



Making Fair Play our Goal

**Submission to the
Inquiry into the Charter of Human Rights & Responsibilities
by Eastern Community Legal Centre**



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Human Rights in Victoria: A question of fair play

“The great thing about sport.. is that it doesn’t matter what your background is, your cultural upbringing, your language or colour or religion, or even who you barrack for.....everyone on the field is worthy of being there. Everybody is respected. Differences in culture or background fade into the turf as it were. Success hinges on respectful relationships and relying on your team mates...Everybody has to help each other otherwise teams don’t work. That’s what we need to do with our country.”

Australian of the Year 2009, Professor Mick Dodson, Co-Chair of Reconciliation Australia,
Australian Football League Industry Conference, November 2008,

“Individual freedom is a driving force that benefits humanity”

Robert Clark MP, Attorney-General, Maiden Speech

Human Rights are internationally recognised standards that make life fair, fostering respect, responsibility and teamwork amongst people. Just as written rules govern fair play on the sports field, likewise, human rights principles are strengthened by their commitment to paper, in the form of a Constitution or Statute.

The Victorian Charter of Human Rights and Responsibilities (CHRR) represents a codification of universally recognised individual rights. There is consensus on both sides of Parliament about the importance of these rights.

In the Attorney-General’s Maiden Speech to Parliament, Robert Clark MP observed that *“human beings have evolved and are continuing to evolve principles which experience has shown are necessary and desirable for good government.”* The Attorney General went on to list Freedom of the Person, Freedom of Religion, Freedom of Speech, Freedom of Marriage and Freedom to own Property as examples of “universally recognised principles.”

While Members of Parliament understand these guiding principles of individual liberty, employees in public authorities may not. More troubling for Victorian democracy and social cohesion are the people in the communities that our parliamentarians represent, who have little or no understanding of, or respect for, human rights.

This is why good government requires the CHRR.

The Eastern Community Legal Centre (ECLC) believes that the principles codified in the CHRR are important, less for the limited legal protection they afford, and more for the educative function they serve in the public sector and the wider community.

ECLC is concerned that community understanding of the principles enunciated in the CHRR have been hampered by a lack of resources for human rights education.

In surveys conducted by ECLC in the east of Melbourne during 2008, our service found knowledge of human rights principles was poor, with only 36% of those surveyed saying they understood key principles. In 2011, a further survey conducted by ECLC of community and government service providers in the east of Melbourne found that 91.4% of respondents had heard about the CHRR, but only 20.5% had used it. It is clear that more education about human rights and the CHRR is needed in the community.

Without a system of human rights education for the community, particularly for young people and new arrivals, ECLC believes that Government's role in preventing future incidents of cultural, racial and religious intolerance and violence is jeopardised.

In particular the impact of a lack of human rights education in schools, where young people first encounter cultural, racial and religious difference, exposes society to the ongoing societal and economic costs of bullying and social exclusion.

Human Rights principles should be real, practical and connected to the everyday lives of Australians. This is why ECLC communicates about human rights in a uniquely Australian way through the universal language of sport and fair play, a language that transcends cultural and linguistic difference.

The work of the Charter for Human Rights & Responsibilities has only just begun.

This review is an opportunity to improve legal protection of human rights in Victoria but to also develop a comprehensive education program.

Submission Methodology

This submission and the recommendations contained herein have been prepared on the foundation of local human rights needs and priorities of people in the East and Outer-east of Melbourne.

Analysis of human rights needs and priorities has been determined by the following methodologies:

1. A survey of community and government service providers based in the east and outer-east of Melbourne on the CHRR and engagement in human rights work (ECLC Community Survey)
2. Analysis of ECLC case work and court work data over the period of CHRR enactment
3. Interviews with ECLC staff and volunteers

