Ken Francis Submission to Vic Parliamentary Enquiry into the Charter of Rights

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Mr Edward O’Donohue
Chair, Scrutiny of Acts and Regulations Committee,
Parliament of Victoria,
Parliament House,
MELBOURNE.

Submission to the Enquiry into the Victorian Charter of Rights from Ken Francis

Summary:

A)
The Victorian Charter of Rights should be repealed for the following reasons:

1. The Charter enshrines the power of judges and the bureaucracy as being the arbiters of what constitutes a “human right”.
2. The Charter achieves this end by reducing the influence of the Parliament (as opposed to the judiciary), in decisions on the day-to-day interpretation and scope of laws.
3. The Charter while purporting to protect rights which already exist, actually allows judges to create new rights and overlook established common law rights.

B)
Should the Charter be retained then Sec 44 (2) should be amended to specifically to deal with the Abortion Law Reform Act 2008, by recognising the right to life of unborn children and delete the restrictions in this Act which purport to restrict the freedom of conscience of doctors who choose not to be involved in abortion.

Discussion:

1. The Victorian Charter of Rights (The Charter) alters the balance of responsibility for determining rights and the recognition and enforcement of rights between the judiciary and the parliament, such that the judiciary is seen as the superior repository for moral and ethical wisdom, and the parliament less important.
2. The parliament should be the place which determines rights through the law-making processes because ultimately Members of Parliament have to face electors and rise or fall on the will of the people.
3. The judiciary is under no such discipline if it becomes the effective ultimate decision maker of what constitutes a right.
4. The parliament is more likely to provide ethical and moral insight into the issues facing society and the line to be drawn in difficult cases than the judiciary.
5. The wording of charters of rights is always couched in high-flown abstract language whose meaning and application to concrete day-to-day situations in the courts is not clear.
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- Thus the UN Declaration of Human Rights includes amongst others the "right to life".
- However, this right is not absolute according to those numerous judges and courts who have provided exemptions in cases relating to abortion and euthanasia.
- It needs to be asked how charters of rights have created a new system of alternative rights, which have diminished the standing of the common law right to life for the unborn or the aged and infirm.
- There is now a hierarchy of "rights to life" because of the intervention of judicial intervention, rather than an absolute right to life for all human beings.
- The answer lies in the fact that courts have allocated to themselves the role of moral and ethical arbitrators, under the powers of charters of rights often in the face of opposition from the community.

6. Section 44 (2) of the Charter should be amended to include provisions in Victorian law and particularly the Abortion Law Reform Act 2008, such that:
   - Recognise the right to life of the unborn child.
   - Ensure that treatment is offered to babies born alive as a result of an attempted abortion.
   - Deliver adequate financial and other support to pregnant women.
   - Remove restrictions on the freedom of conscience of medical personnel which attempt to coerce them to participate in abortions.

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