



Submission to the  
Victorian Government's  
Community Consultation  
on Human Rights

1 August 2005

# Introduction

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## ABOUT WOMEN'S HEALTH WEST

Women's Health West (WHW) is the women's health service for the Western Metropolitan Region of Victoria. Established in 1988, our services include research, health promotion, community development and advocacy around women's health, safety and wellbeing. Since 1994, the agency has also hosted the region's largest family and domestic violence support and prevention program.

Women's Health West operates within a social model of health, regarding health as determined not simply by physiology, but by a wide range of social, cultural, political and economic determinants. These include violence against women, poverty, social and geographic isolation, inadequate housing, and discrimination on the basis of gender, sexuality, ethnicity and ability. Discrimination is embedded in social attitudes, relationships and institutions, and reflected in the operations of health, community and legal services, government policy and practices as well as Victorian law itself.

## ABOUT THIS SUBMISSION

After 18 years of operation as a women's health and family violence support service, we are clear that women's rights are human rights. To illustrate this, we have focussed our submission on the ways in which women's experiences of family and domestic violence seriously curtail their ability to exercise their rights to freedom and equality. We also express our support for submissions by other organisations and individuals focussing on the myriad other ways that the human rights of Victorians are breached, including for example through dispossession of and racism against Indigenous peoples, mandatory detention of asylum seekers, discrimination on the basis of race and/or religious practices, homophobia, child abuse and exploitative employment practices.

We regard the development of instruments such as the proposed Victorian Human Rights Charter as part of a collective struggle against all forms of inequality and oppression across and within nation states. In order to achieve justice and equality in Australia, a formal agreement between Indigenous and non-Indigenous Australians is as critical as a Charter of Human Rights.

Some may argue that Victorian women have in the main achieved equal civil and political rights, such as

the right to vote or enter public office. Yet inequalities of gender, and of class, 'race' and other factors in the economy and civil society 'prevent women, the working class and minority groups from exercising those rights' (Charles, 2000: 2).

A Charter, then, must address questions of status – the carrying of a set of rights – as well as of practice – the conditions under which rights can be realised. Further, **economic and social rights** are as important as civil and political rights to women in achieving freedom and equality, particularly with regard to family and domestic violence.

**Human rights policies must be framed as a response to existing conditions and problems**, not simply as a discourse within which we pretend that having a Charter means we have achieved equality. We encourage the development of policies and processes, and allocation of resources, in a manner that encourages the development of a just and equal society.

Victoria's Charter should protect all our human rights, as expressed in the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural rights, and all other international human rights instruments to which Australia is signatory. Human rights are indivisible: the right to vote, free speech and fair speech are no more important than the rights to work, health, housing, education and safety, even if the mechanisms for protecting different sorts of human rights may differ.

WHW has aimed to respond to the complexity of questions posed with practical suggestions, as well as consideration of the more difficult conceptual issues they raise. We have divided our responses to relevant questions into a 'big picture' section, and another section that examines the question through the lens of family and domestic violence. This encompasses, where relevant, a number of case studies drawn from our direct service experiences. Our submission also includes quotes drawn from research and consultation with women who are affected by family violence in the Western Metropolitan Region.

We fully support the enactment of a Human Rights Charter for Victoria and would see this as a preliminary step in enshrining the Charter in our Constitution.

# 1. Is change needed in Victoria to better protect human rights?

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## **From individual to collective responsibility**

Even a cursory analysis suggests that Victoria, like the rest of Australia, has a relatively poor record of sustaining access to human rights. Key indicators include the deteriorating state of industrial relations, unabated levels of violence against women and children, lack of affordable housing and public housing waiting lists, attacks on and lack of reproductive freedom, the appalling state of Indigenous health and incarceration, myriad issues around mental health, public health and family and domestic violence service waiting lists and treatment of asylum seekers.

The media, encouraged by the rhetoric of conservative governments, increasingly portrays inequality as the result of individual inadequacy (e.g. 'dole bludger', 'single mum') rather than of structural inequality. This shifts the responsibility for socio-economic and political problems from the culture collectively to individuals alone (Cannold, 1998: 112-13). However, individuals alone do not possess the resources to address their oppression or take real control of their lives. An active state focussed on supporting the 'common good', such as through the development of a Human Rights Charter, is a key element in the struggle for equality.

## **From individual to collective rights**

Over the past decade, freedom and autonomy have been increasingly conceptualised in individual terms, resulting in abstract rights in law. Consideration of the power relations within which rights are exercised has, in contrast, tended to be ignored in rights discourse.

However, as US women's rights activist Rosalind Petchesky points out, 'we can no longer afford to think of macroeconomic regimes (finance, trade, fiscal policy) and human rights regimes as entirely separate discourses' (Petchesky, 2003: 14). Rights are 'merely the codification of needs, reformulating them as ethical and/or legal norms and thus implying a duty on the part of those in power to provide all the means necessary to make sure those needs are met' (Petchesky, 2003: 17-18).

Take the example of reproductive choice: a woman's legal right to abortion means little if she cannot access services due to high costs, conservative attitudes, geographical isolation and limited funding. Yet looking at abortion in a broader rights context – for example, as one aspect of all women's right to quality, accessible health care – highlights the necessity to resource programs (from providing primary care to tackling community and service provider attitudes) to ensure that abortion is universally accessible (Gregory, 2005: 58).

There is a fundamental need to shift from a model based on individual rights, to collective rights: the right of all women to health and safety, to live free of violence and discrimination. Shifting from an individual to a collective rights framework recognises the necessity of establishing and resourcing policies and programs that redress inequality, and promote a shift in community attitudes to respect and promote human rights. A Human Rights Charter, under these circumstances, provides a framework for political and moral analysis. WHW advocates a Charter that includes a well-resourced program for implementation across and within private and public sectors, at all levels of government and within communities.

## **Focus on family and domestic violence**

### **The perpetual crisis of family and domestic violence**

The stories and words of survivors of family and domestic violence quoted throughout this submission highlight the urgent need for change in Victoria to promote, protect and address the human rights of women and children affected by family and domestic violence.

In the 2004-2005 financial year, 720 women and 874 children from 36 different cultural and linguistic backgrounds made use of Women's Health West's family and domestic violence support services. Workers report that client intake has increased 40 percent in the last six months, seemingly in response to the new Police Code of Practice for Domestic Violence. Yet we know that these figures represent

*"Nobody knows what goes on behind closed doors."*

*"We were all trained to keep secrets and the secrets we kept poisoned us."*

*"I didn't even know it was a serious offence, I thought I was causing trouble."*

(Women's Health West, 2004)

the tip of the iceberg: there is longstanding evidence of the under-reporting of family and domestic violence and considerable barriers for women to seek support.

If this level of harm – of death, trauma, ongoing mental and physical health problems – were caused by any other phenomenon, it would be widely condemned as a crisis. Family and domestic violence is a perpetual crisis, an endemic abuse of human rights, which is for the most part ignored by media, under-resourced by government, trivialised by the justice system and covered up within families and communities. As a result, women and children continue to suffer violence at an alarming rate, and under-funded support services struggle to keep up with overwhelming demand.