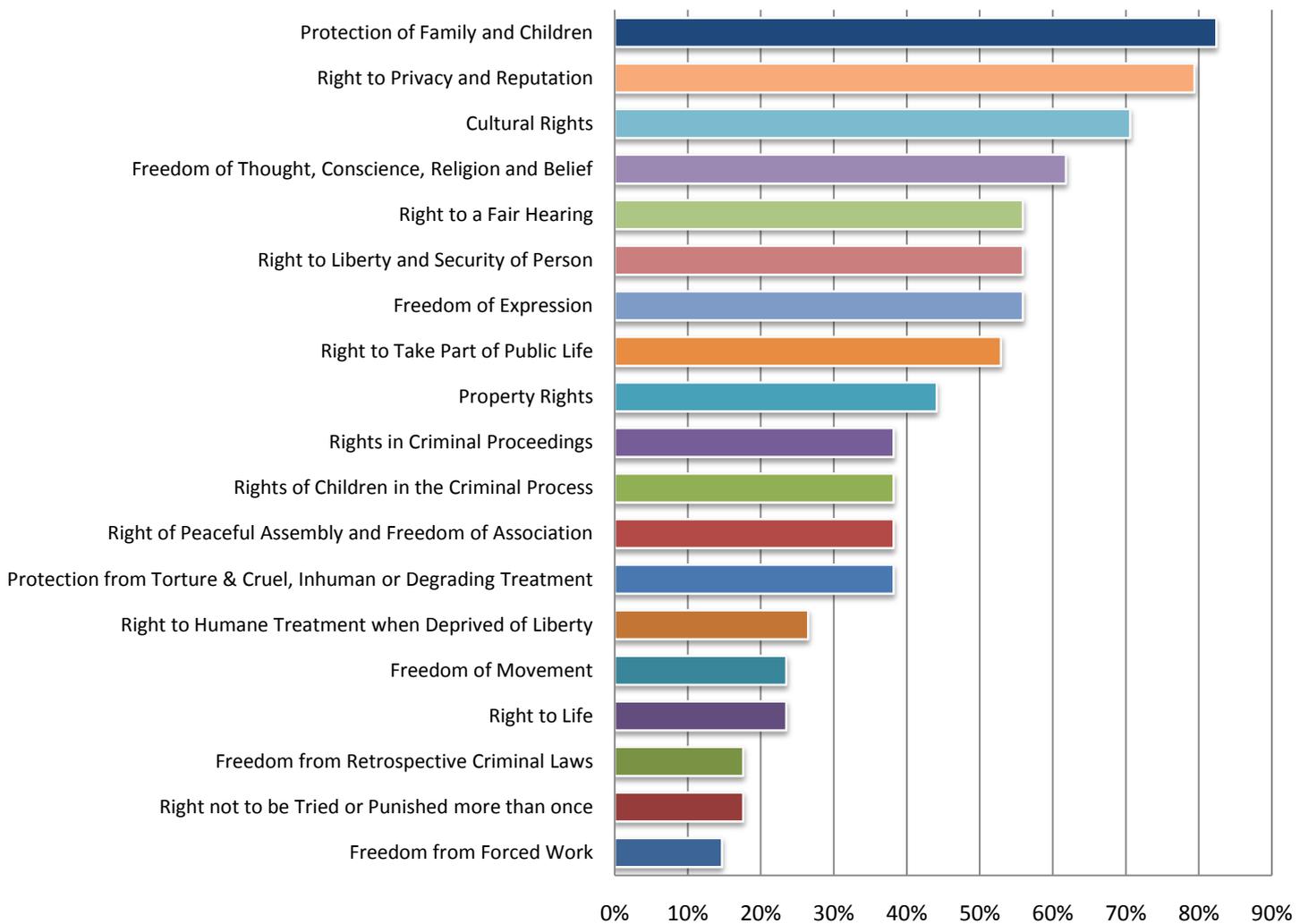
ECLC Community Survey

The ECLC Survey was conducted in May 2011 utilising an online survey program. The survey was distributed to community sector organisations, government and legal agencies, local councils, health and wellbeing groups in the east and outer-east of Melbourne. Respondents were asked 10 questions about their knowledge of the CHRR, if and how they used it in their organisation and how they would improve human rights protection in the State.

Respondents were also asked to identify which of the rights protected by the CHRR their organisation championed.

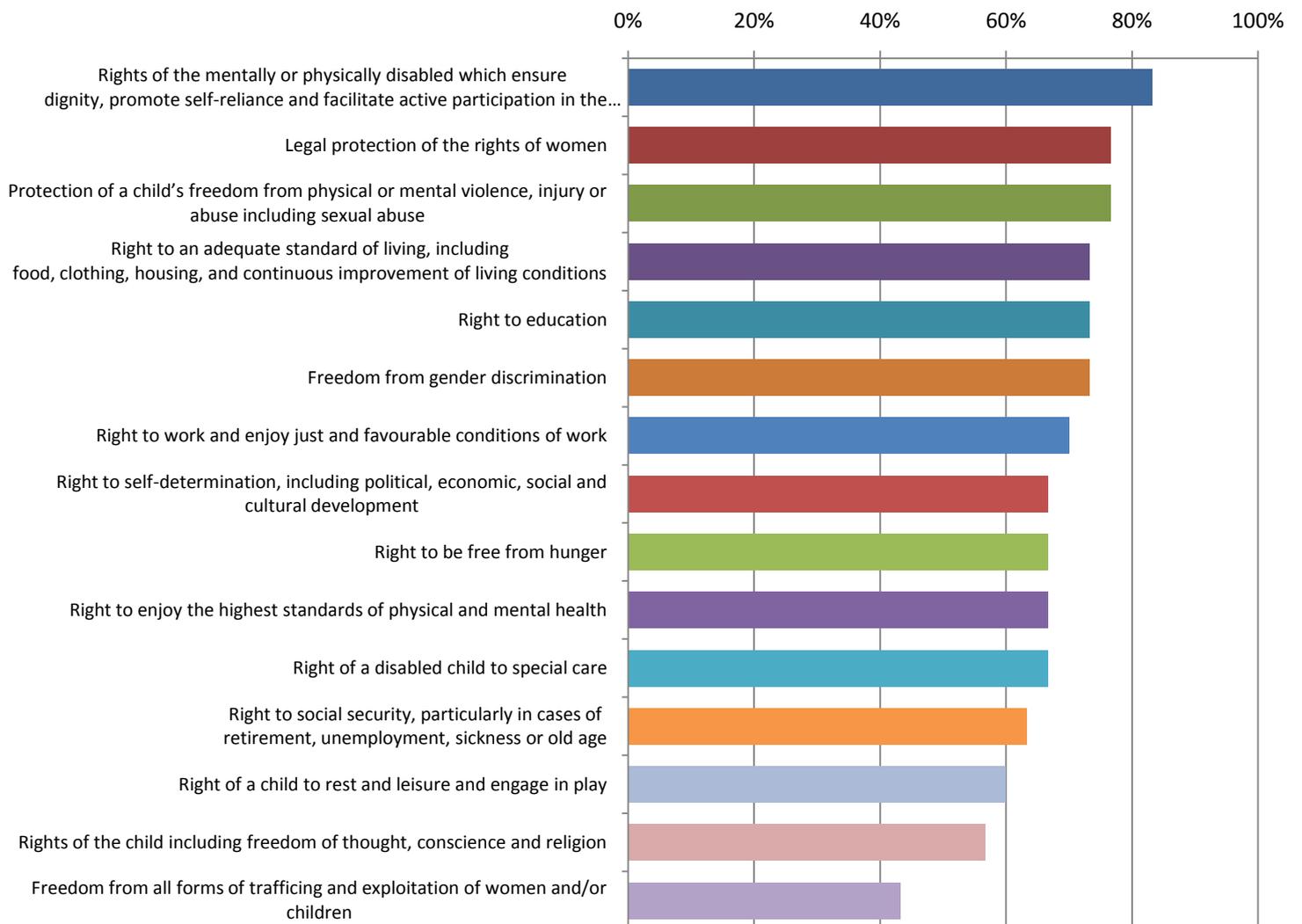
The graph below shows which CHRR rights are most championed in our community, with the Protection of Family and Children, Right to Privacy and Reputation and Cultural Rights most often applied by these organisations.

3. Which human rights protected by the CHRR do you or your organisation champion?



The ECLC Community Survey respondents were also asked to select other rights their organisation championed that are not covered by the CHRR. The results are extracted below. 80% of respondents are involved in the right of people with mental or physical disabilities to live with dignity, self-reliance and through active participation in the community

4. Which other human rights do you or your organisation champion?



The results revealed that most community and government services in the east and outer-east are engaged in protecting rights for vulnerable Victorians not covered by the CHRR.

Observations and Recommendations

1. The enactment of the Charter of Human Rights and Responsibilities has resulted in improvements in service provision for vulnerable Victorians, but there is more work to be done.
2. That Human Rights education be incorporated into State primary and secondary school curriculum, in consultation with the Victorian Human Rights Education Committee.
3. That increased, recurrent funding for human rights education be made available to the Victorian Equal Opportunity and Human Rights Commission and to community sector organisations.
4. That the CHRR be expanded to include protection for new rights including, but not limited to:
 - a. a Right to Education
 - b. a Right to an adequate standard of living, including food, clothing, housing and living conditions.
 - c. Rights outlined in the Convention on the Rights of the Child
 - d. Freedom from Gender Discrimination and Violence
 - e. a Right of mentally and physically disabled people to dignity, self-reliance and active participation in the community
 - f. a Right to indigenous self-determination
5. That the human rights auditing of public authorities be mandatory and coincide with existing annual reporting regimes.
6. That an individual complaint mechanism be enacted that applies to both public and private individuals and organisations.

