



Submission

to

The Human Rights Consultation Committee

Department of Justice

Victoria

A Charter of Human Rights For Victoria

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1. INTRODUCTION: UNITINGCARE VICTORIA AND TASMANIA

The Uniting Church in Australia

The Uniting Church in Australia is a union of three denominations (Methodist, Presbyterian and Congregational) and was inaugurated in 1977. In the Statement to the Nation offered on the occasion of the Church's inauguration, the Uniting Church in Australia (UCA) made the following affirmations:

We affirm our eagerness to uphold basic Christian values and principles, such as the importance of every human being, the need for integrity in public life, the proclamation of truth and justice, the rights for each citizen to participate in decision-making in the community, religious liberty and personal dignity, and a concern for the welfare of the whole human race.

The Statement also affirmed 'the rights of all people to equal educational opportunities, adequate health care, freedom of speech, employment or dignity in unemployment if work is not available'. The Statement also committed the Uniting Church to 'work for the eradication of poverty and racism within our society and beyond.' It committed the Uniting Church to 'oppose all forms of discrimination which infringe basic rights and freedoms.'

The Uniting Church believes that every individual is equal before God regardless of background. The Church considers the world is a community in which all members are responsible for each other and the strongest have a special responsibility for the vulnerable. Christianity teaches that all humanity will be judged by its attitude to neighbours, visitors and strangers. Christians believe that Australians should show concern for those who are suffering because Christ first loved us.

UnitingCare Victoria and Tasmania

UnitingCare Victoria and Tasmania is part of the Uniting Church of Australia Victorian and Tasmanian Synod and represents 82 Uniting Church agencies located in Victoria. These agencies deliver a broad range of services. These include child, adolescent and family support; early childhood services; homelessness and housing; alcohol and drug; mental health; financial counselling; emergency relief, and community-based aged care.

The following is our Statement of Purpose:

*UnitingCare Victoria and Tasmania
is integral to the ministry of the church
sharing in the vision and mission of God -
seeking to address injustice
working together to overcome disadvantage
and to strengthen communities.*

This submission draws on the experience of the agencies in their daily work with vulnerable people, their work pro-actively to improve the circumstances which impact upon Victorians and their work to strengthen the communities in which we live.

A CHARTER OF HUMAN RIGHTS FOR VICTORIA

2.1 Is change needed in Victoria to better protect human rights?

Given our history and the passion about mateship and a fair go, it is surprising that there is no Bill or Charter of Human Rights for Australia, the only country in the developed world not to have such a formal commitment. This context, and in an environment where economic development appears higher on the priority list than human, social and cultural development, the proposal to explore some clear protections for human rights in Victoria is welcomed.

Human rights are an expression of the basic ethical standards that governments, employers, social organisations and individuals must respect. There are breaches of human rights in Victoria, particularly in the areas of social and economic rights such as adequate housing and access to appropriate support services for the vulnerable in areas such as disability and mental health and in access to the provision of utilities.

This Charter process in itself brings to the surface a focus on human rights as one important indicator of how we are travelling as a society.

Any change should build on the existing protections in the Commonwealth and Victorian jurisdictions such as legislation pertaining to sex, racial, religious and age discrimination and structures in existence to promote equal opportunity.

2.2 If change is needed, how should the law be changed to achieve this?

The charter should have the result that the Victorian Parliament and Government or any other body should not be able to take actions which will violate the basic human rights of people. Any legislation should take the positive approach to *confer* rights which is the best way to protect the rights of people, particularly the most vulnerable and disadvantaged.

The design of the Charter should draw on the international experience and the experience in the ACT. From a quick look, the South African model - which is broad-ranging and which imbeds the Human Rights Bill in the Constitution - appears particularly aspirational and inspirational. This offers a high level of protection of human rights.

To imbed something like a *Human Rights Impact Assessment* into our processes of change to legislation, regulations and procedures would reinforce the value of the adoption of a Charter. The Equal Opportunity Commission Victoria could be expanded to become the Human Rights and Equal Opportunity Commission. This would build on their current role and expertise.