It was not until VicHealth's recent study, discussed under question 3, that intimate partner violence was measured within population health research. Yet this study found intimate partner violence to be the greatest risk to the lives and health of Victorian women under 45 (VicHealth, 2004).

## **Violating women's and children's rights**

Family and domestic violence violates women's and children's civil, political, economic, social and cultural rights. It is a manifestation of the impact of gender and power – of unequal power relations between men and women, boys and girls, adults and children. Family and domestic violence breaches women's and children's basic human right to safety and security, and seriously impedes their capacity to exercise many other rights. This is occurring in every community, cultural and socio-economic group throughout the Western Region and around Victoria. Change is urgently needed.

Women's and children's experiences of violence and their ability to receive adequate support and intervention are affected by a range of intersecting socio-cultural and economic factors. This means that women with a disability, Indigenous women, non-English-speaking women, asylum seekers, refugees

and migrants, women who are in/have been in prison, women who are socially and geographically isolated, women on a low income and women who are carers are at relatively greater risk. Age is also a factor, with domestic violence identified as the greatest health risk to women under 45, with elder abuse a related issue.

## **Abuses by 'the system'**

Unfortunately, rights violations against women and children who have experienced family and domestic violence do not always stop when they try to seek help to escape from the violence. Inappropriate and unhelpful responses by the police, government departments and service providers can lead to further denial of women's and children's rights.

Failure to enforce those laws that exist, to consider women's behaviour within a framework of trauma and abuse, or to provide culturally-sensitive services, can leave women feeling that a violent home is 'safer' than an uncertain and hostile service system.

Often it is women who are most vulnerable to rights violations through family and domestic violence who are also most likely to have their rights denied in attempting to seek help. For example, women with a disability are particularly vulnerable to violence from family members and carers. Rates of family and

*Judith was married to a man who was extremely violent for 43 years. She describes living in fear every day. Judith was born in 1935 and was the twelfth of thirteen children. From the age of seven she was sexually molested by her brother. He was fourteen at the time. Judith didn't tell her mother because he threatened her.*

*"My brother was mum's pet, I knew nobody would believe me, I didn't talk about it for 53 years", Judith said. The abuse would occur when her mother was out of the house shopping in the afternoon. When Judith wasn't in school, usually in school holidays, her brother would slip home from work. The abuse continued until she was 12. It stopped only when her brother, then 19, left home. "I hated my life at home. I was frightened of my brother. My mother didn't like me taking girlfriends home. My parents would argue and scream all night. My father was the sort of person who if he said black was white, you'd better believe him", she said.*

(Women's Health West, 2004)

domestic violence against women with a disability are approximately twice those of the broader community (Mulder, 1996). Yet women with a disability are grossly underrepresented in family and domestic violence services such as refuges.

There is only one refuge in the Western Metropolitan Region that is now accessible to women with a disability. Information about family and domestic violence is generally unavailable in formats accessible for women with a disability – let alone women with a disability who are from Culturally and Linguistically Diverse (CALD) backgrounds – or is given to women via their carers, who may be the perpetrators of violence. Women have few economic resources, and may be afraid of leaving their home, which, while unsafe, may at least be accessible.

Women who are mothers often express real fears of their children being removed should they seek assistance due to family and domestic violence. This is exacerbated for mothers who have a disability.

*"A 23-year-old woman was told by child protection that her children were at risk because her partner was violent. They told her that if she didn't leave the house within 24 hours she would lose her children.*

*She was given no support to find housing other than being told 'family violence services are in your region'. She did not meet the deadline, and her children were removed from her custody. She was three months pregnant at the time.*

*"When her baby was born, child protection services immediately took the child. She had no time to bond. She has weekly access to see her children, but the department says must see them immediately after her ex-partner does, to 'minimise disruption' to the children's day.*

*This means she has to face the perpetrator and break her intervention order, otherwise she will not see her children. She moved into her mother's house, and has now been told that she is no longer eligible for public housing because she is in stable housing."*

(WHW Family and Domestic Violence Support Worker, 2005)

*"Women in wheelchairs are scared to leave home because at least it is accessible. They have the basic everyday resources – they can get to the toilet and have a shower. The barriers to women leaving violence include fear of the unknown, inaccessibility of housing alternatives, and being cut off from existing resources and the community."*

(Convenor of WHW social support group for women with a disability, 2005)

## 2. If change is needed, how should the law be changed to achieve this?

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### **A human rights charter with teeth**

Ensuring human rights involves engaging with the social issues that lead to inequality. To this end, Australia is a signatory to many international human rights treaties, such as the Convention on the Elimination of all forms of Discrimination against Women (CEDAW). However, Australian women have been prevented from taking complaints to an international committee under this convention. In addition, any findings or recommendations around human rights that have been violated in Victoria are not binding on the Victorian Government. The implementation of a Human Rights Charter has the potential to alter this situation and strengthen women's rights.

Given Australia's appalling human rights record, particularly as it affects Indigenous peoples and refugees, WHW supports the provision of a special role for the courts to invalidate legislation that breaches human rights, as in South Africa.

We support the establishment of a Human Rights Commission empowered to monitor laws and policies, and make recommendations for change with respect to discrimination – similar to the Canadian Human Rights Commission, but with an additional role in implementing and monitoring the effectiveness of the Charter, as in New Zealand, or the soon-to-be-established Commission for Equality and Human Rights in the United Kingdom.

WHW recommends that responsibility for monitoring and implementing a Human Rights Charter sits with the Office of the Premier. Locating responsibility with the Attorney-General is likely to encourage a focus on the pursuit of legal rights, rather than a broader focus across all areas of government responsibility.

### **Accountability beyond the ballot box**

The last federal election suggests that there is a tendency for modern-day governments (conservative ones, at least) to avoid accountability for their actions at election time, when subterfuge and fear are judged more likely to drive the electorate. Relying on parliamentary processes alone is no guarantee of the protection or advancement of even basic human rights in the long term – the recently-introduced federal industrial relations legislation is a case in

point. An eventual change of government is unlikely to fully redress the human rights violations that will result from such changes, with greatest impact on the most on the most vulnerable people in Australian society, including women, who make up the majority of the casual and part-time labour force.

Given this, a Human Rights Charter must be accompanied by a mechanism that can make governments accountable for human rights violations in law, policy and practice. To be more than symbolic, such a mechanism must have the power to enforce accountability. Enabling governments to ignore a 'declaration of incompatibility' or like judgement might protect the sovereignty of parliament, but to what end, and at what cost? The Canadian model is far preferable in this regard to that of the UK or ACT.

### **A Human Rights Commission**

Women's Health West recommends establishment of a Human Rights Commission by the Premier with a broad remit, including:

- Conducting inquiries into matters of public policy regarding questions of human rights and to make recommendations for changes based on these inquiries;
- Giving guidance and advice to any public authority to address practices that may involve breaches of human rights;
- Giving advice to Ministers and Parliament;
- Undertaking and supporting educational and promotional activities around human rights within communities, including schools, and members of organisations with a role in implementing human rights;
- Promoting the development of human rights awareness in bodies that advise public authorities and departments;
- Giving guidance and advice to private organisations to build their capacity to respect and promote human rights;

- Advocacy, research and education designed to discourage discrimination;
- Hearing and investigating complaints about human rights breaches;
- Monitoring state and federal laws and policies with respect to discrimination and making recommendations to Ministers and Cabinet; and
- Developing an action plan that identifies what must be done in a set period to recognise, protect and respect human rights, including specific implementation programs with relevant agencies and organisations.