About Eastern Community Legal Centre

Eastern Community Legal Centre (ECLC) is located in the Eastern region of Melbourne and serves the Cities of Whitehorse, Boroondara, Manningham, Maroondah, Knox and the Yarra Ranges Council. ECLC offers free legal advice from its offices in Box Hill and Boronia during the day, at night and also through various outreach locations across the East, with a priority being given to those who are disadvantaged.

The Eastern Region has a number of areas of significant disadvantage. Healesville in the Shire of Yarra Ranges is home to the second most populous indigenous population in Victoria. The cities of Whitehorse, Maroondah and Knox host large communities of new arrivals to Australia, particularly from the Horn of Africa and Burma.

In addition to direct legal services, ECLC also focuses on community development activities that empower clients, workers and the general community. It raises awareness of its service, new legal developments and human rights through projects and partnerships, educational sessions, media releases, festivals and events and community displays.

ECLC also produces a range of legal education materials and self-help guides to make laws accessible to the general public.

Human Rights – The rules of fair play in life

ECLC believes all people are born with dignity, freedom and an entitlement to wellbeing and happiness. People are also born into community, where the lives of one person shape those of another.

Human Rights are the preconditions for human potential, fostering responsibility, respect and equality between people and provide a set of rules of fair play governing our interdependence.

Human Rights are more than aspirational goals or constructed legal entitlements. For some people, these rights emanate from natural law, an unspoken code necessary for the peaceful existence of humanity. For people of faith, human rights are seen as blessings from their chosen God. In most Western nations, human rights emanate from the rational enlightenment of humankind about its spiritual, genetic and environmental interconnectedness.

ECLC likes to think of human rights as rules for the game of life, more analogous to a sports code, guiding the standard of behaviour within free, democratic societies. The essence of this code is contained in the four key CHRR principles: Freedom, Respect, Equality and Dignity (FRED)

CHRR: The goal posts for Human Rights in Victoria

ECLC believes that human rights are already a fundamental value of the Australian way of life, represented by the colloquial concept of the “fair go”. A “fair go” is understood in Australian slang as a call for equal opportunity and fair treatment.

While the fair go is an Australian policy cliché with extraordinary power, there is no legal definition or protection of the concept. Human rights laws are an opportunity to provide legislative protection of the fair go - to provide a list of rights and entitlements which ensure just treatment and human dignity for all Australians.

The FRED principles outlined in the CHRR are the goal posts for human rights in Victoria. When we talk about a “fair go” we mean Freedom, Respect, Equality and Dignity for all.

Kicking Goals –Improving the provision of services by public authorities (Terms of Reference 5(c))

Since the introduction of the CHRR, ECLC has observed some improvement in service provision by public authorities, but this task remains incomplete and further work needs to be done.

In May 2011, ECLC surveyed local community and government service providers in the East and Outer East about their knowledge of the CHRR and how they used it to assist clients. The results of survey revealed a high level of knowledge about the CHRR amongst organisations in our community, with 91.4% of respondents aware of the legislation.

However, the results of the ECLC Community survey revealed that only 20.5% of service providers had taken positive steps to implement the CHRR in their organisations. Of those respondents, the change focussed mostly on the implementation of organisational policy and procedure: *“Our policies reflect human rights and responsibilities”, “Human Rights Policy in place”, “We do note our support for these in the preamble of our access and equity policies” “Policies relating to confidentiality, duty of care, equal rights, anti-discrimination to name a few-all updated regularly”.*

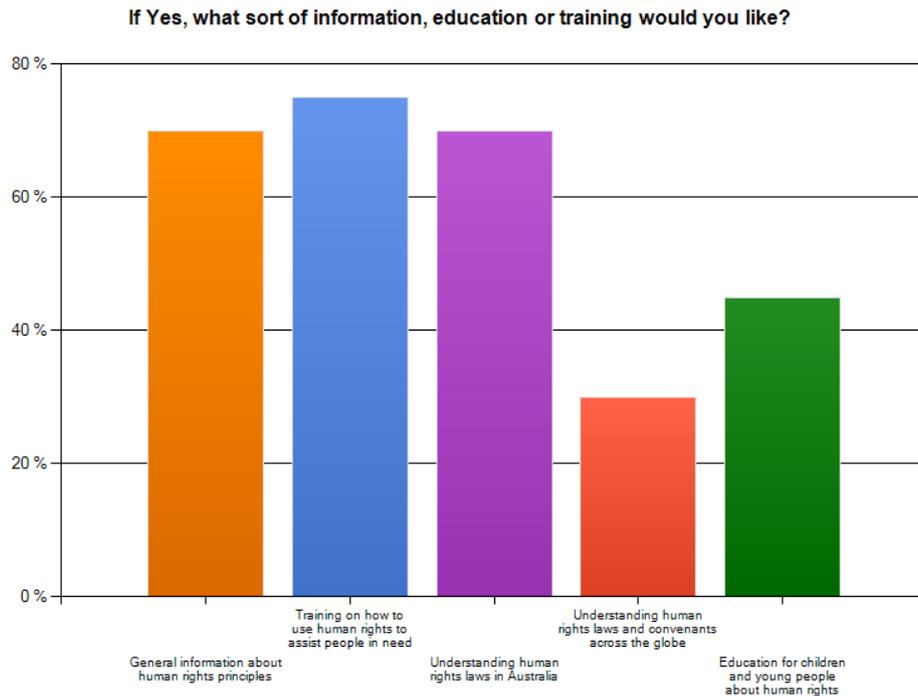
There was a slight improvement in the number of organisations using the CHRR to assist clients, with 22.9% of organisations using the CHRR in this way. Respondents recorded that they used the CHRR to **train** new staff *“An acknowledgement of the Charter in orientation package of information given to all staff and volunteers. Work instructions need to be consistent with Charter”*through **advocacy** *“we use it to advocate for access to services and priority of access”* and as a **guiding principle in client service** *“we use it for everything done for clients”.*

More specifically, the CHRR was used to assist disabled clients in *“discrimination cases in employment and in a case where an airline refused a flight with someone who had epilepsy”.* In the Housing sector, the CHRR was used *“primarily..with public authorities (mostly DHS) in seeking action in relation to individual participants. This is emerging work as our staff have only recently become skilled in using the Charter.”*

For these reasons ECLC observes:

- 1. The enactment of the Charter of Human Rights and Responsibilities has resulted in improvements in service provision for vulnerable Victorians, but there is more work to be done.**

The discrepancy between high levels of public awareness of the CHRR and low levels of implementation and use of the CHRR is explained best by the desire for service providers in our community to access more education about human rights. 62.9% of respondents reported that they wanted more training on how to use the CHRR in their workplaces and most wanted to know specifically how to use the CHRR to help people in need.



