



Victorian Council of Churches

(Inc.A0036552E)

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Mr Edward O'Donohue, MLC
Chairperson
Scrutiny of Acts and Regulations Committee
Parliament House
Spring Street
EAST MELBOURNE VIC 3002
Email: charter.review@parliament.vic.gov.au

Dear Mr O'Donohue,

Re: Review of *Charter of Human Rights and Responsibilities Act 2006*

Thank you for the opportunity to make this submission on behalf of the Victorian Council of Churches to the Committee's Review of the *Charter of Human Rights and Responsibilities Act 2006* (the Charter).

This submission recommends that the Charter adopt the provisions on freedom of religion that are incorporated in the International Covenant on Civil and Political Rights (ICCPR, the Covenant). However, I would emphasise at the outset that it is submitted in the context of the strong support for the promotion and protection of human rights that is a hallmark of the mission of Christian Churches and communities.

The biblical teachings of our being created 'in the image of God' underpins the principle, widely accepted across cultures, of the inherent dignity of each human person, and from that dignity flows a broad set of rights and obligation. This is complemented by the biblical tradition of justice, understood primarily as a restoration of relationships, which gives distinctive foundation and character to our understanding of rights. This is about becoming 'more human' through relationships with others and with God, towards a global human community in the 'image of God' (Gen 1:27).

In taking up the theme of freedom of religion, we would submit that freedom of religion and associated freedoms are central to the fundamental dignity of each person, and are necessary to enable each of us to attain fulfilment. Accordingly, they will contribute to the common good of society.

This centrality is recognised by the international community, including in the 1948 Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights, which Australia ratified on 13 August 1980.



Article 18 of the ICCPR considers ‘the right to freedom of thought, conscience and religion, as follows:

Article 18

1. Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.
2. No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice.
3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.
4. The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions.

The Victorian Council of Churches strongly supports these rights, and, on behalf of the Christian Churches, urges that they be protected to the extent possible under Victorian law.

Further, we recommend that the current Charter Act be amended to more fully reflect the formulation of these rights in Article 18 of the ICCPR. The rationale for this is outlined in the following paragraphs.

Firstly, Article 18.1 states clearly and unequivocally that “Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice...” Under the covenant, this core right is not subject to any qualifications – it is a fundamental right. The centrality of Article 18 in its entirety is further underlined by Article 4 of the Convention, which makes explicit that no derogation from Article 18 (nor from several other Articles) can be made, even ‘In time of public emergency which threatens the life of the nation’.

This can be contrasted with the text of the Charter Act, at Section 14, which sets out the freedom, and Section 7 (2), which sets out how it can be limited:

14 Freedom of thought, conscience, religion and belief

- (1) Every person has the right to freedom of thought, conscience, religion and belief, including—
- (a) the freedom to have or to adopt a religion or belief of his or her choice; and



(b) the freedom to demonstrate his or her religion or belief in worship, observance, practice and teaching, either individually or as part of a community, in public or in private.

(2) A person must not be coerced or restrained in a way that limits his or her freedom to have or adopt a religion or belief in worship, observance, practice or teaching.

7 Human rights—what they are and when they may be limited

(2) A human right may be subject under law only to such reasonable limits as can be demonstrably justified in a free and democratic society based on human dignity, equality and freedom, and taking into account all relevant factors including—

- (a) the nature of the right; and
- (b) the importance of the purpose of the limitation; and
- (c) the nature and extent of the limitation; and
- (d) the relationship between the limitation and its purpose; and
- (e) any less restrictive means reasonably available to achieve the purpose that the limitation seeks to achieve.

We submit that the right to freedom of thought, conscience and religion should be absolute, as recognised by Australia in our ratification of the Convention.

Secondly, we submit that the rights and wellbeing of Victorians would be better served by the adoption of Article 18.3 of the Covenant, instead of limiting the manifestation of one's religion or beliefs according to the provisions of s 7(2).

Article 18.3: Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.

The Covenant is, in this respect, clearer, and more closely reflects the nature of these rights and their centrality to the dignity of the person, and the wellbeing of the community. The safeguards that it provides are broad ranging, but are to be applied in cases of necessity, not of balance as is provided for in the Charter. They thus more effectively protect these freedoms, but not at the expense of the protection of public safety, the fundamental rights and freedoms of others, etc.

Moreover, the language of the ICCPR is supported by a body of international jurisprudence that does not automatically transfer to the Charter Act, because of the different wording and provisions adopted in the Act. Thus, Victorians do not currently have full advantage of the effective and appropriate protection of these human rights that have been considered by the international community over the decades since their codification in the Covenant.



