Why the Charter matters to me

The Charter is important to me because as a Victorian I want to know that my basic rights are protected. As Australia is one of the only Western democracies without overarching human rights protection, I feel proud that as a Victorian we have human rights legislation.

However, as a member of the LGBTIQ community, my rights are not adequately protected. Protecting the rights of LGBTIQ Victorians as part of the review on broadening rights protected under the Charter would not only be consistent with international law but would also be a positive step towards a more inclusive Victoria.

Young people struggle, as I did, because they fear reproach from their families and friends if they come out about their sexual identity. The general public can too increase young people’s turmoil about their sexuality. Only five years ago, I sat on Williamstown beach with my arm around my girlfriend. After a few young men came up to us to ask us if we would like boyfriends a group of people chanted at us, “animals, animals, animals” as we walked home. In the first instance I felt vaguely threatened. In the second instance, I felt enraged, ashamed and like crying. However, I was lucky that my parents and friends were always supportive of my sexuality identity. Not all young Victorians have this which is why the government needs to provide them with rights protection.

Whilst LGBTIQ rights protection would not necessarily have been a help in this case had I chosen to take legal action against this verbal harassment, its normative power should not be estimated. By 19, I was comfortable enough with my sexuality that even if I felt injured at the time, I could bounce back. But not all young people have this resilience and many even fear to come out in the first place. I know that at 15 and 16, I certainly did not have this resilience and struggled to come to terms with my sexual identity. The problems that LGBTIQ youth face in dealing with their identity, fear of reprisal, bullying and homophobia leads to the higher suicide rates amongst LGBTIQ Victorians. Headspace, a youth mental organisation, has found that being gay or indigenous increases your risk of suicide fourfold.¹

The normative power of rights protection should not be underestimated. By legislating in Victoria that LGBTIQ Victorians deserve the same protection young LGBTIQ Victorians that the Victorian government is behind them. It would also send a strong message to would-be bullies and discriminators that LGBTIQ Victorians have every right to define their sexuality as they see fit. By doing this and showing the community that LGBTIQ have human rights, this would also help combat homophobia in the broader community.

The basis in international law for protecting the human rights of LGBTIQ Victorians

Protecting this right, has a basis in international law and the possibility of including must be looked at s44(2)(a) and in particular s44(2)(a)(i) in whether the Charter should be extended to include economic, social and cultural rights.

This could be achieved through ensuring Principle 18 from the Yogyakarta Principles in the Charter. Principle 18 is the “the right to freedom of thought, conscience and religion.” The full principle is in Appendix 1.

Recognising this right would be in line with the United Nations’ Human Rights Committee’s official interpretation of Article 18 and Article 14 of the International Covenant on Civil and Political Rights to which Australia is signatory. ²

In May 2009, the UN Committee on Economic, Social and Cultural Rights (CESCR) which evaluates compliance with the International Covenant on Economic, Social and Cultural Rights, adopted a Comment on Non-Discrimination in which it explicitly recognised gender for the first time. ³ The UN has also repeatedly affirmed that sexual identity is a human right. ⁴ Therefore as part of s44(2)(a)(ii) LGBTIQ rights protection should be included in the Charter.

**Extension of section 17 to better protect LGBTIQ Victorians**
Section 17 could be extended to expressly protect LGBTIQ Victorians. This section could be changed to read:

> All persons with a particular cultural, religious, racial or linguistic background or sexual identity must not be denied the right, in community with other persons of that background, to enjoy his or her culture, to declare and practise his or her religion and to use his or her language.⁵

A full list of what states should do under Principle 26 on the right to participate in cultural life of the Yogyakarta Principles is included in Appendix 2.

**Conclusions**
I am proud to be both a Victorian and a member of the LGBTIQ community. I hope that Victorian can continue to lead the way in human rights protection in Australia by strengthening the Charter to include LGBTIQ rights. This would be based in international law and would not only provide substantive protection for LGBTIQ Victorians but would also create normative change needed to help combat LGBTIQ youth suicide rates and fight homophobia that is still prevalent in Victorian society today.

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³ CESCR, General Comment No 20: Non-discrimination in economic, social and cultural rights (para 32), 2 July 2009, E/C/12/GC/20 (2009); 16 IHRR 925 (2009) at 32.
⁵ Author’s additions to the section are italicised.
Appendix 1: Principle 21: the right to freedom of thought, conscience and religion
Everyone has the right to freedom of thought, conscience and religion, regardless of sexual orientation or gender identity. These rights may not be invoked by the State to justify laws, policies or practices which deny equal protection of the law, or discriminate, on the basis of sexual orientation or gender identity.

States shall:
A. Take all necessary legislative, administrative and other measures to ensure the right of persons, regardless of sexual orientation or gender identity, to hold and practise religious and non-religious beliefs, alone or in association with others, to be free from interference with their beliefs and to be free from coercion or the imposition of beliefs.

B. Ensure that the expression, practice and promotion of different opinions, convictions and beliefs with regard to issues of sexual orientation or gender identity is not undertaken in a manner incompatible with human rights.

Appendix 2: The right to participate in cultural life
Everyone has the right to participate freely in cultural life, regardless of sexual orientation or gender identity, and to express, through cultural participation, the diversity of sexual orientation and gender identity.

States shall:
A. Take all necessary legislative, administrative and other measures to ensure opportunities for the participation in cultural life of all persons, regardless of, and with full respect for, their sexual orientations and gender identities;
B. Foster dialogue between, and mutual respect among, proponents of the various cultural groups present within the State, including among groups that hold different views on matters of sexual orientation and gender identity, consistently with respect for the human rights referred to in these Principles.