Kicking Goals - Human Rights Education (Terms of Reference 6 & 7)

ECLC's recent survey of service providers in the east and outer-east of Melbourne has confirmed that a Human Rights Act, Bill or Charter, without a properly funded human rights education framework, is like playing footy with a rule book, but no ball. You cannot have fair play without both human rights legal protection and human rights education. They go hand in hand.

ECLC asked local service providers to nominate how human rights could be better protected for their clients. Time and again in our survey the same response came back: **more education**.

"Education in schools education and in community based groups such as community houses";

"Much greater awareness of these via promotion in media etc";

"Ensure that people have the information and skills to support their life choices, capacity to self advocate, and ability to identify and access support services when required";

"Better knowledge of charter for our staff"

"Greater awareness and education of service providers and at risk client groups"

By having Human Rights more widely known and understood by the education and service sectors.

More information available to the general public

More publicity and education.

Only two people called for improvements to legal protection "A human rights charter at a federal level" and "clearer definitions in regard to public authorities".

These survey results are no surprise to ECLC. Nor was it a surprise that the National Human Rights Consultation, conducted by the Federal Government during 2009-2010, recommended the urgent implementation of a national approach on human rights education.ⁱ

One of our survey respondents said: “*Information is a powerful tool but knowing how to use this information is true empowerment*”. ECLC is committed to achieving true empowerment of people through human rights education, starting with our most vulnerable and impressionable citizens – Victorian children. That is why ECLC established the Human Rights are Aussie Rules Project to ensure the creation of the CHRR was accompanied by human rights education in the community

CASE STUDY: HUMAN RIGHTS EDUCATION IN PRACTICE - HUMAN RIGHTS ARE AUSSIE RULES

Human Rights are Aussie Rules is a unique human rights education program for young people in primary schools and at community festivals incorporating:

- A 45 minute theatre performance *FRED’s Fair Play*
- *Human Rights are Aussie Rules* Workshops where FRED principles are taught in an interactive and engaging manner
- The mass participatory game *Handballs for Human Rights*
- An online human rights game (in development)

By comparing the rules of fair play in life to the rules on the sports field, concepts of equality, human dignity and justice become easy to relate to, rather than just abstract ideas. An understanding of human rights strengthens communities, particularly where the cultural, racial and religious background of people is diverse. A recent survey conducted by UNICEF UK of over 1000 schools found that human rights centred education reduces the incidence of bullying (as well as truancy and exclusions.)ⁱⁱECLC’s *Human Rights are Aussie Rules* Project aims to reduce the incidence of racial, religious and cultural bullying and intolerance at schools.

PROJECT BACKGROUND

The *Human Rights are Aussie Rules Project* was born out of community need.

In 2006, prior to the enactment of the CHRR, ECLC engaged in community education and discussion about Human Rights. ECLC became concerned during this process that the local community’s understanding of human rights was in fact poor, confused by technical legal discussion and political argument.

ECLC identified a need to provide accessible education about human rights to the community, particularly young people, and, in the absence of any Government initiatives, began providing human rights education in a way that was connected to the everyday lives of Victorians.

The ECLC chose sport – the metaphor of fair play and good sportsmanship – as the medium to teach young people and their families about human rights.

In 2007, ECLC was granted modest funding of \$5000 from the Victorian Equal Opportunity and Human Rights Commission to conduct human rights education at community festivals in the outer-east. The *Human Rights - On the Festival Stage*

project saw ECLC engage a professional drama group, Carp Productions, to develop, write and present a short performance at community festivals in the east, promoting awareness of the CHRR Act, specifically the underlying principles of Freedom, Respect, Equality and Dignity (FRED).

ECLC conducted surveys of people who watched *FRED's Fair Play*. Again, our concerns about human rights education were confirmed. While 100% of those surveyed believed human rights to be important, only 36% of respondents said they understood the key themes of human rights principles.

In 2009, with support from the Helen MacPherson-Smith Trust, Victorian Multicultural Commission and Whitehorse City Council, a pilot program of the *Human Rights are Aussie Rules* project was launched in primary schools in Victoria.

Human Rights are Aussie Rules, now in its fourth year, goes from strength to strength. In 2010 it was a finalist in the National Children's Law Awards, attended the Garma Indigenous Cultural Festival in Arnhem Land at the request of the Castan Centre for Human Rights and Yothu Yindi Foundation and received Federal Government funding to roll the program out nationally over three years, commencing in WA and NT. The Victorian Government also supported the project's work through the development of an online game for children. Most recently, the project was the beneficiary of The Scanlon Foundation, who awarded the program funding to transfer the *Human Rights are Aussie Rules* education package from Primary into Secondary Schools.

WHY SCHOOLS?

ECLC believes the early years of schooling provide a young person's first learning about how to respect people who have different values, experiences, backgrounds and beliefs from them and their families.

At Primary School, parents and families tend to maintain day-to-day hands on contact with the school, participating in pre and after school activities, school excursions, sporting events and lunchtime programs. This provides ECLC with the opportunity of providing education about human rights to adults, too.

Primary school is also the first time young people learn the principles of fair play on the sports field. By connecting the ideal of the good sport – respect for rules, personal safety and the unbiased decision of umpires – to the principles of human rights, ECLC engages with young people about human rights in a way that is relevant to their daily lives.

Currently, there is an absence of comprehensive and cohesive human rights education within the National and State curriculum at either a primary and secondary school level. Further, there is no national human rights promotional program for new arrivals or the broader community. The lack of formal and popular education strategies is leading to a lack of human rights awareness and respect in the community.

Through the Human Rights are Aussie Rules Project, ECLC is filling a gap in human rights education at a state and national level.

WHY SPORT?

The idea of linking sport and human rights came from a community based reference group formed by ECLC to help develop ideas for FRED's Fair Play. This group included young people, community service organisations, local lawyers and businesspeople. From these discussions came a table comparing human rights principles to sporting rules.

