property, was involved in two verbal altercations with neighbours. As a consequence of these events, the woman was issued with breach of duty notices and the Office of Housing applied for a compliance order. HPLC were engaged to make submissions before VCAT. They argued amongst other things, that the DOH has an obligation to uphold rights under the Charter and were failing to do so by applying for a compliance order. Specifically, they stated that the order was an interference with the family's privacy and infringed the right to protection of families and children. HPLC also argued that the compliance notice was not a reasonable limitation upon the family's rights. VCAT took these into consideration and while it did make a compliance order, it limited its application to one year duration only.

Source: Homeless Persons Legal Clinic: Submission for Review of the Victorian Charter of Human Rights and Responsibilities Act 2006.

Case Study 87:**Young woman caring for siblings protected by Charter**

Following the death of her father and incarceration of her mother, a 23 year old woman agreed to be the guardian of her three younger siblings. She maintained their public housing tenancy and had rental payments deducted from her Youth Allowance payments. While overseas on a study tour, her Youth Allowance was cancelled due to the discontinuation of her enrolment. As a result she accrued significant arrears but did not receive notice of this. The DOH applied for a possession order after having issued a notice to vacate. The HPLC argued at the VCAT hearing that the decisions made by the DOH failed to consider the rights of the young woman and her siblings. VCAT, instead of making a possession order, made an order that the young woman pay \$10 per week towards her rental arrears in addition to her rent.

Source: Homeless Persons Legal Clinic: Submission for Review of the Victorian Charter of Human Rights and Responsibilities Act 2006.

Case Study 88:**Somali refugee provided protection by Charter from eviction**

A Somali refugee moved to Australia after having lived in Kenya for eight years. He was unaware that he needed to inform the Office of Housing that he was working casually and as a result, the OOH recalculated his rent, which caused him to be \$1000 in arrears. He made attempts to repay this debt but found it difficult to make competing payments to various agencies with the small income he received. The HPLC made requests for him to be placed on a payment plan to assist with the administrative difficulties he was facing but these were refused and an order for possession was applied for. HPLC made submissions to VCAT, asserting that the DOH had not given proper consideration to the young man's rights to privacy under the Charter. VCAT dismissed the application for possession and allowed the man to enter into a Local Agreement by which he could pay his rent and make repayments toward the arrears.

Source: Homeless Persons Legal Clinic: Submission for Review of the Victorian Charter of Human Rights and Responsibilities Act 2006.

Case Study 89:**Primary school redevelopment conducting in accordance with Charter-based rights**

A primary school was encouraged by the Charter to actively engage with its community when conducting decision making processes. The school, in consultancy with a broad range of stakeholders including parents, young persons and indigenous cooperatives, used human rights principles to determine the redesigning and redevelopment of its buildings. The process itself was a great contributor to the building of awareness of human rights issues in the community, as well as strengthening relationships and a positive culture in the community more generally.

Source: Victorian Equal Opportunity and Human Rights Commission - Submissions to the Four Year Review of the Charter of Human Rights and Responsibilities Act 2006 (1 July 2011), p150.

Case Study 90:

Centre for Human Rights and Social Justice established in Warrnambool

The Legal Services Board established the Centre for Human Rights and Social Justice. This Centre enables communities to gain information about the Charter. It further provides access to various services including legal advice financial services and housing assistance. An additional aspect of the Centre is its ability to act upon human rights issues of concern, which become apparent as affecting the community. An exercise of the Centre was the development of a *Consumer Rights and Responsibilities* brochure, which based on Charter rights, informs clients of their human rights with regard to services for children and families.

Source: Victorian Equal Opportunity and Human Rights Commission - Submissions to the Four Year Review of the Charter of Human Rights and Responsibilities Act 2006 (1 July 2011), Appendix I.

Case Study 91:

Salvation Army develops responses to incorporate Charter

During 2007-2008, the Salvation Army undertook a project in order to better understand and adapt its practice and policies to the Charter. Specifically, the project involved:

- Determining how the Charter related to the creation and provision of Victorian social programs; and
- Providing training and information to ensure that social programs were in line with the Charter's principles.

Source: Salvation Army: Submission for Review of the Victorian Charter of Human Rights and Responsibilities Act 2006.

Case Study 92:

Women's health organisation believe that Charter makes all the difference

A female family violence worker at Women's Health West has stated that the Charter had a prominent impact in not only the way in which human rights issues are framed and tackled but also the practical realisation of these rights across various sectors.

The family violence worker stated:

"We frequently refer to the Charter to educate clients about their rights and responsibilities, such as the right to live free from violence the right to be safe. Often women are surprised to hear this and respond that this is the first time they've had their experiences framed in this way. At times, workers will refer back to legislative changes that reflect these rights, such as police power to temporarily remove suspected perpetrators of family violence from the house, issue safety notices and apply for intervention orders on behalf of the affected family member

and the requirement to make relevant referrals to regional FV services, men's referral services and the DHS. So the rights are backed up by actions that actually make a difference."

Source: Western Region Health Centre and Women's Health West: Submission for Review of the Victorian Charter of Human Rights and Responsibilities Act 2006.

