Mr Edward O’Donohue,
Chairperson
Scrutiny of Acts and Regulations Committee
Parliament House
Spring St
East Melbourne Vic 3002

Dear Mr O’Donohue

Thankyou for this opportunity to comment on the Charter of Human Rights and Responsibilities Act 2006.

Given that

(2) "The main purpose of this Charter is to protect and promote human rights ",
my comments will reflect upon the following:

1: Options for reform or improvement of the regime for protecting and upholding rights and responsibilities in Victoria.

A: The Charter articles 14 and 15 recognize the rights of individuals to hold and express conscientiously held beliefs:

14. Freedom of thought, conscience, religion and belief
(1) Every person has the right to freedom of thought, conscience, religion and belief, and

15. Freedom of expression
(1) Every person has the right to hold an opinion without interference

But, in 2008, health professionals were given cause to wonder how their freedom of thought, conscience, religion and belief and expression could be legislated against so easily.

The Savings Provision 48 in the Charter of Human Rights which exempted laws to do with abortion and child destruction, from analysis and scrutiny, allowed this travesty of justice to occur.

I have been in medical practice in Victoria for over 25 years. Medical practitioners have the responsibility of dealing with the complexity of competing rights daily eg the just allocation of health resources while caring for the physical and mental health needs of unwell individuals, of all ages, and their families.

Medical practitioners have training to fulfil these responsibilities competently, efficiently and with compassion. It is a privileged position, to be entrusted with
helping people make decisions that are often literally "life and death" ones - and the gravity of the ensuing responsibilities are well understood by the profession.

Individuals consulting a doctor for advice, expect that the doctor chosen would be making considered informed decisions that correspond with his or her expertise and values.

One would not expect in our democratic society, where rights are to be protected, that a professional, especially one who is entrusted with the nuanced decisions of the complexity surrounding physical and mental illness, would be unable to act according to their conscience. This is a given in any situation, but especially when the decision may involve the taking of a life. Doctors who believe, not unreasonably, that pre-natal human life is the earliest developmental phase of an individual's life, and that to "terminate" that pre-natal life is ethically and medically wrong, are rightly distressed at the thought that they could be forced by law to participate in such an act against their conscientiously held belief.

Because of the Abortion Law Reform Bill 2008, I have had to change the way I practice so that I work always with another doctor and have ceased doing more lucrative solo after-hours work. I felt the need to have a brochure printed outlining my beliefs and the positive ways of helping I could offer. It was necessary to discuss all this with the Board of the practice where I work, with my medical insurer and with the Victorian Medical Practitioners Board - which caused anxiety and difficulty. I have known doctors who have chosen to leave Victoria, and doctors and medical students who would choose not to study or work here because of this discrimination and denial of basic rights to freedom of conscience and of religion. There is now a fear of discrimination, prosecution or deregistration in Victoria for doctors who want to practice medicine according to their beliefs in this area. The rights of these professionals have been trashed.

The medical and social issues around the procedure of "termination of pregnancy" or "abortion" or "child destruction" are difficult, but this Charter unfortunately and incredibly, summarily dismisses this important debate with the Savings Provision 48, preventing any just examination of "law applicable to abortion or child destruction".

I submit that the Savings Provision 48 be removed from the Charter to allow a just examination of "laws applicable to abortion and child destruction" and so allow examination of the effect of the Abortion Law Reform Bill on the rights and freedoms of health professionals.

xxxxxxxxxxx

B: I would also like to briefly comment on whether additional rights should be included in the Charter. It does seem anomalous that Victoria could have a Charter of Rights that does not include the totality of other rights in various Conventions that are named and to which Australia is a signatory.

I would ask especially that the right to life of all human beings be reinforced with the inclusion of the following references to the child, including the pre-natal or unborn child, found within the Convention of the Rights of the Child.
The ninth preambular paragraph of this Convention states:

"BEARING in mind that, as indicated in the Declaration of the Rights of the Child, -
the child, by reason of his physical and mental immaturity, needs special safeguards
and care, including appropriate legal protection, before as well as after birth",

Article 1

For the purposes of the present Convention, a child means every human being below
the age of eighteen years unless, under the law applicable to the child, majority is
attained earlier.

The Charter contains a right to life but it able to be limited under section 7(2) by other
rights. In the International Covenant on Civil and Political Rights the right to life is
both inherent and inalienable. Similarly the Covenant on the Rights of Child makes
all rights inalienable and declares:

Article 6

1. States Parties recognize that every child has the inherent right to life.

2. States Parties shall ensure to the maximum extent possible the survival and
development of the child.

xxxxxxx

C: It is worthy of reflection also that pregnant women are vulnerable and that this is
recognized in the “Convention on the Elimination of All Forms of Discrimination
Against Women “. Inclusion of such recognition would strengthen the Charter.

It is important to recognize and enforce the rights of pregnant women –especially
those facing a difficult or unplanned pregnancy. Access to pregnancy counselling and
support as “appropriate services” may help reduce the fear and anxiety of women,
and assist them to cope with the thought of a difficult situation. That would also be a
check on women being coerced by their partners or families or by their abuser in the
case of underage women or those with disabilities. Today I listened to an elderly
woman weeping as she told me of being forced to have an abortion in her 20s. The
Abortion Act does nothing to prevent that happening. Most women who have
abortions say that they would not have done so if their partners had supported them.
There is surely common ground that the high number of pregnancies terminated is
regrettable and that our society needs to ensure that women having difficulty with a
pregnancy have support from a professional counsellor who can help them make a
decision according to the woman’s own values.
It remains a great disappointment that no amendments were allowed with the introduction of the Abortion Law Reform Bill 2008 to improve the situation and supports for distressed pregnant women. Only offering easier access to abortion or “child destruction”, belittles the reality of the distressingly complex situations. Such complexity requires more than the simple-minded response of abortion. I have known enough women to suffer life-long grief over the termination of their child’s life, to know that the abortion experience “never goes away”.

Statements such as the following from the “Convention on the Elimination of All Forms of Discrimination Against Women” would be important to include:

1) Preamble:

BEARING IN MIND the great contribution of women to the welfare of the family and to the development of society, so far not fully recognized, the social significance of maternity and the role of both parents in the family and in the upbringing of children, and aware that the role of women in procreation should not be a basis for discrimination but that the upbringing of children requires a sharing of responsibility between men and women and society as a whole,

2) Article 12

2. Notwithstanding the provisions of paragraph 1 of this article, States Parties shall ensure to women appropriate services in connexion with pregnancy, confinement and the post-natal period, granting free services where necessary, as well as adequate nutrition during pregnancy and lactation.

Thank you again for the opportunity to make this submission.

The Charter as it stands is not worthy of support and needs to be improved considerably if it is to serve as a valid defence of the rights of every individual in our society - including the unborn and their parents.

The right of health professionals to act according to their deeply held conscientious belief in the life and value of the unborn must be allowed to be upheld.

Yours sincerely,

Dr Mary Walsh MBBS, FRACGP