Thirdly, we submit that the language of the Covenant is preferable because it more effectively reflects the communal nature of freedom of religion. This is necessary, because the Victorian law on this point is currently contested.

The Victorian Law Reform Commission in their 2008 report on abortion laws in Victoria argued that organisations should not be permitted to have a right to freedom of conscience under law, with no exemption. In their view:¹

8.32 As freedom of conscience is generally understood to be held by individuals, the conscience provision should not extend to corporations. This is consistent with existing conscience provisions in other Victorian laws.

8.33 The danger in extending the provision to institutions is that it may establish a precedent of corporations holding interests that could be categorised as human rights. This could lead to perverse outcomes.

This was repeated in the section of the report considering the right to freedom of thought, conscience and religion, where the Victorian Law Reform Commission argued that Catholic organisations should be denied a right to conscientious objection on the grounds that “human rights are generally regarded as residing in individuals rather than organisations.”² This position relied on a journal paper by Rebecca Cook and Bernard Dickens, ‘Human Rights Dynamics of Abortion Law Reform’ (2003), 25 *Human Rights Quarterly* 1, 29.

In asking about this position of the Victorian Law Reform Commission the Justice and International Mission Unit of the Uniting Church Synod of Victoria and Tasmania was informed:³

This is not a specific position or stance of the VLRC, but a restatement of principles of human rights law which is supported by the article referred to in the Report (Cook and Dickens Human Rights Quarterly at footnote 18). The human rights principle that rights reside only in individuals, not organisations, is also expressly indicated in the Victorian Charter which expressly states that the rights enshrined in the Charter only apply to ‘persons’ (see Section 6 ‘Application’).

Thus the VLRC is took it as a matter of fact that the right to freedom of religion in Victoria does not extent to religious bodies, communities and organisations.

However, the views of the Victorian Law Reform Commission are at odds with the Covenant, and with the UN Human Rights Committee which stated in General Comment 22 of 1993 on Article 18 of the *International Covenant on Civil and Political Rights*⁴ that:

The right to freedom of thought, conscience and religion (which includes the freedom to hold beliefs) in article 18.1 is far-reaching and profound; it

¹ Victorian Law Reform Commission, ‘Law of Abortion’, March 2008, p.114.

² Victorian Law Reform Commission, ‘Law of Abortion’, March 2008, p. 170.

³ E-mail from the Victorian Law Reform Commission, 3 November 2008.

⁴ Human Rights Committee, General Comment 22, Article 18 (Forty-eighth session, 1993). *Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies*, U.N. Doc. HRI/GEN/1/Rev.1 at 35 (1994)., at <http://www1.umn.edu/humanrts/gencomm/hrcom22.htm>



encompasses freedom of thought on all matters, personal conviction and the commitment to religion or belief, whether manifested individually or in community with others....

The adoption of the text of the Covenant would ensure that the right to freedom of religion as it applies to religious bodies, communities and organisations was effectively enshrined in Victorian law.

Fourthly, Article 18.4 of the Convention is not currently reflected in the Charter. We submit that it should be included, because the right 'to ensure the religious and moral education of their children in conformity with their own convictions' is an integral part of the right to freedom of religion, and should thus be respected by the State, as is provided for in the Covenant. As the UN Human Rights Committee has formally advised:

The liberty of parents or legal guardians to ensure that their children receive a religious and moral education in conformity with their own convictions, set forth in article 18.4, is related to the guarantees of the freedom to teach a religion or belief stated in article 18.1.⁵

Nor does the Article provide for an unfettered right of parents to guide and provide for the education of their children. Rather, it requires that this right be 'respected'. The rights of the child and the safeguards associated with Article 18.3, including the safety of the community and the fundamental rights and freedoms of the child, would clearly be relevant here.

Representatives from the Victorian Council of Churches would welcome the opportunity to meet with your Committee, and to expand on our submission that the Charter be amended to protect religious freedom in full accordance with Article 18 of the International Covenant on Civil and Political Rights.

Yours sincerely,

Rev Ian Smith
President

⁵ 5 Human Rights Committee, General Comment 22, Article 18 (Forty-eighth session, 1993). *Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies*, U.N. Doc. HRI/GEN/1/Rev.1 at 35 (1994)., at <http://www1.umn.edu/humanrts/gencomm/hrcom22.htm>