Under questions 4, 5 and 6 we further explore the role of a Commission, and suggest additional changes the Victorian Government might make, drawing on the Charter as a basis for increased accountability and improved practice not only for government, but for government-funded organisations and private corporations.

## 2. If Victoria had a Charter of Human Rights, what kind of rights should it protect?

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### **Beyond civil and political rights**

The Victorian Government proposes a Human Rights Charter that concentrates on civil and political rights. WHW sees the protection of civil and political rights as essential, and traditionally more easily defined and protected by law than other kinds of rights. However, we argue that protection of civil and political rights alone drastically limits women's capacity to achieve equality. Protection and promotion of social and economic rights, ordinarily relegated to the poorly-funded arena of social policy, is critical to women's freedom and equality.

### **Citizenship and reproductive rights**

Much of the research that considers women's rights as citizens assumes citizenship on the basis of the right to vote and seek public office. Yet women's suffrage easily co-exists with other inequalities between men and women including inequalities in wealth, income and access to social, economic and political power. Control over reproductive choice – the right to choose abortion or motherhood – strikes directly at the foundation of many of those inequalities.

Protecting women's reproductive rights is one way that governments can work to ensure women's social and economic rights are upheld. Rosalind Petchesky (1994: 10) argues:

*Without the ability and means to control their fertility and to be self-determined, experience pleasure, and be free from abuse in their sexual lives, women and girls cannot function as responsible, fully participating members of their families and communities – they cannot exercise citizenship.*

The right to reproductive choice is intrinsic to the citizenship status of women and is a key indicator of autonomy and freedom (Gregory, 2005: 20). Women's lack of control over a 'private' reproductive choice limits their ability to control their private lives and their ability to participate in the public domain. Further, the meaning of who controls decision-making reflects women's status and the limitations imposed on them as citizens (Gregory, 2005: 55). Control over reproductive decision-making remains contested and is not derivative of rights originally extended to men. It is thus in relation to access to

reproductive rights that it is possible to judge the state of equality between men and women (Ramirez and McEneaney, 1997: 6-24).

For women to attain reproductive freedom they require political, economic and sexual self-determination, through access to education, employment, health, and reproductive choice. The struggle for reproductive rights is thus part of a broader struggle to develop a 'just society' (Bauman, 2001: 49).

A Charter must protect women's reproductive freedom as a basic human right, resisting any attempt to restrict women's human rights by those who would seek to use this process to establish the 'rights of the foetus'. Control over decision-making, over one's body, is a political, civil, economic and social right. Unless women have control over reproductive decision-making – not simply access to abortion, contraception or reproduction-aiding technologies – it is possible for such technologies to be woman-controlling, rather than woman-emancipating, used, for example, by governments or other interests keen to control populations.

### **Focus on family and domestic violence**

Family and domestic violence also highlights the need to protect and promote social and economic rights. Family and domestic violence goes far beyond physical violence and sexual assault. It encompasses emotional and psychological abuse – threats, name-calling, controlling behaviours and public humiliation – stalking and financial abuse – using money as a tool for control, including withholding money so that a woman cannot afford to meet her or her children's basic needs.

VicHealth's 2004 publication, *The health costs of violence: Measuring the burden of disease caused by intimate partner violence*, provides direct evidence that intimate partner violence is 'a common problem with serious health, social and economic consequences for women, their families and communities', and that it is 'responsible for more ill-health and premature death in Victorian women under the age of 45 than any other factor' (VicHealth, 2004: 8, 10).

*"I have an Acquired Brain Injury, or ABI. Most people who have an ABI get them through a car accident or a stroke, drug or alcohol abuse, or any kind of severe trauma to the head. I got my disability over a slow period through domestic violence.*

*"For a period of four years, I didn't really understand what it meant for me to have an ABI. This is partly because this is a different way to get an ABI from the way many people do. The disability affects me in different ways, for example I have a short-term memory loss and have to live by a diary, and sometimes have problems with logical thinking or my perception of how I express myself."*

(Julyenne, from a speech given for WHW's International Women's Day celebrations in Werribee, 2005)

*"I know a woman who has experienced sexual, emotional and financial abuse from her partner for almost a decade. So many times she's decided to leave him and take her two young children, but there's one thing that holds her back – money. He controls the family finances, spends all his wages on things for himself, then comes and demands her parenting payments – the money she needs to buy food, or clothes for herself and the kids. What chance does she have to save the money she'd need to set up rental housing for herself and the children? It's only a couple of thousand – enough for bond, rent, some basic furniture. But want of it has kept her trapped for years. And she's concerned about supporting the kids once she's out – the pension is so low, and she doesn't trust him to pay child support."*

(WHW Worker, 2005)

## **When rights are protected in name only**

Family and domestic violence clearly illustrates how rights that are theoretically protected by law can in practice be breached due to women's lack of social and economic power. Too often, a woman's lack of economic resources – the economic independence to meet her and her children's basic needs, in particular for housing – forces her to stay in a situation of ongoing family and domestic violence.

Decades of research have demonstrated that women's lack of economic independence renders them vulnerable to sexual abuse and systematic degradation (Lake, 1997: 103), and that many of the mechanisms for continuing oppression operate invisibly through social institutions, relationships and practices (Boyle, 1997: 7-8).

Many forms of family and domestic violence, such as physical assault, are against the law, yet these laws are unevenly applied, and women's and children's experiences of abuse too easily dismissed or trivialised by police or courts.

Rights are meaningless unless you can exercise them. Women's legal right to live in safety is violated when police and other legal authorities refuse to protect it. Our family and domestic violence workers tell us that unless women are assertive when police come to investigate family and domestic violence, the police are very unlikely to act, even to inform them of their rights or services available.

Yet if a woman is angry or aggressive, very emotional, or expresses herself in a way that is culturally appropriate to her, but which the police find uncomfortable, they will often ignore or dismiss her. Police attitudes to and assumptions about women based on their class and racial background can result in discriminatory practices, even systematised violence, that severely undermines women's trust in authority; their belief that their rights will be respected or upheld.

Women exiting prison or mandatory detention are particularly vulnerable to the impacts of family and domestic violence, they have few economic resources and limited or no social support. They are exiting a system where violence is endemic, and which has given them little cause to trust authority, or to feel confident that they have the power make independent choices to live free from violence.

