Submission to

Scrutiny of Acts and Legislations Committee of Parliament


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Submitted by

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Executive Summary

Amnesty International considers the Charter as an integral component of the promotion and protection of human rights in Victoria. Victoria currently plays a leading role in its human rights protection framework as Victoria and the Australian Capital Territory are currently the only two states or territories to legislatively protect human rights. Other state and territory governments are continuously encouraged to implement similar legislative measures to better protect human rights in their state or territory. While the Federal Government is accountable internationally to Australia’s human rights obligations, state and territory governments are also instrumental in preserving the human rights of people in Australia as many of the areas that are susceptible to human rights infringements fall within their jurisdictions.

Since its establishment the Charter has positively contributed to the lives of individuals who have had their human rights violated and has also served to bolster the culture of human rights throughout the Victorian Community. Amnesty International urges the Victorian Government to maintain its important leadership position towards the promotion and protection of human rights.

In this submission Amnesty International also outlines its recommendations on how the Charter could be improved to ensure the best protection for society’s most vulnerable individuals – including: Aboriginal and Torres Strait Islander people, women, the elderly, people with disabilities, the young, the socially and economically disadvantaged, and those from culturally and linguistically diverse communities.

Recommended amendments include:

- Incorporate all rights outlined in the International Covenant on Economic, Social and Cultural Rights
- Ensure all the human rights treaties to which Australia is a party to are incorporated into the Charter
- Recognise the right to self determination for Aboriginal and Torres Strait Islander Peoples
- Reform the manner in which the Charter can be used in legal proceedings so that it is less complex, enabling self-represented parties to properly access the Charter
- Create an independent course of action for people to seek redress for breaches of rights

This submission draws on previous submissions made by Amnesty International in support of the introduction of state, territory and national human rights charters, especially the organisation’s submissions to the 2005 Victorian Human Rights Consultation Committee and to the 2009 National Human Rights Consultation Committee.
About Amnesty International

Amnesty International is a worldwide movement to promote and defend all human rights enshrined in the Universal Declaration of Human Rights (UDHR) and other international instruments. Amnesty International undertakes research focused on preventing and ending abuses of these rights. Amnesty International is the world’s largest independent human rights organisation, comprising more than 3 million supporters in more than 160 countries and has over 125,000 supporters in Australia. Amnesty International is impartial and independent of any government, political persuasion or religious belief. It does not receive funding from governments or political parties. Amnesty International has been a vocal advocate for the need for Australia

Victorian Human Rights Charter making a positive contribution

Since its introduction in 2006 the Charter has served as a guiding framework for ensuring:

- policy and decision makers assess the compatibility of new laws and amendments to the 20 fundamental civil and political rights enshrined in the Charter;
- the Victorian Public Service - including government departments, public hospitals, and the Victorian Police – implements policies that adhere to the Charter and gives proper consideration to human rights in decision making processes; and
- courts and tribunals interpret and apply legislation consistent with the Human Rights contained within the Charter.

Despite it only being introduced a few years ago, there is substantial evidence that the Charter has already made a positive contribution to the lives of many people in Victoria as well as to the broader community. It has also fostered a better understanding and appreciation of the importance of the promotion and protection of human rights within the three arms of government. In its fourth annual report on the operations of the Charter, the Victorian Equal Opportunity and Human Rights Commission stated:

"where used well, the Charter prevents breaches of human rights by taking human rights into consideration at the front end of the work of government... practical application of the Charter is being demonstrated though the matters that are heard in the courts and tribunals, where there is emerging guidance on its application... four years after the introduction, there is clear evidence that the Charter is making a genuine difference for individuals and communities"  

One of the areas in which the Charter has been most effective has been in helping to ensure that public authorities in Victoria pursue policies and practices in consideration of a human rights based approach. The Charter has enabled matters to be satisfactorily resolved without needing to be litigated and has importantly provided community advocates with a means by which they have been able to have policies and practices corrected where they would otherwise have breached the rights of those for whom they were advocating.

One such case involved a severely intellectually disabled refugee who was placed in unsuitable accommodation with limited contact with his family. After an advocate’s intervention, he was not returned to the accommodation and was allowed to reside in his family home. Another case involved a pregnant woman with two children being evicted into homelessness without reasons or the opportunity to address the landlord’s concerns. An advocate used the Charter in negotiating with the landlord to prevent an eviction into homelessness and reached an alternative agreement. A third case involved a young man who, as a prisoner, was denied a request to attend the funeral of his step-father. The Charter responsibilities were specifically raised by the advocate and the prisoner was allowed to attend the funeral.