Case Study 93:

Empowering migrant women through Charter education

Women's Health West has established a project, *Our Community, Our Rights*, which supports migrant women to understand their rights and empowers them to exercise leadership and facilitate change within newly-arrived migrant communities. Women's Health West state that it is not only projects which directly engage the Charter that make the difference, but also the general culture that the Charter has fostered, which enables projects such as *Our Community, Our Rights* to flourish.

Source: Western Region Health Centre and Women's Health West: Submission for Review of the Victorian Charter of Human Rights and Responsibilities Act 2006.

Case Study 94:

Using Aussie Rules to educate the community about the Charter

The Eastern Community Legal Service Centre (ECLSC) has established a project aimed to engage young persons in the forum of both schools and at community festivals. The activities involved in this project enhance young people's understanding of human rights principles and are phrased in terms of rules of sport. The ECLSC engaged a performance company to create plays, which promote the Charter- in particular rights of equality and freedom. The "*Human Rights in Aussie Rules*" Project was then launched in primary schools and later transferred to secondary schools.

Source: Eastern Community Legal Centre: Submission for Review of the Victorian Charter of Human Rights and Responsibilities Act 2006.

Case Study 95:

Using the Charter to combat racism in Ringwood

Numerous complaints against police for acts of racism were being made by migrants from the Horn of Africa. Ringwood station had come to be considered a "hot spot" for racism. In response to these complaints, Victorian Police, Eastern Community Legal Service Centre (ECLSC), the Migrant Information Centre and VEOHRC partnered together to develop initiatives to address the issues. A series of sessions have been held to educate new arrivals in the Sudanese, Burmese and Afghani community about the role of Victoria Police and to further inform them of the role that can be played by VEOHRC and ECLSC. According to ECLSC, the Charter has 'enabled cooperation between these four agencies and a willingness on behalf of Victoria Police in the Outer-East to combat racism'.

Source: Eastern Community Legal Centre: Submission for Review of the Victorian Charter of Human Rights and Responsibilities Act 2006.

Case Study 96:

Charter used as framework to make council submissions

The Fitzroy Legal Service (FLS) has found that the Charter provides a useful framework by which they can engage councils in discussion about issues associated with use of public space, freedom of association and freedom of expression. More specifically, the Charter enables an approach whereby competing interests can be considered and balanced. The FLS cite one example in which the parties were able to consider all relevant Charter obligations in negotiations and consequently, adopted monitoring procedures and various measures to minimise the impact of their policies on human rights. The FLS stated that in all cases, the Charter principles were formally recognised by the councils with which they were negotiating.

Source: Fitzroy Legal Service: Submission for Review of the Victorian Charter of Human Rights and Responsibilities Act 2006.

Case Study 97:

Charter used to make submissions to Department of Human Services

The Fitzroy Legal Service (FLS) has employed the Charter to premise its submissions to the Department of Human Services (DHS), with regard to tenant's rights. More specifically, they have included Charter rights such as right privacy, protection of families and children and matters of procedural fairness into the submissions. FLS stated that the Charter provided an empowerment framework for the submissions to the DHS within which they could communicate the rights that the DHS was obliged to consider.

Source: Fitzroy Legal Service: Submission for Review of the Victorian Charter of Human Rights and Responsibilities Act 2006.

Case Study 98:

Charter used in community education about human rights

Fitzroy Legal Service (FLS) has conducted training sessions focused on the justice system in Victoria and incorporated specific training and information based on the Charter. The sessions are aimed to address the needs of a broad and diverse range of the community including young mothers, new arrivals and culturally and linguistically diverse communities.

Source: Fitzroy Legal Service: Submission for Review of the Victorian Charter of Human Rights and Responsibilities Act 2006.

Case Study 99:

Bail applications based on Charter rights

Fitzroy Legal Service (FLS) frequently raises Charter rights for bail applications. The particular right in question is that of the presumption of innocence, which is enshrined in the Charter through the

procedural fairness provisions. FLS raise this right within the bail application context to ensure that the presumption that bail will be granted, not denied, is preserved and have been very successful in doing so.

Source: Fitzroy Legal Service: Submission for Review of the Victorian Charter of Human Rights and Responsibilities Act 2006.

Case Study 100:

Charter assists Good Shepherd Youth and Family Service in a variety of ways

The St Kilda Branch of the Good Shepherd Youth and Family Service notes the various ways in which they have found the Charter to be of great assistance in their work.

- They successfully employed Charter rights when ensuring that a woman, released from prison was able to secure work and reintegrate into the community.
- They raised the Charter during negotiations where business operators wished to remove homeless persons.
- They used the Charter to run sessions and programs, which outline the various needs and associated rights of marginalised persons, including women who have faced violence, trafficking, forced labour.

Source: Good Shepherd Youth and Family Service: Submission for Review of the Victorian Charter of Human Rights and Responsibilities Act 2006.

Case Study 101:

Charter used to empower and assist with articulating rights arguments

A healthcare coordinator was equipped with a better understanding of the Charter and its application to persons with disabilities before entering negotiations regarding improved hospital conditions for a patient. As a consequence of the negotiations, the patient was moved into a home with rehabilitation services. Following the negotiations, the coordinator stated that 'they went in armed and ready but we were able to negotiate without bringing out the big guns because of the Charter'.

Source: Liz Curran: Submission for Review of the Victorian Charter of Human Rights and Responsibilities Act 2006.