*"I've seen women walking around the Sunshine Court having had their heads split open, but being advised by the police to apply for a court intervention order. This is serious assault, but the police just don't both to charge the perpetrators."*

(WHW Family Violence Worker, 2005)

*"A woman was living in housing commission. She saw constant drug deals in front of her house and watched the police bash someone and steal property obtained from a robbery. No one believed her. Then one day she was picked up in her car. The police said the car was unroadworthy and that she and her daughter would have to walk home at 9.30 at night. The women expressed her anger that she and her daughter would have to walk home so late. The police accused her of being on drugs. Another time she called the police due to a family violence incident, but they took her partner out for a smoke and left."*

(WHW Family Violence Worker, 2005)

## **Changing the structures and cultures**

As the VicHealth study and much previous research has shown, 'factors in our social, economic and cultural environments' play a significant part in creating a climate in which violence against women occurs (VicHealth, 2004: 13). Women and children's lack of social and economic rights underpins the causes of family and domestic violence, giving men power – should they choose to use it – to abuse the rights of their partners and children.

Family and domestic violence is embedded in all cultures, and across the socio-economic spectrum. While having access to economic resources can make all the difference to women's capacity to leave, social and cultural factors are equally critical. Cultures of secrecy, shame, social isolation and the acceptability of men's use of violence vary between communities, but are ubiquitous.

We applaud the legal and political responses to violence against women by progressive governments, including the Victorian government. However, we argue that these are predominantly 'band-aid' solutions unless accompanied by policies and programs that deal with the promotion and protection of women's broader social and economic rights: that is, women's economic independence, health and community services, and social attitudes that make violence against women and children

*"A woman and her children were forced to move from the eastern to the western suburbs. She was the wife of a lawyer. They had to move to a different place, she and her kids don't know any one, there is no familiar social support, the kids aren't street savvy. They have lost their social capital. They are totally cut off from their friends at school. She was crying because she didn't know how to cope. It was like being dropped onto another planet – a cross-cultural transition moving from the east to the west. They were totally traumatised trying to pursue their rights to safety. We shared a smoke overlooking her Mercedes in the car park."*

*"There are no socio-economic lines to family violence. It affects women no matter what their background is. In our experience, upper-middle class women are more likely to go back to the violent relationship when they see the refuge. They can't cope with the change. The women say; 'I'll be good, I'll give him more sex, whatever he wants'. The neighbours won't hear the violence because they live in big houses with lots of land around them."*

(WHW Family Violence Worker, 2005)

acceptable. This means giving appropriate consideration 'to intimate partner violence when priorities are being set for expenditure, program development and other activities at the governmental service and community levels' (VicHealth, 2004: 10).

Responding to family and domestic violence within a human rights framework would strengthen existing responses and embed the need to tackle violence simultaneously at a number of levels: at the macro level, in the development of laws and public policies on ending violence against women and equal pay; at the meso level in integrated service system responses and auditing; and on the micro level, tackling community and individual responsibility for attitudes and behaviours towards women and children.

## 4. What should be the role of our institutions of government in protecting human rights?

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### The resources to exercise rights

Protection and promotion of human rights require both rights in law and the resources for those rights to be translated into reality through services and access to resources (Charles, 2000: 168). Human rights should be enshrined in law and formal procedures created to allow groups or individuals to pursue them. A government body such as a Human Rights Commission (see question 2) is needed to monitor and report on the impact of policy, legislation and departmental practices on human rights. Furthermore, publicly-funded agencies should be required, through conditional funding agreements, to report on their efforts to promote human rights.

### A code of conduct for policy, practice and spending

To be meaningful, a Charter must effectively be a code of conduct for government. All new legislation, policies and practice must be made consistent with the Charter, and current legislation, policies and practices audited for their compatibility. Government departments should be audited for their compliance with human rights (with regard to both staff and service users) and codes of conduct developed based on a human rights approach.

*"I didn't believe there was any help for me, you gave me hope and assistance that will never be forgotten...It brings tears to my eyes that you believed in me."*

*"(I recommend) that police and courts work more closely together to understand the immense psychological and physical destruction domestic violence causes and the support required for victims to break the cycle."*

*It was such a relief ...to know my rights and to be encouraged that I wasn't going crazy."*

(Service users, quoted with permission from feedback forms for WHW family and domestic violence support services, 2004-2005)

*"If you're struggling and you have to go months and months and months of looking and being rejected, if you can't find a decent house to raise your children in, and then when you find a house you've got nothing around you then, the chances are you do consider going back... (to the violence)"*

(WHW, Annual Report 2003–04)

With 'outsourcing' of so many aspects of service provision by governments, a parallel code should be developed for government procurement. A similar approach can be taken for non-government organizations, requiring them to meaningfully report their human rights performance as part of annual or funding-based reporting or accreditation requirements. Many institutions, including private companies such as nursing homes, require accreditation or licensing. This could be linked with reporting requirements as to how they are protecting the rights of people using their service.

However notions of compliance and compatibility must go beyond whether a particular practice or policy might adversely impact on an individual. Resources must be allocated to allow identified rights to become a reality. Human rights as guaranteed in a Charter should be a basis for decision-making about all government spending and policy, from infrastructure investment to justice policy to health, housing, transport and education spending.

The Charter should be applied at all levels of government – at Victorian state government level, in relation to local government, and in state government advocacy to the federal government. Achievement of a Victorian Human Rights Charter should be seen as a key step towards eventual achievement of an Australian Charter of Human Rights.

## Focus on family and domestic violence

Government institutions and government-funded services have an integral role in protecting women's and children's right to live their lives in safety, free of violence, fear of violence and discrimination.

Government must take the lead in family and domestic violence prevention. This includes community education and training in government departments, schools, community and health agencies and the broader community, to promote a zero-tolerance attitude towards violence, and the right of all people to health, safety and citizenship.

In practical terms, the right to financial and housing security is crucial. Refuge, transitional and public housing is at a crisis point in the Western Region. Alternative housing is often unavailable, or requires very long waiting periods; housing options are often inappropriate and sub-standard and far away from familiar social and neighbourhood support networks.

Enforcement of existing laws could allow women and children to remain in their own home, leaving existing support networks in place. For women to whom this would mean too great a risk, affordable and accessible public housing is crucial.

### Rights-based approaches

Without financial and housing security, women and children will always be more vulnerable to family and domestic violence. This requires just and equitable processes and guidelines for government and service provider responses. For example, all too often it is the victims of family and domestic violence who become homeless and suffer further as a result. An approach to family and domestic violence focussed on the social and economic rights of women would require, for example, that the perpetrator of violence instead be removed from the family home, and ensure that a proportion of housing stock is preserved for women and children experiencing family and domestic violence.

*"The legislation with regard to violence against women is black and white: it is against the law. But the police just don't enforce it. In our experience, they are just as likely to come to the woman's house, then step outside and have a smoke with the perpetrator – just tell him to 'calm down mate', then leave him to it."*

(WHW Family and Domestic Violence Support Worker, 2005)

*Every day at Women's Health West, we see women and children who have had to leave their homes and the bulk of their possessions in fear for their lives. Whatever they could grab as they ran out of the door lines our corridors until women and their children can access emergency accommodation for the night. Many will simply not be able to leave their home and endure the consequences:*

*"After she became pregnant with her second child the violence escalated. Her husband always had a gun or guns in and around the house. The guns were a constant reminder of the danger she lived in. He shot at her, menaced her with a shotgun and on two occasions fired weapons at the children. One of the worst beatings she received at his hands was the butt of a shotgun."*

(WHW, 2003)

The recently-introduced Police Codes of Practice around family and domestic violence provides an example of how rights principles might inform positive change in policy and practice. Previously, discretionary policing enabled police to assess individual situations and take action (or not) accordingly. The Code recognises a women's right to receive information and support and mandates that police attending a family and domestic violence complaint take certain steps. This has clearly resulted in a massive increase in women seeking support from services such as WHW's. Enforceable codes of practice encourage development of a culture that recognises rights.