2.3 If Victoria had a Charter of Human Rights, what rights should it protect?

As a minimum, the Charter should protect the rights contained in the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights. These include:

- The right to life
- Freedom from torture, cruel, inhuman or degrading treatment

- Equality before the law
- Freedom from arbitrary detention
- Freedom of expression
- Freedom of movement
- Freedom of thought and religion
- The right to education
- The right to health
- The right to adequate food, housing and clothing
- The right to social security

This approach would particularly assist in the protection of the most vulnerable and disadvantaged in Victoria. These are people who are struggling economically, socially, emotionally or spiritually. This includes the provision of affordable and adequate housing and income for those with disabilities - including mental illness - those who are unemployed, for those in casual and low paid employment and those who need assistance to access support due to language or cultural barriers or due to status, such as those who are refugees and asylum seekers. The need to enhance the life situation of many indigenous Victorians is a reason in itself to have a Charter. The rights of children is another area requiring examination. In particular, those in the age range of 14-17 are currently not well protected as the relevant legislation covers children up to age 14 and those 18 or older. Some of these areas can be included in the Charter through reference to the International Covenants Australia is a party to such as the Rights of the Child.

Some of these areas clearly have implications for the Victorian Government Budget and priorities. Governments are there to respond to the needs of their citizens. It is acknowledged that the adoption of a Charter is not realistically going to change the ability of Government to resource relevant initiatives overnight. However, like the adoption of policy frameworks such as *A Fairer Victoria*, a broad Charter provides the basis to apply resources over time to steadily enhance our human rights performance through meeting basic human needs.

2.4 What should be the role of institutions of government in protecting human rights?

At a minimum it would be important that Government develop new legislation which is consistent with the Charter and promotes and protects the human rights enshrined in it. A systematic process of ongoing review of existing legislation could also be instituted.

The affirmation of human rights in Departmental and Organisational Mission Statements and Strategic Plans would be an indicator of commitment and integration of human rights into organisational values.

The legal system should also act consistently with the Charter and where inconsistencies arise there would need to be a mechanism for raising the issue for possible change to the law. A Commission as suggested above could be the mechanism to actively interpret adherence to human rights, so long as this did not lead to entrenching an adversarial and costly legal human rights industry and infrastructure.

2.5 What should happen if a person's rights are breached?

The creation of a Commission or Ombudsman to monitor and act on human rights breaches is supported. This body could also conduct inquiries and make recommendations on human rights public policy issues. Other possible structures such as a Cabinet Committee are perceived as less independent and the legal formality of a Court or Tribunal may be a disincentive for those seeking redress. The important factor will be the accessibility of any complaint mechanism and the protection of the complainant. The Court system currently appears to favour those who can access greater financial resources and highly qualified and expensive legal counsel. The system of appeal to higher courts, whilst appearing to guarantee fairness and accountability, can be prohibitively expensive for many people to contemplate. Clear, simple appeal and redress procedures and a range of specified options for responding to breaches, such as sanctions or compensation in extreme cases, would also ensure a Charter is not just "feel-good rhetoric".

2.6 What wider changes would be needed if Victoria brought about a Charter of Human Rights?

A Commission to implement a Charter of Human Rights is required. This would include an ongoing role in community education and education of politicians, health practitioners, legal practitioners, public servants, corporations, schools and community organisations. It would both monitor human rights and actively promote human rights. The role of the existing Victorian Human Rights Education Committee could be brought under this Commission.

2.7 What role would the wider community play in protecting and promoting human rights?

The community through its various structures is where the success of establishing a human rights culture will be measured. We experience whether our human rights are respected in all the venues where we live out our daily lives - home, employment, social activities, places where we volunteer, sporting activities, religious activities, schools and tertiary and training activities, business and commerce. If we have a structure and culture which encourages the raising of our issues and is responsive to them, the community will naturally ensure the progressive enhancement of the protection of human rights in Victoria. For example, the human stories where human rights are encroached upon that we see in our agencies sometimes point to a need for a change in attitude rather than major systemic change. In other cases, more fundamental systemic change is needed. Whichever is the case, responding to these stories will bring about the necessary incremental change to ensure human rights do not continue to be encroached upon. Clear mechanisms that enable the public reporting of human rights abuses will enable ongoing learning and continuous improvement.

**2.8 What other strategies are needed to protect human rights?
What should happen next?**

In Ireland the combination of an Anti-Poverty Plan and the strong implementation of Poverty Impact Statements appears to have significantly contributed to a reduction in poverty. This gives us hope that a similar approach in Victoria around human rights with a Charter and strong implementation could make a real difference. It would be important to develop a Human Rights Action or Implementation Plan which could then be actively monitored.

2.9 Other comments

There is a great opportunity here to bring about a fundamental shift in our approach in Victoria to enable this State to be seen as one which values its people and protects and enhances their rights.

The development of a Human Rights Charter enables a focus on any significant structural deprivations in Victoria and in so doing may greatly assist in reducing poverty and disadvantage in this State. It also creates an environment where community members are encouraged to be active participants in their community as we all strive to create a Fairer Victoria.