Further theoretical and academic support for this idea came from conference papers of the *1999 How to Play the Game Conference*, where an in-depth discussion about sport and human rights took place amongst human rights lawyers, campaigners and sportspeople.

Sport as metaphor for human rights is particularly useful in communicating with young people from culturally and linguistically diverse backgrounds because it is a universal language common to all cultures. It also has profound resonance to indigenous communities.

Further, 66% of Australians play a team sport, requiring a commitment to a set of standards and rules about good conduct, sportsmanship and fair playⁱⁱⁱ. Sporting heroes are revered in Australia, not just because they are good athletes, but because they are "good sports", standard-bearers of integrity and decency.

ECLC's project seeks to tap into the goodwill in sport, an accepted and fundamental part of the Australian way of life, and thereby transpose goodwill to the concept of human rights. By targeting primary school-aged young people, the association between sport and human rights – the importance both on and off the sports field of freedom, respect, equality and dignity - has an opportunity of progressing through teenage years into adulthood.

More information about the project can be obtained at:

www.humanrightsareaussierules.org.au

ECLC participates in the Victorian Human Rights Education Committee, a collaborative committee consisting of representatives from the State Government, church groups, lawyers, academics, teachers, unions and other community organisations working on ways to improve human rights education. To date, this group, along with other advocates of human rights education across the country, have struggled to place human rights on the curriculum of schools. To combat the lack of formal education, many community legal centres (including ECLC), tertiary institutions, NGO's and other non-profit and community organisations have attempted to fill the gap by providing one-off or pilot education programs. However ongoing sources of funding for such initiatives are limited.

ECLC strongly believes that human rights will not be better protected in Australia by only the creation of a legal document that lawyers understand. This is why, in addition to the ongoing

development of human rights principles enunciated by the CHRR and improved accountability mechanisms and remedies for individuals, ECLC recommends funding and support of human rights education in schools curriculum and popular education of human rights in the community.

ECLC observes and recommends:

- 2. That Human Rights education be incorporated into State primary and secondary school curriculum, in consultation with the Victorian Human Rights Education Committee.***
- 3. That increased, recurrent funding for human rights education be made available to the Victorian Equal Opportunity and Human Rights Commission and to community sector organisations.***

New Rules; New Rights (Terms of Reference Term 1 & 2)

ECLC believes that the best way to distil the fair go into legislation is through support for the two categories of human rights known as Civil and Political Rights and Economic, Social and Cultural rights. ECLC refers to the list of rights set out in the ICCPR and ICESCR, but acknowledges that these lists may not be exhaustive.

ECLC acknowledges that civil and political rights – the right to vote, the right to a fair trial and others – are essential freedoms required for citizens to fully participate in the Australian democracy. These rights are the minimum standards which should be protected in any just society and the absence of a statement of these rights either in the Australian Constitution or legislation is a significant deficiency in our system of government.

The CHRR commendably introduced legislative protection for human rights in Victoria, but the range of rights protected were limited to civil and political rights.

As a community legal centre, ECLC assists clients on a daily basis for whom lack of education, income, stable housing or a reasonable standard of health are barriers to democratic participation. ECLC knows civil and political rights have reduced meaning to our clients if they do not enjoy the basic conditions of economic, social and cultural wellbeing.

ECLC observes and recommends:

- 4. That the CHRR be expanded to include new rights, including but not limited to:***
 - a. a Right to Education,***
 - b. a Right to an adequate standard of living, including food, clothing, housing and living conditions,***
 - c. Rights outlined in the Convention on the Rights of the Child,***
 - d. Freedom from Gender Discrimination and Violence,***
 - e. a Right of mentally and physically disabled people to dignity, self-reliance and active participation in the community; and***
 - f. a Right to indigenous self-determination.***

a. Right to Education

The Right to education is recognised in at least three international treaties to which Australia is a signatory - UNESCO Convention against Discrimination in Education of 1962, the International Covenant on Economic, Social and Cultural Rights of 1966 and the Convention on the Rights of the Child of 1989.

Despite this, there is no right to education recognised at a federal or state level. ECLC believes that this lack of recognition of a right to education has three consequences. It risks social cohesion in Australia, reduces productivity of Australian workers and perpetuates disadvantage in indigenous communities.

ECLC submits that the right to education is a cornerstone on which other rights depend. Without a recognised right to education, the foundation of knowledge, understanding and respect for cultural, racial, religious difference is weak. To understand human rights, you must be able to read and reason. Therefore lack of a right to education jeopardises knowledge of human rights themselves and consequently, social cohesion.

A right to education is fundamental to the productivity of the nation. In recent years, literacy and numeracy rates have become the subject of increased interest by both Federal and State Governments. In 2010, the Australian Industry Group report into literacy and numeracy revealed that 75% of employers reported that their businesses were affected by low levels of literacy and numeracy.^{iv} If Governments cannot guarantee a right to accessible and quality education, it is difficult to expect Australian workers to live up to standards of literacy and numeracy expected of them in a global marketplace.

But the right to education is most needed to advance educational opportunity for indigenous youth. In 2009, 77% of young people completed Year 12. For indigenous students, less than half of the student population completed Year 12^v. This is a discrepancy that has flow on affects in health and employment. The Productivity Commission's annual report on Government Services released startling figures for Indigenous students, where attendance rates fell for Year 10 students in every state and territory between 2007 and 2009^{vi}.

CASE STUDY: THE RIGHT TO EDUCATION OF INDIGENOUS CHILDREN

Healesville, a township on the rural fringe of the Outer-East of Melbourne is home to the second most populous indigenous community in Victoria. The historic connection between Healesville and local indigenous people dates back to the establishment of the Coranderrk Aboriginal Reserve in the area in 1863.

Young indigenous people in Healesville experience significant disadvantage, arising from systemic racial discrimination and poverty, but also from geographic isolation, lack of public transport and social services.

The starkest example of disadvantage occurs in education. Despite high levels of enrolment at a primary school level, young Indigenous people in the outer east have a significant drop out rate at high school, with only one student in the last five years completing VCE. This is consistent with State wide statistics which indicate that in

Years 11 and 12, 41% of Indigenous Students will leave school, compared with 18% amongst non-indigenous populations.

To combat indigenous disadvantage at schools in the outer east, the state government employed a Koorie Education Worker to provide support to indigenous young people attending four schools providing:

- a link between schools, indigenous students and their families
- daily pastoral care for individual indigenous students, including school breakfasts and lunches and a means of transport between isolated homes and the schools.
- indigenous cultural awareness education within multiple school and local government communities

While successive workers in this position demonstrated high levels of commitment and professionalism to the task, the position, in our view, was stretched and underfunded. Despite a restructure of Koorie Education Workers in 2009, within the Department of Education and Early Childhood Development Koorie Education Transition and Support Workers remain unfilled.