Government departments, police, courts and services need common protocols for dealing with family and domestic violence, including promotional, referral and assessment processes. Government needs to ensure service agreements, protocols and legislation are audited to ensure that they are equitable – that is they overtly address discrimination faced by women with diverse needs, so that everybody has equal access and ability to exercise their rights.

Women must be assured they will have adequate information, support and security when applying for intervention orders. Once they are separated from violent partners, women require financial and housing security, as well as social support, to ensure that they can keep themselves and their children safe.

*In the 2003-04 financial year, 221 women contacted Women's Health West needing housing support, who were unable to access it due to the lack of available housing across the region. Eighty percent of these women were affected by family and domestic violence.*

(WHW, Annual Report, 2003-2004).

## Tackle the causes

Perhaps even more importantly, the underlying causes of men's use of violence against women and children must be acknowledged and a comprehensive plan of redress put in place. This requires a whole-of-government approach to tackling an array of complex issues, including funded school and community education, advocacy, policies and practices and service development. This must challenge attitudes that make it acceptable for boys and men to use violence, fostering healthy relationships based on respect for the rights of women and children.

Government need to work with the community to come up with a range of strategies aimed at producing a major cultural shift to 'break the silence' about family and sexual violence, and move the burden of shame from the victims and survivors of violence to the perpetrators.

Structures within the taxation and social security system must be examined for the ways in which they force women and young people to remain economically dependent on partners or parents, making them more vulnerable to family and domestic violence. Changes in the industrial relations system, in particular the increasing casualisation of the workforce, removal of unfair dismissal laws and watering down of guaranteed conditions, the steady increase in working hours and lack of 'family friendly' work practices in many industries also impacts strongly on women's capacity to achieve economic independence.

Government and the community must also tackle the complex causes of oppression that are the context for some men's use of violence against women and children. This is not an argument that shifts responsibility away from men who choose to use violence and thus violate the rights of their partners or children. However, it is a recognition that in some communities, men's use of violence is pervasive, and linked to their use of alcohol and other drugs, and occurs in the context of systemic violence and oppression experienced by the whole community.

Indigenous communities remain traumatised by the dispossession and genocidal policies of past governments, and – despite ongoing rhetoric and programs – continue to be worse off on every indicator of disadvantage: health, housing, education, employment, incarceration, mental health, and experiences of violence. Indigenous women's and children's right to live in safety can only be truly and universally achieved when all Indigenous Australians are able to exercise their right to self-determination, to justice, and to the land and economic resources stolen from them over 218 years of occupation.

The violation of Indigenous women's and children's rights through their experiences of family and domestic violence is all too often compounded by their experiences in seeking help from services that can best be described as inadequate and which in practice can range from merely culturally insensitive (for example public housing that does not meet an Indigenous family's cultural needs) to racist and violently abusive.

## The right to equal, individualised and personalised care

Just as Indigenous women's experiences of family and domestic violence are shaped by dispossession and racism, so are the experiences of every woman and child informed by the intersecting identities and forms of oppression that shape their lives. Policy must be informed by an understanding of these complex factors, tailored prevention and support strategies.

*"I know an Indigenous woman who was a victim of serious domestic violence. She had broken bones and her face reconstructed. She left the relationship, moved to Melbourne and was diagnosed with a psychiatric disability. She was told that she had to look after herself, and if she needed she could go to a psychiatric unit. She admitted herself to the unit and experienced extreme violence there. She had broken teeth, broken bones and manhandling because she was trying to express herself in a culturally appropriate way. She was violated twice, first by her partner and secondly in voluntary detention. She's lost now, she disappeared and no one has seen her since. There are perpetrators in society and perpetrators in the service system."*

(WHW Family Violence Worker, 2005)

*"I have met women with files an inch thick about injuries they have received. One woman I knew had her fingers sticking straight out because it had been broken so many times. Others are bedridden and covered in bedsores because of the lack the resources to change their situation. Some women were in an institution for 30 years and the conditions they were living in were unspeakable. How do we protect the rights and raise the status of these women?"*

(WHW Health Promotion Worker, 2005)

This is not about 'special rights' for particular groups, but about recognising all women's right to receive equal, personalised and individualised care. Although this right is often written into service and departmental policy, it is too infrequently reflected in the practices of government or services.

We also need the change the attitudes, structures and institutions that make some women vulnerable to violence. For example, in order for women with a disability to exercise their rights – to safety, self-determination, economic and social independence, equality and appropriate services – a fundamental shift is required to raise the status of people with a disability. This would make it no longer acceptable, nor effectively condoned by secrecy, for women to be abused by family, carers, or in institutions.

*"They threaten that they will send you back if you do anything they don't like or want."*

(sponsored migrant; WHW, 2002)

*"A Sudanese family I met had recently come to Australia. Disciplinary practice by men against women and children were part of their culture. Put this together with their resettlement experiences – the men felt a loss of identity, powerless because they could not work. A woman may recognise she has more rights here, but if she experiences domestic violence, there is so much at stake. According to the culture the family must be kept together – she is cut off from her community if she leaves. She cannot speak English, doesn't know the services available. She may have a visa that stipulates she can't work. Some, such as the TPV, have severe restrictions – she has no entitlement to income or Medicare. She can't access a hospital if she or her children are sick."*

(WHW Family Violence Worker, 2005)

Women's and children's experiences of family and domestic violence are also determined by their cultural and language background. CALD women who experience violence face additional barriers to knowing, understanding and exercising their rights. Some arise from cultural differences, some from the pressures of resettlement and migration, and some from the inadequacies of services and the law in meeting women's needs. These include language barriers, racism and legal requirements (such as visa or Centrelink regulations) that make it more difficult for women to leave violent relationships. A woman who is sponsored in Australia may be particularly vulnerable if she is threatened with deportation if she leaves her sponsoring spouse. She is likely to be socially isolated, ashamed and confused.

Understandings of gender relationships, acceptable behaviour and family and domestic violence vary enormously between cultures. Acts of family and domestic violence that are clearly illegal in Australia may be more tolerated by the law and social attitudes in the country of origin (and resettled communities) of some migrant women. Many women are unaware of their rights in Australia, or of what support services are available.

We need community education, delivered appropriately and in consultation with people from target communities, about women's rights under Australian law. This needs to be given to women and men when they arrive, and to be ongoing. Both women and men need to know that violence is illegal, and that there are legal remedies and support services. Resources also need to be funnelled into pursuing discussions about such issues within communities, so that change comes from within rather than being 'imposed' by external institutions.

