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Submission on the Review of the Victorian Human Rights Charter

This submission is a citizen submission offering an example of an ongoing case study of a community attempt to improve water planning and locate a human rights and gender analysis framework to assist in this process.

QUESTION AND RESPONSES

1. Whether the Charter should include additional human rights under the Charter including but not limited to rights under the -

A] International Covenant on Economic, Social and Cultural Rights  
B] Convention on the Rights of the Child, and  
C] Convention on the Elimination of all forms of Discrimination against Women?

Introduction

18 years of yearly instances of water quality ‘fails’,  
10 years of drought  
4 years of continual Stage 4 water restrictions - nil outside watering, the demise of domestic and food gardens [without multiple water tanks], water deprived therefore unusable primary school oval, town landscape deterioration, water price increases by 17%, lack of equitable frameworks for water funding and decision making,  
Affected population approximately 3000.

Over the past three years a local Study Group/concerned citizens have been advocating to the Then Premier, relevant Victorian Government Ministers, and relevant water and governance authorities in their local area, for support for a formal water plan to assist the dire situation of near depleted water quality and quantity in the Local Water Supply System. Various less than satisfactory responses were received.

This situation of water depletion and poor quality especially affected the domestic water supply in townships in the local supply system, while adjacent small farms on river diversion were at zero water allocation.
Part of this local study and advocacy activity attempted to locate a way to utilize a human rights framework for water planning to assist a more effective and equitable result for the provision of water supply including quality and quantity, and also to respond more effectively to the demands of changing climate.

To date our Study Group has come to a dead-end in trying to locate an accessible organisation to assist in providing a human rights framework to facilitate the communities’ right to participate in decisions which affect it; namely the water supply and the next 5 year water planning period to be conducted by a major corporate water organisation in Victoria.

It is the Study Group’s impression that the current Charter is inadequate to support this framework unless it is expanded to include:

A] International Covenant on Economic, Social and Cultural Rights
B] Convention on the Rights of the Child and
C] Convention on the Elimination of all forms of Discrimination against Women
Any other relevant Covenants Conventions and Agreements

For example;

Our Group would like to have examined the situation of 4 years of continual Stage 4 water restrictions and associated water supply problems, against human rights standards.

Or we would like to have examined the justification of water supply anomalies occurring in a closely adjacent irrigation planning zone which allows 7,000 litres ‘house and garden’ per day.

Information we have been able to elicit from contacts with the Human Rights and Equal Opportunity Commission indicated that it was unable to assist in advice for a human rights framework due to the exclusion of the above covenants and conventions in Victoria and the lack of capacity and resources available to their organisation.

The community still ponders the legalistic obstacles and obfuscations despite Australia being a signatory to some or all of these and other covenants/conventions.

2. Should the right to self determination be included in the Charter?

Not in a position to comment.
3. Whether there should be mandatory regular auditing of public authorities to assess compliance with human rights or remedies that may be awarded in relation to acts or decisions of public authorities made unlawful by the Charter

The main responsible authorities with which we are currently liaising have varying degrees of accessibility and responsiveness to the community.

The level of community consultation conducted by an organisation is one of the first barriers to the community being able to connect with such organisations.

There is little evidence of highly public human rights facilitation processes, detailed human rights frameworks, or implementation strategies of existing obligations under the Victorian Human Rights Charter or Australian Human Rights obligations, either on websites or corporate literature in relation of most of the organisations we are attempting liaison.
There is one very brief reference to the Charter in one document.

There appears to be an absence of articulation of how human rights, if any, might be exercised in relation to improving water supply and services in our supply area.

There appears to be a lack of a human rights knowledge base, powerlessness or lack of capacity, in most existing institutions we have approached to assist to formulate human rights frameworks or to assist in advocating human rights frameworks to responsible authorities such as water governance bodies and local government.

What instrumentality can ensure that there are levels of human rights expertise in the subject organisations being called upon for human rights advice and implementation and how is this actualised for the public?

When there appears to be a breach of a right where does a citizen turn for direction?

Some Government Departments appeared in our experience to be reluctant to openly confront a water corporation in relation to compliance issues, water improvements and statutory obligations. [Issues of timeliness and transparency]

Some relevant peak bodies indicated they were prevented from assisting individual applications for advice on human rights or lacked the resources needed.

Therefore-
Yes, there should be mandatory auditing and reporting of public authorities in order to assist education, public awareness and compliance of human rights.

Yes, additional powers should be given bodies such the Equal Opportunity and Human Rights Commission.
4. Whether the Charter should include further provisions with respect to legal proceedings that may be brought

Not in a position to comment, do not have a legal background or advisor

5[a] What have been the effects of the Charter Act on the development and drafting of statutory provisions

Not in a position to comment

5[b] What have been the effects of the Charter Act on the consideration of statutory provisions by Parliament?