ECLC believes that a right to education would ensure greater attention was paid by Governments to the advancement of indigenous education. Existing laws and policy are failing indigenous students, providing no remedies for systemic failures in education, discriminatory allocation of resources or the mismanagement of individual learning.

The inclusion of a right to education is of significant importance to indigenous communities. It provides hope that disparities between indigenous and non-indigenous populations in health, education and employment, may be remedied by a human rights centred approach to service delivery.

b. Right to an adequate standard of living, including food, clothing, housing and living conditions.

At several stages of life, individuals can become dependent on others – family, friends and the State – to assist them with their needs. Children, the elderly, the ill and the disabled all require care and nurturing from others, if they are to enjoy an adequate standard of living.

ECLC assists clients with legal problems across each of these age groups. But the particular crisis in living standards is with our ageing population.

CASE STUDY: SENIORS RIGHTS

ECLC came to the assistance of a man in his eighties, who was living on his own in a private residence and had his licence cancelled by VicRoads because of alleged deficiencies in his eyesight, which the man disputed. The decision left him socially isolated, without a motor vehicle for transport to shops, relatives or to access essential services.

The decision to cancel his licence was made without consultation with him, without conducting an older driver assessment nor with any regard to the impact such a

decision would have on his freedom and enjoyment of life. Further, it provided no support to the individual to cope with the impact of its decision. VicRoads failed to balance the public interest in safe roads with the individual's human rights. It failed to do this because it had no statutory or other legal compulsion to consider broader human rights considerations when regulating road safety.

ECLC also received submissions from the Melbourne East General Practice Network providing anecdotal evidence that aged persons receiving medical services were at risk of discrimination because of their age. It was reported to us that some doctors made assumptions about the mental faculties of aged people that ignored their capacity to consent to medical treatment and/or recommendations about their ongoing care, including their right to choose what treatment to accept when facing a debilitating illness. Local doctors raised concerns about the adequacy of existing laws to protect patients' rights to self-determination and dignity.

ECLC's first hand knowledge of violations of rights of older persons in part led our centre to partner with other legal centres and community organisations to develop Seniors Rights Victoria, a service targeted at preventing elder abuse. Seniors Rights Victoria deals with cases involving a variety of forms of elder abuse, which violate an older persons right to life, liberty and the security of person. Further, our service produces Older and Wiser; a resource booklet providing advice about legal and financial issues affecting seniors in our community.

Older Australians face the prospect of increasing imposition of the State in their lives, as they become more and more dependent on social security and care, health services and transportation provided by others. The incidents where this tension between individual freedom and broader societal and economic issues will only escalate as Baby Boomers move into retirement and beyond.

As Australia's population ages, dependency on the state to provide care increases. Care includes food, clothing, housing and other necessities for daily living.

Older Australians – who have provided economic and social benefits to Australia for many years, deserve to have the protection of a right to an adequate standard of living. This is why ECLC is calling on the enactment of such a right in the CHRR.

c. Rights outlined in the Convention on the Rights of the Child

ECLC's Human Rights are Aussie Rules Program brings ECLC into schools across the country. It sees children at the coal face of life – learning about what it means to be a citizen and a human being. These years of self discovery are brief, but their impact lasts a lifetime. How we shape and educate our young people determines the kind of people they become, their sense of civic engagement and their commitment to work.

This is why ECLC believes it is important to enshrine all the Rights of the Child in the CHRR. To this end it endorses the recommendations of YouthLaw.

Further, it is noted that young people are at their most vulnerable when coming into contact with law enforcement agencies, such as Victoria Police.

CASE STUDY: YOUTH REFERRAL AND INDEPENDENT PERSON PROGRAM

Young people, particularly from indigenous, migrant and refugee backgrounds, are over represented in the justice system. Their capacity to understand laws, police and legal processes, the concept of consent and general knowledge about life is diminished because of age. Further, young people have very limited knowledge of their rights in criminal proceedings.

In Victoria, the law requires that an adult be present during formal police questioning of a young person under 18 years of age. When a parent or guardian is unavailable, an adult 'Independent Person' is required to be in attendance. Despite this law, ECLC has managed many cases in which young people have been required by police officers to give statements or participate in formal interviews without seeking advice or counsel from a lawyer, parent or guardian.

This led ECLC to partner with the Centre for Multicultural Youth and the Youth Affairs Council of Victoria to develop the Youth Referral and Independent Person Program (YRIPP), which co-ordinates volunteer adults to provide advice about rights to young people during police questioning.

Prior to the enactment of a CHRR, in ECLC's experience existing laws were insufficient to create a culture of rights protection for young people within Victoria Police. The CHRR is putting greater onus on police to protect the rights of young people, but there is more work to do.

Unfortunately, ongoing funding for the YRIPP program remains in doubt. Protection of the Rights of the Child, particularly in a law and order setting, would ensure that government programs designed to protect young people were seen as fundamental to the rule of law, the operation of justice and thereby properly funded.

This is why ECLC believes it is necessary to expand the legal protection of children and young people within the CHRR.

d. Freedom from Gender Discrimination and Violence

The historic inequalities between men and women may have been challenged by the suffragettes and later the rise of feminism to give women greater opportunities in the work place, but the vulnerability of women within the domestic realm, in homes and families, continues.

The controlling behaviour of men – adherence to rigid or narrow gender roles and stereotypes, acting out of jealousy and a desire to control behaviour of wives and partners - is an especially important predictor of violence.^{vii} The connection between discrimination and inequality of women and family violence is uncontested.

In Victoria during 2009/10, there were 35,720 incidents where Victoria Police submitted family incident reports.^{viii} It is no wonder then, that family violence prevention has been a key priority of the Victorian Government since 2005, with \$74.3 million being allocated to family violence services in Victoria for prevention strategies, data collection, housing and support; behavioural change programs, counselling and better coordination of police, justice and family violence services. In 2007 these reforms included the enactment of a new *Family Violence Act* and Risk Assessment and Management Framework as well as the funding for specialist family violence lawyers.

These initiatives have been matched at a federal level, with the implementation of a 12 year strategy aimed at reducing family violence. The National Plan to Reduce Violence Against Women and Their Children is currently in Stage 1: Building a Strong Foundation.