Women's Health West's *Family Harmony* research project with women from Somalia and Eritrea demonstrated that women may also be unwilling to seek assistance from services they perceive as unwelcoming, inaccessible or culturally insensitive. Service providers also identified the following factors impacting on the effectiveness of family support services for CALD women:

- The Telephone Interpreting Service is not ideal for good communication. In smaller communities there is a risk that the woman may know the interpreter. There can be difficulty in accessing female telephone interpreters, however male interpreters may be inappropriate for certain issues.
- Women may be trapped by their partner around immigration issues as they do not know their rights and are told by their partner they must stay or be deported. In some countries is it regarded as

*"It is not appropriate in our culture to seek help if you are hurt. It is silent."*

(WHW, 2005).

*"Two Ethiopian women killed themselves in the end because of the cultural expectation that they should stay in the relationship. The women became depressed, and ran into a train."*

(WHW FARREP (Family and Reproductive Rights Education Program) Worker, 2005)

particularly shameful to return from a broken marriage, so leaving is often not an option.

- Cross-cultural training focusing on police attitudes is particularly important as many women have experienced legal or political systems that are unsafe and where the system of help from police, court and services relies on bribes and nepotism.
- The Department of Immigration may be less than sensitive to women's situations. Interviewing officers may well assume that violence is not an issue unless overtly stated, and a woman may be silenced by the presence of her partner at interview.
- Many women have serious concerns that their partner will take the children out of the country and place them in the care of relatives overseas.
- Women in violent relationships are often prevented by their partners from attending AMES English courses and are thus further isolated by the language barrier.
- Violent partners can hide women's and children's passports, making it very difficult for women escaping to be able to arrange for Centrelink benefits.
- Accessing Centrelink Special Benefits becomes complex when a member of the partner's family has sponsored the woman. This is because Centrelink is required to contact that member

before payments begin and inform them that they will be responsible for repayments in two years' time. It is not permitted for the woman to repay the debt herself.

A rights-based, whole-of-government approach must go beyond legal rights to recognise that all women have the right to appropriate information and accessible services, as well as to financial and housing security and social support. Development and review of policies, practices, regulations and laws must recognise the specific issues that impact on the rights of women and children from diverse backgrounds, and processes must include consultation with such communities.

*"In my work as an interpreter, I see women who have arrived from Africa complain about staying in the refuge. The refuges are not culturally sensitive. The women experience racism, and feel isolated, lonely and inferior. There is nothing that she knows – not the food, languages, or faces. It is not necessarily about enormous changes, sometimes just some effort, for example to find appropriate food, is enough for women to know that their needs are being considered."*

*"A child protection worker came to visit a newly arrived single African mother because her 12 year old daughter rang the department and said that her mother was forcing her to go to Islamic school, to wear a scarf and wanted to know what time she'd be home when she went out. The worker asked, 'Why do you ask your 12-year-old daughter what time she is coming back, when you don't tell her when you'll be back?' A twelve-year-old! The mother has five children and her husband died in the war. She was crying. The children were removed from the house. When I saw them in care, they were not being taken care of, they hadn't had a shower for weeks."*

(WHW FARREP Worker, 2005)

## 5. What should happen if a person's rights are breached?

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WHW supports the government's preferred approach to addressing human rights through dialogue, education, discussion and good practice rather than litigation. Litigation is generally a lengthy and expensive process available to a privileged few, that rather than resolving an issue can strengthen feelings of anger and powerlessness.

However, in order for a Human Rights Charter to hold some weight and achieve change, it must be enforceable and effective in the long term, well beyond the time of any eventual change of government. We see the futility of unenforceable human rights instruments in the actions of the Howard Government in response to criticisms from the United Nations on such diverse issues as the extinguishment of land rights, mandatory detention of asylum seekers and the denial of benefits to the same-sex partner of a war veteran.

All such recent criticisms have been based on Conventions to which Australia has long been a signatory and historically a strong supporter. Yet instead of regarding such criticisms as opportunities for dialogue, reform and education, the Howard Government has rejected them out of hand, shut down opportunities for further UN investigation (e.g. of detention centres), attempted to further exclude NGOs from UN reporting processes and conducted a 'secret' review of its engagement with the UN, revealing only its decision to radically scale back its involvement with UN human rights processes.

Indeed, the Howard Government has not only moved away from longstanding levels of engagement with current mechanisms, it has also actively worked against further development of new mechanisms. For example, the Government voted in July 2002 against the adoption of an Optional Protocol to the Convention Against Torture, and has also worked against the development of an Optional Protocol to the International Convention on Economic, Social and Cultural Rights.

### **Legal action as a last resort**

WHW argues for the capacity for individuals or groups to bring an action under the Charter as one of a series of measures, further to those measures outlined in our submission at question 4.

*"Women's rights are still violated even where legislation exists. This is a compliance and monitoring issue. For example, all buildings built after a certain date must be accessible to people with a disability. Yet we know one service that had a funding application for a disabled toilet rejected recently on the basis that the worker could visit the clients in their homes if necessary. This meant a restricted service, purely on the basis of disability."*

(WHW Health Promotion Worker, 2005)

We suggest allowing legal action as a last resort against government, organisations or individuals responsible for human rights breaches. We are not convinced that a model that relies on mediation is workable. The process of negotiation required for successful mediation relies on one party – generally the least powerful – giving up ground to another party – generally the more powerful. Certainly in the corporate sector, fear of litigation is likely to be a more effective tool for implementing human rights than education.

As explained in detail under question 4, we support the establishment of a Human Rights Commission with the power to investigate and report upon human rights abuses and to enforce legal remedies as a last resort (see also question 8). If individuals are expected to instigate legal proceedings, only those who are able to afford to do so will gain redress. This appears contrary to the intent of a Charter.

We advocate a model where the basis of litigation is specific to a community (e.g. women with a disability, Indigenous people) in a manner similar to the racial vilification legislation, rather than to an individual seeking redress within a civil liberties framework. This must include an option for an individual to seek redress in order to elucidate the problem that faces a particular community. Responses to such actions should go beyond apologies or compensation, opening up further dialogue (in the case of a need for legal change) and recommendations for reform, to ensure such rights are better protected and promoted in the future.

## 6. What wide changes would be needed if Victoria brought about a Charter?

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*"Twenty years ago the immigration department provided a welcome package via interpreters that gave information to newly-arrived women about their rights. It was part of the orientation. Now there is no orientation. Women need to be informed of their rights."*

(WHW FARREP Worker, 2005)

### Creating a human rights culture

Promoting knowledge and understanding of human rights is an essential component in the implementation of a Charter. In our consultations, one woman succinctly voiced the shared opinion of all present: "You can have all the rights in the world, but it doesn't mean a thing if you don't know about them." Developing a culture of human rights is partly about a mechanism to enforce accountability (as argued in question 5), and also about education, awareness and training within the community and among those people responsible for implementing human rights within their organisations.

Organisations such as WHW are regularly involved in training and information-sharing programs in schools, among community groups and with service providers. It would be relatively simple to include information and training within a framework of human rights. Similarly, state-wide, peak bodies and agencies providing funding could assist smaller organisations by developing policies and frameworks – and providing training regarding implementation – within which those organisations consider their work. Something similar already occurs around particular issues – see, for instance, the mental health promotion framework and short course developed by VicHealth in 2005 to promote mental health and wellbeing. This very useful course was both free and compulsory for any agency receiving funding from VicHealth.