Most of the Charter’s successes have occurred away from the public light or media commentary but have protected the dignity and human rights of some of society’s most vulnerable and marginalised. It is for such individuals who are at most risk of falling through the cracks that the Charter serves to protect the most. Amnesty International strongly urges the Victorian Government to consider the plight of these people who often struggle to have a voice, when deliberating on the future of the Charter. Amnesty International recommends that at the very least the Charter be preserved in its current form and not weakened by any means.

Recommended amendments

Incorporation of all of Australia’s international human rights obligations

While the Charter is already positively contributing to the Victorian community, there are a number of areas in which it could be significantly amended to strengthen the level of human rights protection afforded to people in living in Victoria.

Amnesty International’s vision is that of a world in which every person is entitled to live their life with dignity and this is secured through their enjoyment of all of the human rights enshrined in the
Universal Declaration of Human Rights (UDHR) and other international human rights standards. This means that all persons have certain fundamental rights that they are entitled to simply because they are human.

It is a widely-established principle of international human rights law that the rights outlined in the UDHR are universal, indivisible, interdependent and interrelated and therefore must be protected equally, as recognised in Article 5 of the Vienna Declaration. International human rights principles reflect the common understanding and experiences of people in their everyday lives. The ability for a person to realise their right to vote or to freedom of expression if they have not been provided with an adequate education is just one example of many that demonstrate the universal, indivisible, interdependent and interrelated nature of human rights.

The Charter currently only protects civil and political rights and two cultural rights pertaining to the right to culture. Amnesty International believes that any Charter of Human Rights must protect economic, social and cultural rights as well as civil and political rights.

The incorporation of economic, social and cultural rights is necessary as in many cases the alleged breach of a person’s civil and political rights is closely related if not inextricably linked to a breach of economic, social or cultural rights. Economic, social and cultural rights are essential to the full achievement of civil and political rights.

Amnesty International welcomes the findings by the Victorian Equal Opportunity and Human Rights Commission following its public consultations that “the majority support the inclusion of economic and social and cultural right in the Charter”.

Amnesty International recommends that the Charter further incorporate all of Australia’s obligations under international human rights law, as contained in the UDHR and the various international human rights covenants and conventions to which Australia is already a party, as well as having the flexibility to allow the implementation of the obligations of subsequent treaties.

Australia is a party to these seven key human rights treaties:

- International Covenant on Civil and Political Rights (ICCPR)
- International Covenant on Economic, Social and Cultural Rights (ICESCR)

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2 UN World Conference on Human Rights, Vienna, 1993

- Convention of the Rights of the Child (CRC)
- Convention Against Torture (CAT)
- Convention on the Elimination of All Forms of Racial Discrimination (CERD)
- Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)
- Convention on the Rights of Persons with Disabilities (CRPD)

Australia is also a signatory to the Convention relating to the Status of Refugees and has unequivocally endorsed the Declaration on the Rights of Indigenous Peoples.

Recognising the importance of self-determination for Aboriginal and Torres Strait Islander Peoples

On 3 April 2009 the Australian Government formally endorsed the Declaration on the Rights of Indigenous Peoples. The Declaration is the most comprehensive international tool to advance the rights of Indigenous Peoples across the world and complements the international covenants such as the ICCPR and ICESCR. While the Declaration is not legally binding, the principles contained within it provide a minimum standard for both for the implementation of laws, policies and programs by governments. Of particular importance to Aboriginal Peoples is the right of Self Determination and recognition of their collective rights as peoples, consistent with their right to maintain their distinctive identities, cultures and institutions.

Amnesty International recommends that the Charter recognises these rights in order to facilitate more positive health, education and social outcomes for the Indigenous Australians living in Victoria.

Remedies for breaches

For human rights to be adequately respected, protected and fulfilled there must be effective remedies for people who have had their rights violated. Compensation and reparation are an accepted part of human rights law and therefore should be recognised and included in the Charter to ensure the protection of human rights.

The Human Rights Committee, in a general comment about the legal obligation imposed on state parties in relation to the ICCPR, explains:

"Without reparation to individuals whose Covenant rights have been violated, the obligation to provide an effective remedy ... is not discharged. In addition to the explicit reparation required by
articles 9, paragraph 5, and 14, paragraph 6, the Committee considers that the Covenant generally entails appropriate compensation. The Committee notes that, where appropriate, reparation can involve restitution, rehabilitation and measures of satisfaction, such as public apologies, public memorials, guarantees of non repetition and changes in relevant laws and practices, as well as bringing to justice the perpetrators of human rights violations.\(^4\)

While effective remedies are an integral part of implementing Australia’s international human rights obligations by ensuring that violations are adequately dealt with, it is only one element of what should be seen as a positive human rights framework that can be realised through the Charter. Through the establishment of independent, effective, well resourced and funded institutions and programs to support the protection and promotion of human rights, the need for legal remedies should be minimised, to ensure the government respects, protects and fulfils its obligations.