ECLC submits that the strongest foundation for ending violence against women is codified human rights protection for women.

Governments talk tough on law and order and crime prevention, but statistics on Family Violence in Victoria reveal that this message is not getting through to where it is most needed – the homes of Victorians.

CASE STUDY: FAMILY VIOLENCE IN THE OUTER-EAST: A WOMEN'S RIGHTS ISSUE

According to Victoria Police statistics collected over 5 regions, the East of Victoria has the highest number of incidents of family violence in the State. 24% of state-wide complaints came from within the Eastern Community Legal Centre catchment.^{ix}

These statistics are consistent with the work undertaken by specialist family violence prevention lawyers at ECLC. Over half of the legal work undertaken at ECLC is in the area of family law and family violence.

Family Breakdown and Separation, alcohol and drug use, financial difficulties and isolation are all high risk factors for family violence. In the Outer-east of Melbourne these issues are acutely in play, because of the lack of community and other services beyond the inner city limits. Couple this with a poor public transport system and you have a recipe for social isolation and all the other associated problems that contribute to family breakdown and family violence.

When 1 in 3 women will experience family violence in their lifetime^x, there is a clear crisis in the way men perceive the human rights of women, particularly those closest to them. This is why ECLC believes that the Convention on the Elimination of Discrimination Against Women should be incorporated into the CHRR. In particular, a Freedom from discrimination on the basis of gender, applying to employment, education and political representation should be protected in the CHRR, as well as equality in marriage and other family relations.

Further, family violence cannot be resolved by compartmentalising the issue as a crime to be resolved only through the legal system. Family violence is a consequence of financial, social and mental/physical health pressures, often made more difficult because of substance abuse. Human rights centred approaches to family violence resist seeing these issues as detached and separate from each other and instead promote a holistic resolution. Family violence prevention benefits from a human rights centred approach.

e. Right of mentally and physically disabled people to dignity, self-reliance and active participation in the community

In the ECLC community survey over 80% of respondents reported that they engage in advocacy for the rights of mentally and physically disabled persons. At ECLC alone, 18.7% of clients seen suffer from some form of disability.

People living with a disability are more likely to experience unemployment, social isolation and the health care system than other, abled people in the community. This means that people with a disability come into more contact with public authorities and government agencies providing support systems for them. It is particularly important that the human rights of the disabled are protected. This is why ECLC supports a right for people living with a mental or physical disability to an inclusive and accessible community environment.

f. Right to self-determination for indigenous people

ECLC supports the right of Indigenous people to determine themselves how best to preserve culture, promote justice and opportunity for their community. ECLC is aware that in Victoria, some indigenous organisations such as the Victorian Aboriginal Legal Service (VALS) support a Right to Self-Determination but recognise that further conversation amongst indigenous communities must take place before settling on definition and meaning.

ECLC believes the CHRR would be enhanced by specifically addressing the rights of indigenous people, but for the development of such provisions to occur in consultation with indigenous Victorians. To this end ECLC notes the recommendations made in the *Talking rights: Consulting with Victoria's Indigenous community about the right to self-determination and the Charter*, prepared by the Victorian Equal Opportunity and Human Rights Commission in March 2011. The methodology and recommendations made in the report set out a meaningful future process for protecting the rights of indigenous Victorians.

Empowering an Umpire - Mandatory auditing of public authorities (Terms of Reference 3)

ECLC supports mandatory auditing of public authorities under the CHRR. Auditing and reporting of Nation-State parties is part of the framework of International Human Rights Protection. These same techniques of self-evaluation and analysis, reviewed by an independent body of human rights experts, would replicate a successful international model of human rights compliance at a local level.

ECLC derives support for the mandatory auditing of public authorities from the principle of positive subsidiarity, that the organisation of human rights compliance is best handled at the least centralised or smallest authority – that is at the coalface of interaction with citizens. However, some assistance from Government is required to create the legislative and social conditions that promote protection of individual freedom and an oversight mechanism.

Although voluntary compliance is having some impact on public sector organisations, ECLC believes mandatory reporting is required to improve service provision and make positive cultural change.

CASE STUDY: HUMAN RIGHTS COMPLIANCE - VICTORIA POLICE IN THE OUTER EAST

RACISM IN RINGWOOD

Last year, several media outlets reported on an increased volume in racially based complaints made against Victoria Police. Many of these complaints were under investigation by the Office of Police Integrity, with questions being raised in the press and by the then Opposition Leader about the seriousness with which the complaints were being investigated.

Many of the complaints were made by new arrivals to Australia, particularly young men from the Horn of Africa. While many African migrants are settling around high-rise public housing in the inner North, a considerable population is also settling in the outer-east. This is due to growing property price rises in the inner city and the lack of affordable housing. Despite previous waves of migration bringing families from Europe and Asia to the outer-east, the volume of African faces in the community is presenting a challenge to policing and social cohesion.

One of the notorious locations for racism is Ringwood Train Station, the largest public transport station in the outer-east, where two railway lines, the Belgrave and the Lilydale line intersect. The large number of migrants from the Horn of Africa locating in Ringwood has led to Ringwood Station becoming a racism hotspot.

Thanks in large part to the CHRR, local Victoria Police members have recognised both the problem of racism in the community, as well as the need to combat problems amongst reporting rates in the local community. In addition to initiatives coming out of Victoria Police themselves, a partnership between the Victorian Equal Opportunity and Human Rights Commission, the Migrant Information Centre, the Eastern Community Legal Centre and Victoria Police saw the organisations collaborate to confront racism in the community.

Three sessions aimed at educating new arrivals about the role Victoria Police, the VEOHRC and ECLC can play in making complaints about racist remarks and violence were held earlier this year for members of the Sudanese, Burmese and Afghani Communities.

Although more work needs to be done, ECLC believes that the CHRR has enabled the co-operation between these four agencies and a willingness on behalf of Victoria Police in the Outer-East to combat racism.

RACISM IN HEALESVILLE

The outer-east was the centre of another a controversial incident involving racism within the Victoria Police community with a police officer being disciplined by Victoria Police's Chief Commissioner, Simon Overland, for the distribution of racist emails. The content of the emails is the subject of some conjecture, with suggestions the material contained depictions of violence towards Indian students.

The incident of racism amongst the Victoria Police force in Healesville is particularly concerning for ECLC. Healesville is the location of a significant indigenous community. For this reason, Healesville is a police station where it is reasonable to expect high standards of respect for human rights and dignity and greater appreciation of the negative impacts of bigotry.