As discussed under questions 2 and 4, WHW supports the establishment of a body with a similar role to the South African Human Rights Commission in promoting respect for, and a culture of, human rights in Victoria, through advocacy, research, education and by hearing complaints about human rights breaches. Similarly, the education and training

campaign undertaken by the United Kingdom government and the publicity programs and activities undertaken by the New Zealand Human Rights Commission are essential.

WHW advocates a multi-faceted approach to developing a culture within which human rights are respected and implemented. As noted earlier, this involves the allocation of resources and the review and development of protocols to effectively implement change at all levels of government, within services, organisations and institutions and across the community. It also involves education and training at many levels – from policy makers to service providers and implementers, to citizens.

WHW emphasise the importance of effective and appropriate information provision among those groups who are most vulnerable to abuses of their human rights, including Indigenous peoples, recently arrived immigrants (especially refugees and asylum seekers) and those who live with profound disabilities. Our experience in health promotion to such groups demonstrates that the most effective information provision occurs through community development processes that draw on the skills, knowledge and experience of the target group to develop appropriate and effective information resources and educational programs.

### The language of rights and citizenship

As discussed in detail throughout this submission, WHW argues that a Charter should be much more than a guarantee of individual rights and a means to open dialogue – or action – should those rights be breached. Based on the understanding that rights are only meaningful when people have the capacity to exercise them, we argue that a Charter should be the basis for decision-making on policy and spending across government, and should inform policy and practice change across and beyond government departments and government-funded services.

*"When somebody tells you that this is an offence and that no one has the right to do this to you. It's about knowing your rights."*

(WHW, 2004)

*"Providing a ramp at the entrance to a refuge or other support service not only makes it more accessible for women in a wheelchair, it also makes the service more accessible for women with prams or luggage. Something seemingly simple can make a huge difference to a lot of women, and result in a more accessible and sensitive service for all women."*

(WHW convenor of the social support group for women with a disability, 2005)

The value of a Charter in promoting a culture of respect for human rights should not be underestimated. The US Bill of Rights, for all its limitations, is central to US citizens' understandings of themselves as citizens. WHW argues that the language of 'citizenship' is much more appropriate in the conduct of rights than the prevailing language of 'consumers', 'customers' and 'clients'. The term 'citizen' implies rights and responsibilities, and a capacity to identify and hold accountable those responsible for breaches of human rights.

Building a culture of respect for human rights requires a mechanism that supports and empowers groups and individuals as citizens to pursue and defend their rights. It also requires a broad approach and strong commitment to human rights education, from primary school through to appropriate promotion and information provision to diverse communities.

## Focus on family and domestic violence

Areas of government and service provider policy and practice that impact on women and children experiencing violence are discussed throughout this submission, along with case studies and suggestions for how a rights-based approach might look in practice. In summary, some of the suggested approaches include:

- A review of taxation, social security, education, housing, employment and other structures (recognising that many are federal) to examine the ways in which they reinforce women's and young people's economic dependency, making them more vulnerable to family and domestic violence.
- A gender focus in the Victorian Government's strategy for countering changes to industrial relations being made by the Howard Government. This includes tackling the particular impacts on women's economic independence (and thus vulnerability to family and domestic violence) of,

for example, long working hours, casualisation, removal of basic conditions, and changes to social security laws affecting sole parents.

- A review of government policies that reinforce social isolation, making women more vulnerable to family and domestic violence. Examples include lack of affordable public transport and support services for women living in outer suburban growth corridors, rural or regional areas beyond public transport networks. Women with disabilities are particularly isolated by a lack of affordable, accessible transport, and policies such as the cap on use of taxi subsidies.
- An audit of policies and practices within the Police, Justice, Human Services and other relevant departments to examine their impact on women and children's rights, and the likelihood of seeking help to escape family and domestic violence. This should be part of a broader audit of all government departments' implementation of the Charter.
- Enforceable codes of conduct for government departments involved in providing support or legal remedies to women and children affected by family and domestic violence.

For example, the new Police Code of Practice on family and domestic violence is mandated and enforceable, and women have the right to take legal action if they think that police have not acted according to the Code. Such rights, however, must be backed up by the resources to make it realistic for women to take action. The current Code requires a woman to have considerable resources to exercise her right – an unlikely situation for a woman experiencing family and domestic violence.

- A review of all policies and practices within relevant departments, including reporting requirements for funding of non-government organisations, to examine the ways that they can better meet the specific needs of diverse women and children experiencing family and domestic violence (including Indigenous women, CALD women, newly-arrived women, women with a disability, young women, children, older women,

*"Women will appreciate any effort to meet their needs. It doesn't have to be big, for example the opportunity to identify and access culturally appropriate food at a refuge."*

(WHW Family and Domestic Violence Support Worker, 2005)

- same-sex attracted women). The review process should encompass meaningful consultation with affected communities.
- Increasing resources for accessible housing options for women and children, including crisis, transitional, private rental and public housing. Further, support for policies that encourage investment in housing that meets the needs of diverse women, including women with a disability and women from Indigenous and CALD backgrounds.
  - Adequate resources for service providers who are accountable for protecting and redressing rights violations, enabling them to hear, understand and respond to the complexities of women's individual journeys, the multiple factors that shape their experiences of violence, and their support needs.
  - Exploration of the ways that corporations can be made accountable for human rights violations, for example linking human rights reporting to funding, taxation or accreditation processes.
  - Funding of education campaigns and information strategies targeted at young people, the broader community, and a range of specific groups, aimed at educating the community about their rights, and about respectful, healthy relationships.
  - A review of the wide range of policy affecting women with a disability, with a focus on the factors that make women particularly vulnerable to family and domestic violence, and development of an action plan to enact change.
  - Targeting education and information strategies for all groups at particular risk of rights violations, including women with a disability, newly-arrived and other CALD women, women exiting prison, women in isolated communities and growth corridors etc. This requires resources for projects that empower members of identified communities to identify problems and find solutions most relevant to their lived experience.

## 7. What wide changes would be needed if Victoria brought about a Charter?

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### **Rights and responsibilities**

A document that recognises Victorians' rights is of little use unless it is accompanied by a recognition of our shared responsibility to work towards the development and maintenance of a just and equal society. Previous campaigns that raise awareness of and deal actively with problems facing women in the community – such as family and domestic violence – have been proven to be most effective when they involve a whole-of-community approach.

The government must work with the community to not only promote and protect human rights, but also to promote our shared responsibility to do so. This includes developing strategies to foster an ongoing commitment in subsequent generations and working towards developing a shared vision of the kind of society in which we would like to live.

WHW strongly supports the importance of cultural change in promoting and achieving equality. We do not regard this as separate from or a substitute for the possibility of legal action. Rather we argue that promoting cultural change is an important part of a multi-faceted approach to embedding a human rights framework in our thinking and actions.