Not in a position to comment

5[c] What have been the effects of the Charter Act on the provision of services, and the performance of other functions, by public authorities?

Given the present situation of haphazard civics education in the Australian education system generally, we appear to be in danger of losing some collective memory of appropriate benchmarks and first principles of civic and democratic standards. This community knowledge problem has been noted by Professor George Williams.

Our Group has been liaising with Ministerial offices, Government Departments, Water Corporations, University Departments, Local Government, and some peak bodies for socio-economic and legal advocacy.

Our experience would indicate there is either limited training, specialised human rights knowledge, awareness, capacity, will or compulsion to assist the community in advising or translating a human rights framework into the implementation of an improved water plan.

We have not been able to locate a suitable source of assistance despite approaching several organisations for assistance or advice.

As a result our impression was the limitations of the Charter were eroding confidence in the effectiveness of human rights to assist a particular community initiative in water planning improvement.
There appears to be a great need for both education about the potential of human rights when properly expanded and the practical application of human rights frameworks to be applied.

This requires a form of legal aid support for the exposition of human rights to more powerful and responsible authorities [Truth to power].

For the community to do this effectively requires considerable time, some detailed knowledge, confidence and even specific legal training in order to concentrate the attention of some quite intransigent or bureaucratized or rarefied organisations.

5 [d] What have been the effects of the Charter on litigation and the roles and functioning of courts and tribunals?

Not in a position to comment.

5[e] What have been the effects of the Charter on the availability of Victorians of accessibility of just and timely remedies for infringements of rights?

Our Group has not located a clearly accessible advisory body to assess our request for a human rights framework for water planning.

We have attempted to locate a possible mediation process with our Water Corporation but have not been successful to date.

We believe the provision of a formal human rights educative and mediation process should be more accessible to the community.

We have formally applied to the Public Interest Law Clearing House to locate a source for mediation and the preparation of a human rights framework for a water plan, but were unsuccessful – no reasons or debriefing supplied.

Our primary need is for an educative and mediative process in our approaches to responsible authorities regarding a water plan.

Legal proceedings should be a last resort, if the Victorian human rights legislation was sufficiently comprehensive to support it and legal aid was available.
6. What if any have been the overall costs and benefits of the Charter?

Human Rights appears to be an abstract concept to many Australian citizens and most Australians have lacked the opportunity for a thorough educational grounding in the evolution of human rights. The Victorian Charter, despite its limitations, has increased awareness and discussion of human rights, including how to fix its limitations. It also makes us realize how Australia has been losing ground in human rights understanding and action.

Our Study Group evolved from the desperation of the 10 year drought and survival questioning and turned to an understanding of human rights to assist us.

For instance,

- Why have our towns had such unusable and increasingly detrimental and restricted water supply for so long? [Four years of continual stage 4 restrictions, 18 years of undrinkable water under corporatised water management in Victoria]
- Whose water rights and demands are prioritized in water planning and why?
- What is the role of human rights to assist?

This questioning was assisted by 5 coincidental events in 2009:

1. A 2009 successful local campaign by the community, to convince the local Shire to abandon a proposed Outfall Drainage Pipe Project [cost $310,000] which would have duplicated and made redundant the historic Storm Water Channel.

This storm channel has existing potential for storm water capture and aquifer recharge and proved it effectiveness in the recent 100 year flood events in regional Victoria in January 2011.

2. The near depletion of the River Water Storages. [10 years of drought]

3. The imposition of four years of continual Stage 4 water restrictions [nil outside watering] the environmental and social detriment and the consequent risk of ‘conditioning to deprivation’.

5. The 2009 National Human Rights Consultation

The group embarked on an intensive study, liaison and advocacy program to fully understand the State, regional and local water systems and the legal and human rights background [see attachment 1].

The group also became aware of detailed human rights based water planning guidelines for many overseas and third world countries but could not find how this could be translated to the water planning needs in their own supply system in Victoria.

Among the human rights documents gathered in the study group bibliography were,


AusAID’s, ‘Gender guidelines water and sanitation’ and

Rio Tinto’s ‘Why Gender Matters’

These documents suggest that a Human Rights approach could be adapted to the local situation by the Water Corporation in undertaking the next official water planning program for the period [2013-2018].
The preparation time for this period is now well advanced and despite repeated community initiatives to the Water Corporation over the past 3 years and seeking advice from the Community Utilities Advocacy Centre[CUAC] and the Essential Services Commission [ESC], the community is running out of effective time to participate in the next five year cycle of water provision and hopefully greater innovation and responsiveness to climate challenges which should be based on a better understanding of local needs and knowledge.

Why is it so difficult to find a lead organisation to advise or assist in the translation of these human rights planning documents to a local situation?