While ECLC observes that the CHRR has achieved some cultural change amongst Victoria Police in the outer-east, it is clear that there is a lot more work to do. Mandatory reporting on human rights initiatives by Victoria Police would make transparent strategies needed in public authorities to combat cultural change, while also celebrating success stories. Human Rights reporting should be

included, not as an onerous additional report, but as part of existing reporting and accountability frameworks applying to public authorities.

CASE STUDY: HUMAN RIGHTS NON-COMPLIANCE – THE SHERIFF’S OFFICE & CIVIC COMPLIANCE

VICTORIA

ECLC staff and volunteer lawyers practice poverty law, law that helps people who are suffering significant financial hardship. They do this by providing access to justice to people who cannot afford to pay, but also by developing an expertise in areas of law connected to the consequences of financial instability and poverty.

The Infringement system and the infringement court are at the front line of poverty. For when people cannot afford to register vehicles, buy e-tags, pay for public transport or parking fees they will inevitably incur fines.

On a weekly basis, our centre would advise individuals who have incurred several thousands of dollars in infringements, often more than \$20,000. Many of these infringements are of a minor nature and are incurred over a prolonged period of financial hardship. Despite opportunities to claim special circumstances, mental and physical disabilities coupled with a lack of knowledge about the law and low literacy and numeracy, prohibit them from seeking a waiver of the fees at first instance. Fines rise, court costs are added. The financial difficulties escalate.

Although these problem cases must be obvious through electronic record keeping, they continue to clog the infringement system. Our legal practitioners rarely see the Sheriff’s Office or Civic Compliance Victoria engage in a more thorough investigation as to how and why so many fines have been incurred nor why payment is not being made. More often than not, both offices apply the law in relation to the seizure and sale of assets, wheel clamping and other enforcement mechanisms without wider human rights implications being taken into account. Certainly, the right to an adequate standard of living is not considered when the assets of already poor and struggling Victorians are taken away or their modest income payments garnished.

Multiple, unpaid infringements are generally a cry for help from our most financially disadvantaged Victorians. ECLC believes mandatory reporting on human rights measures and strategies would encourage a more sensible humane approach to infringements and diminish the volume of cases in the system.

ECLC supports mandatory auditing because respect for human rights is a client service standard our community expects from public authorities. As one of our survey respondents observed *“If the universal services who act against the basic rights of people knew they were doing so and that they were breaking the law then perhaps they might think twice ... there is a need for more training at the grass roots response level in these services”*

ECLC observes and recommends:

- 5. That the human rights auditing of public authorities be mandatory and coincide with existing annual reporting regimes.***

Missing the Mark – Limitations of the CHRR (Terms of Reference 4 and 5(d) and (e))

Greater legal protection of human rights has been made possible through the enactment of the CHRR Act in Victoria. ECLC applauds the Victorian Government for taking the step to recognise human rights. The strengths of this CHRR Act include the requirement that a statement of compatibility be completed when considering new legislation and the empowerment of courts to refer legislation inconsistent with the CHRR Act back to Parliament for review.

However a major weakness of the legislation is its failure to provide an avenue for individual complaint.

An individual complaint mechanism, that is a right to litigate for breaches of the CHRR, provides clear, direct access to justice for people alleging human rights violation.

Individual complaint mechanisms need not lead to awards of compensatory damages. It is within the power of Government to limit or prohibit damages awards, in favour of judicial review, declaratory or injunctive relief. Floodgates and litigation explosion arguments are easily dismissed through careful, considered legislative drafting.

As one of our survey participants observed, the CHRR would be improved by *“By providing other remedies in addressing human rights breaches, rather than requiring other legal actions.”*

The CHRR is also diminished by its focus solely on public sector actors and agents. ECLC believes that the private sector also has an obligation to preserve a culture of human rights in Australia and that individual or other complaint mechanisms should be extended to apply to private individuals and corporations.

CASE STUDY: THE EXPLOITATION OF NEW ARRIVALS BY SMALL BUSINESSES

ECLC has come to the assistance of a number of new arrivals from the Horn of Africa who experience exploitation because of their limited knowledge about rights in Australia.

Recently, ECLC provided assistance to a newly arrived client who had purchased a motor vehicle from a used car dealership. Our client, who was born in the Sudan where motor vehicle licensing is not required, was unlicensed at the time of purchasing the vehicle. Despite knowledge of this, the car salesperson, finance company and the insurer proceeded with the sale of all three products. The client later had an accident in the vehicle and the insurer refused coverage of his claim on the basis that he was unlicensed.

While there is well developed protection against unconscionable contracts, cultural and linguistic barriers, the limited resources of new arrivals and the costs of litigation are unlikely to result in many civil claims of this nature. While existing discrimination laws provide assistance for people who are denied equal treatment in the provision of some goods and services, there is no positive obligation on businesses providing goods and services to consider the human rights of the

purchaser or to take into account cultural and linguistic differences when finalizing a purchase of sale or insurance contract.

But the real problem with this case is that, while it is the car salespeople, insurer and finance company with all the power and knowledge about existing laws and entitlements, the burden of achieving justice falls on the new arrival. It is their responsibility to inform themselves of consumer laws, credit laws, road safety laws and entitlements to discrimination complaints to protect their rights. ECLC believes that the absence of a general responsibility to respect the human rights of others applying to private, public and community sectors, is a major impediment to human rights protection in Victoria.

A CHRR with an individual complaint mechanism applicable to public and private sector individuals and organisation would place greater emphasis on the responsibility of the community to care about rights, particularly for new arrivals and other people whose knowledge of rights is limited and vulnerable. Far from opening litigious floodgates, this may prevent individuals, government and business behaving unlawfully that cost taxpayers and the community in other ways.

ECLC observes and recommends:

- 6. That an individual complaint mechanism be enacted that applies to both public and private individuals and organisations.**

Conclusion

Majak Daw, the first Sudanese refugee to be drafted by an Australian Rules Football League club was recently confronted by racist remarks from the sidelines by a spectator. In the same week, Collingwood FC President Eddie Maguire made headlines for threatening a fan who racially abused Andrew Krakouer, a Collingwood player of aboriginal heritage. The high profile condemnation of racism by the AFL has been made possible through changes to AFL rules prohibiting racism. Andrew Demetriou, CEO of the AFL observed *“The AFL’s Racial and Religious Vilification code has played a significant role in changing attitudes on and off the field”^{xi}*.

Respect for human rights begins with written rules, expands in impact through education and achieves change through a lasting commitment to both over the passage of time.

ECLC believes that the CHRR is creating a human rights culture in Victoria which reduces the vulnerability and disadvantage of Victorians.

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