### **Change at the grass roots**

Many of the actions suggested in question 4 of this submission outline ways of involving the community, in particular in a range of strategies for tackling the causes and impacts of family and domestic violence. This kind of 'grass roots' change needs to be supported at all levels of government, but is particularly likely to be achievable through local area actions, supported by local governments. Local councillors and staff members are in a position to understand their own community and tailor the methods of implementing a charter of human rights to that community.

A focus on capacity-building is important, given the widely varying socio-economic demographics of local areas and the impact this has on energy for creating change. State provision of resources to support local government initiatives is vital.

### **The responsibilities of corporate citizenship**

WHW also regards the corporate or private sector as part of the community with a particular responsibility to promote and protect human rights. While it is a comparatively easier task to implement change in the public sector – given exigencies of funding and reporting processes – it is important that we do not shy away from implementing sanctions and benefits in the private sector.

This is all the more important given the number of private sector agencies from which the public sector purchases services for disadvantaged groups (eg private prisons, care services for people who are elderly or have a disability), the impact of privatisation of infrastructure and essential services such as public transport and utilities, and the interaction between the public and private sectors in key areas such as Workcover.

Further, the impact of private sector policies and practices on important human rights matters – in particular in the area of industrial practices – means that this sector cannot be overlooked. Research cited by the Victorian Employers Chamber of Commerce and Industry suggests that family and domestic violence costs the corporate sector \$1.5 billion annually, providing a strong case for responding to family and domestic violence as a workplace issue as good business practice (Boughton, 2004).

Equal opportunity legislation may also place a legal responsibility on employers to respond appropriately to questions of family and domestic violence that arise in the workplace. As Liana Buchanan from the Equal Opportunity Commission stated, family and domestic violence is a human rights issue that 'is as much the responsibility of employers, unions and workers in the community as it is for the police, refuge workers and domestic violence counsellors' (Buchanan, 2004).

In the same way that government departments should be expected to place human rights action plans on their websites, businesses could be expected to provide action plans and human rights audits to shareholders. The burgeoning success of 'ethical investments' might encourage human rights action plans as good economic sense.

## 8. What wide changes would be needed if Victoria brought about a Charter?

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WHW supports the development of an action plan by government that identifies different groups' responsibilities for action to better recognise, protect and respect human rights, as has been developed in New Zealand. Such responsibilities, as we have argued, could relatively easily be incorporated into the reporting requirements that already exist for government-funded organisations. The private sector presents more of a challenge, which might be met through a combination of legal change (for example in conditions linked to funding or accreditation processes, and in industrial relations protections), and in broader policies aimed at promoting the value of 'good corporate citizenship'.

### Focus on family and domestic violence

Throughout this submission, we have suggested strategies that encompass and go beyond legal change, and involve recognition and resourcing of all Victorians' shared responsibility to protect and promote human rights. To that we add the following points in relation to family and domestic violence:

It is vital that the Victorian government works to enforce those laws that already exist protecting women's and children's basic human rights. For instance it is common practice for a police officer attending a family and domestic violence complaint to assist a woman to take out an intervention order, rather than to pursue criminal charges against a perpetrator. This reinforces the widespread view that family and domestic violence is 'private', and that men's violence against their partners and children is somehow different from other forms of sexual or physical assault. The equivalent crime perpetrated against an unknown or unrelated victim would result in immediate criminal action. An audit of police practices in this regard would work to increase the effectiveness of existing laws.

Further, WHW staff regularly receive complaints from women in the Western Region about police brutality, corruption and bias against disadvantaged families. Their experiences of policing and the criminal justice system has understandably led them to believe the law exists to harass them, not to protect them. This makes them unwilling to seek assistance from police, the courts and other services if they are subject to family and domestic violence.

Equality under the law is a basic human right. A Charter that is properly implemented and meaningfully integrated into government policy and practice would assist to increase the effectiveness of existing laws by auditing, for example, the behaviour of police officers in relation to their treatment of individuals within a human rights framework.

The integration of a Human Rights Charter with existing legislation – for example laws relating to equal opportunity, racial discrimination, vilification and sexual harassment – would ensure a well-integrated, whole-of-government approach to developing a human rights culture.

This must include the capacity for individual cases to be referred to a Human Rights Commission, taking the impact of law beyond restitution for the individual into greater protection for all Victorians' human rights. For example, if a woman makes an individual complaint of sexual harassment in her workplace, the outcome of her case will have little impact on other women's workplace experiences. If a Human Rights Commission was resourced to audit equal opportunity complaints and develop and implement policies that impacted on all workplaces, this would extend the reach and impact of successful action taken by individuals.

## 9. If Victoria introduced a Charter of Human Rights, what should happen next?

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The introduction of a Charter of Human Rights is the first stage in creating a human rights dialogue leading to the development of a culture of consideration of our human rights in all policies, practices, laws and behaviours. It is crucial that adequate resources are available to translate those rights into reality. This includes the establishment of a Commission with the power to enforce the Charter.

WHW supports a process that encourages a culture of human rights to develop progressively, while avoiding a process that is so slow – or limited in resources – that any changes that do occur are already irrelevant. A phased implementation of a Charter of Human Rights appears sensible. This would allow for support to be built within the community, while also allowing organisations to implement planning processes, and departments to plan budgets that provide resources for implementation.

There is a good deal of knowledge and experience available – in the Victorian community and institutions, and in other jurisdictions – about implementation of human rights instruments and principles that should ensure that the Victorian Charter protects rights comprehensively. However, political processes, inadvertent omissions or changing political contexts might result in the necessity for review of the Charter and the addition or clarification of human rights.

Further, the current statement of intent specifies the introduction of legal and political rights only. As detailed throughout this submission, social, cultural and economic rights are equally as important if women's human rights are to be protected. If the Charter did not include the range of rights required to realistically protect the human rights of minority and oppressed people, it is imperative that the act be reviewed in three years with the specific purpose of considering and including social, cultural and economic rights.

WHW does not support an approach that might allow political processes to result in the removal or rolling back of human rights guaranteed by the Charter. This is of increasing importance in the current political and economic climate, where citizens rights and freedoms are under threat from conservative responses to 'terrorism', and the increasing pressures of globalisation.

WHW regards citizenship as a relationship 'inflected by identity, social positioning, cultural assumptions, institutional practices and a sense of belonging', not as simply the formal relationship between an individual and the state (Hobson & Lister, 2002: 24). It is imperative within this framework that human rights be extended to all Victorians, regardless of their formal citizenship status. We are particularly concerned with movements towards the creation of legal 'second class citizens', such as federal legislation passed in September 2001 that provides successive temporary protection visas to some refugees who will never have access to permanent residence, citizenship and therefore equal rights.

In previous questions we have outlined the sorts of procedures and processes required to report upon the implementation of the Charter. WHW recommends that the Victorian Government develop and implement five-yearly action plans to promote and improve human rights in Victoria, with a review at the end of each period. We expect that the procedures and processes put in place for the implementation of the Charter would ensure broad community consultation and the production of adequate documentation on which to base analysis and review.

Again we applaud the Victorian Government in beginning discussion about the conditions necessary for us to work towards the sort of society in which we want to live – one in which all people are free and equal in status and in practice.

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