

24 May 2006

Renee Leon  
Chief Executive  
Department of Justice and Community Safety  
PO Box 158  
Canberra ACT 2601

Dear Ms Leon

### **Review of the Human Rights Act 2004**

Thank you for the opportunity to participate in the Review. We would like to congratulate the Department on the quality of the Discussion Paper and other materials provided to inform submissions.

We also acknowledge the work the ACT Human Rights Office has undertaken in hosting forums regarding the Review. The Human Rights Office has, in our view, continued the important community consultative process integral if the Act is to underpin social inclusion in the ACT. Our submission has been assisted, in part, through our participation in those forums.

### **Our Services**

Care Inc has been the main provider of financial counselling and related services to low income and vulnerable consumers in the ACT since 1983. Those services include:

- \* Financial counselling and information services (including an outreach service in Queanbeyan and a dedicated service for tenants and applicants of Housing ACT)
- \* Community Development and Education
- \* A No Interest Loans Program
- \* Participation in Policy Formation, Regulation and Law Reform

The Consumer Law Centre is hosted by Care Inc. The legal service provides free legal assistance, advice and advocacy for low and moderate income consumers, primarily in the areas of debt, consumer credit, telecommunications and utilities, as well as general fair trading and consumer protection.

We work with some of the most financially and socially disenfranchised members of the ACT community and the combined experience of our services, have informed this

submission. Our focus is on the incorporation of Economic, Social and Cultural Rights into the Human Rights Act, however we will briefly make some general comments about building a human rights culture.

### **Building a Human Rights Culture**

Since the inception of the Human Rights Act, we have not witnessed and cannot describe any specific benefits flowing from the Act to our client base. Indeed, our clients often present with problems which are indicative of a culture that does not honour human rights and indeed, enables disenfranchisement. There are a myriad of factors contributing to a person experiencing poverty and the social exclusion that results. We do not view the Human Rights Act itself as the panacea for overcoming these issues. However, we do submit that the manner in which the Act is embraced or incorporated into the social fabric of the community and Territory Government's operations could be part of a broader solution to disadvantage and exclusion.

This work, to the Government's credit, has begun but is a long way off completion. The Government has put in place basic frameworks, which in our submission would help to build a human rights culture that could deliver tangible benefits to our client group. In the area of Economic Rights specifically, these mechanisms include the Community Inclusion Board and the Essential Services Consumer Council most notably. However other bodies and offices such as the Office of Sustainability and the Independent Competition and Regulatory Commission could also contribute if given that mandate.

As part of building a human rights culture, there is the need to facilitate access to "rights skills" which enable people to become rights conscious. "Rights skilling" should begin with children, so that the consciousness becomes part of their everyday life. Those skills should also be supported by inclusive practices that encourage parents and others to develop those skills and consciousness. Further, a human rights culture requires robust mechanisms for redress and guidance on general principles.

For example, in the areas of financial literacy and consumer rights, rights skilling is essential to our work with people who experience poverty to give them the knowledge to respond to abuses of those rights. Often our client's poverty has been passed down through generations. The earlier financial literacy is taught, the better the outcomes are likely to be in our view. Ideally, if children were taught consumer rights and financial literacy, the nature of our work could shift dramatically. Like the Human Rights Act, financial literacy does **not** exist in isolation and can only be an effective tool where there is adequate and appropriate protection and enforcement of those rights.

## **Incorporation of Economic, Social and Cultural Rights into the Human Rights Act 2004**

Financial deprivation is what leads people to our service. The assistance provided to clients often focuses on addressing the sources and entrenched nature of the deprivation. We present options and discuss with clients how they can better cope. Yet, the options can be extremely narrow where poverty largely excludes clients from participating in civic life. Further, in a recent Australian study on psychological distress in the labour market, financial distress was found to be the most important and consistent predictor of psychological well-being.<sup>1</sup> It has also been argued that financial distress restricts people from engaging in a socially acceptable lifestyle, reduces capacity to plan and cuts them off from a meaningful future.<sup>2</sup>

Based upon our experience in working with low income people, this service submits it is impossible to realise civil and political rights separately from economic, social and cultural rights. In some respects, civil and political rights represent the top tiers in the hierarchy of needs. Economic, social and cultural rights form the most basic level of need. From our perspective these rights include right to housing, right to health, right to social security, right to education and the right to work.

For example, the civil right to participate in Territory elections while important, has little utility or priority for a citizen of the Territory when they are putting all of their energy into surviving each day. Persons presenting to our service in housing crisis are in that category. The right to housing is so fundamental it has flow on effects into all other areas of a person's life. If a client does not know where his or her family are going to sleep that night, next week or next month, it is almost impossible to assist them to make choices about anything else, no matter how urgent these other issues are.

In recent weeks our service has become acutely aware of how the right to housing impacts upon clients, with the termination of the leases of residents at the Narrabundah Long Stay Caravan Park. For many of the residents, their caravan was their only asset of value. It provided them with the option of sale, with residual funds available to pay creditors or to secure more sustainable accommodation. It allowed them to realise the right to privacy, security and protection of their family life. Put simply, their security of housing allowed them to plan for the future.

With the right to housing undermined, other rights fall down like dominos – protection of children, reputation, adequate standard of living, freedom from degrading treatment. The same can be said for the right to health or education.

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<sup>1</sup> Creed, P and Muller, J. "Psychological Distress in the labour market: Shame or deprivation?" (2006) 58 *Australian Journal of Psychology* at 31-39.

<sup>2</sup> Fryer, D (1986) 1 "Employment deprivation and personal agency during unemployment: A critical discussion of the psychological effects of unemployment" *Social Behaviour* at 3-23.

It is our submission, that by incorporating Economic Cultural and Social Rights, the Human Rights Act could have impact upon a range of factors which cause poverty and social exclusion. For example, in relation to consumer protection, a review of ACT laws in the area of Fair Trading and the Consumer Credit, through an Economic, Social and Cultural Rights analysis, might identify ways to prevent predatory lending practices which keep people in perpetual debt and curb debt collecting practices that are degrading and humiliating. This could produce significant benefits for our client group.

From our experience it is also likely that a review of financial services available to people in poverty in the Territory would reveal that what exists at all, is predominantly unsafe and unfair. An Economic Rights based approach could move the Territory to provide greater encouragement of alternatives like, no and low interest loan schemes.

Until the Human Rights Act incorporates Economic Cultural and Social Rights and is part of all decision making by public officials, it is our submission that the Civil and Political Rights therein will remain unachievable for our client group. Together those rights ought to be justiciable with none favoured above others. We also submit that the Human Rights Act will largely remain an untouched instrument if no direct cause of action is allowed.

To that end, it is a false argument in our submission to assert that courts should not be given scope to make decisions about Economic Cultural and Social Rights as those would effect budgetary or policy considerations. This is already political reality. Courts make decisions every day conscious of public policy implications.

### **Concluding Remarks**

We recognise that the process of building a human rights culture is a long term project. In our submission, incorporating Economic Cultural and Social Rights into the Human Rights Act and enlivening meaningful community based mechanisms for their engagement is fundamental to realising a human rights culture in the Territory.

Again, we thank the Department for the opportunity to provide this submission and we look forward to being appraised of the outcome of the review in due course.

Yours sincerely,

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Care Inc

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Consumer Law Centre