We offer a suggestion:

Maybe we need a specific community focused human rights clearing house with a continuing and wide geographic outreach and presence, or a roving ambassador or public advocate such as the process adopted for the Everyday People Everyday Rights Program recently conducted by the Human Rights and Equal Opportunity Commission.

This is an important issue for regional areas, with identified disadvantage, ageing populations, less access or facility to the internet.
We wish to make a plea for better and more accessible resources to enable a proactive educative approach to applying a Human Rights framework as a basis for improving the obligations of relevant organisations to their communities.

This might prompt the ignorance and lack of awareness in these organisations which can lead to expensive or prohibitive legal remedies.

7. What options are there for reform or improvement of the regime for protecting and upholding rights and responsibilities in Victoria?

Enclosed is a list of water planning questions [attachment 2.] which remain to be answered by a suitably qualified human rights/water specialist, to highlight our search for the application of human rights in Victoria to the vital environmental and socio-economic challenge of improved water planning, especially in an area of identified disadvantage.

Yours Faithfully,
Christine Hancock,

8/6/11
Attachment 1.

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HUMAN RIGHTS AND WATER PLANNING QUESTIONS

How could a human rights framework [HRF] be applied?

1. Water Entities and water planning [Government and corporations]

a] To improve governance principles and gender and human rights awareness and practices of various regional water board members water consultative committees, and responsible authorities.

b] To improve local water catchment and supply systems management and township water plans, which could result in improved water quality, supply and equity.

2. Water quality issues

2. How could a HRF be used as a testing mechanism to review the effects of current and some past practices relating to unacceptable water quality ‘fails’, indefinite Stage 4 restrictions, cost setting and also to improve risk management plans i.e. area and catchment water supply risk management.

3. Domestic households/gender analysis/community impacts

a] To improve domestic water quality for washing, bathing, cooking, drinking, etc., given the prolonged history [17 years] of poor water quality delivery by a water corporation to townships [measuring up to 3800 TDS mg/litre until the temporary desalination plant was installed in October 2009 and now failing to meet Australian Drinking Water Guidelines].

b] To restore local community and home food gardens forced to be abandoned or deteriorating under indefinite stage 4 water restrictions and highly saline reticulated water until the temporary desalination plant was installed in 2009 [no formal debriefing document or quality information to individual customers to date].

c] To save the township environment [under the responsibility of local government], of neglected/dead mature trees, neglected semi abandoned public parks and gardens which provided shade, cooling, shelter, recreation, health benefits, natural habitat.

d] To address the possible gender/domestic disadvantage resulting from fluctuating and unreliable water standards and indefinite stage 4. Restrictions [water quality ranging
from 3800 TDS mg/litre in 2009 to over 500 TDS mg/litre at present at Temporary Desalination Plant]

e) To improve sub-catchment water risk management and future water planning to ensure water quality and supply of alternative solutions as back-up water supply systems eg water tanks, mine water, ground water, storm water capture, and treated waste water.

f) To ensure clarification and implementation of statutory water supply responsibility for fire fighting and essential back up on red alert days, as described by the CFA Representative at FIRE READY MEETING at township, November 2009. At this meeting householders were informed not to expect enough water pressure in the reticulated system to protect their homes from fire and that they were advised to have an additional 10,000 litre tank per household reserved for firefighting purposes and an independent pumping system [i.e. not reliant on electricity as an energy source.]

Recently, in December 2009 the water corporation also sent flyers to individual customers also advising of this suggested need for each household to have access to a water tank or an alternative source of water to substitute for the increased demand on the reticulation system which cannot be guaranteed to supply sufficient pressure on a “red alert” fire day.

Water corporation pamphlet available:
No compensatory or survival assistance plan in a disadvantaged area

g) To ensure appropriate water planning processes and equitable allocation of scarce water sources and government grants for community water planning

For example:
The recently installed local Reservoir water pipe is be made available for exclusive use of the Sport and Recreation Ground [predominantly football ground].

The parched school oval was bypassed and not included in the provision

Also the inadequate prioritization, and privileging of sectional interests for water planning grants by responsible authorities despite community concern and effort to inform, liaise and assist responsible authorities to address water quality and quantity for townships. The lack of inclusivity or needs assessment for equitable allocation of water grants

h) To alleviate ‘conditioning to deprivation’ in an already stressed and socio-economically disadvantaged area, by more recognition of the effects of water disadvantage and indefinite, arbitrary stage 4 water restrictions.

i) To remedy a possible equity issue at the Primary school, where the school oval is needing water supply and was once connected to the old town water supply from the local Reservoir. The allocation of this decommissioned water supply is now a confused legal ‘grey area’ which could benefit from examination and an equitable planning framework.
j) To recognise the past opportunity costs [18 years of non-compliant water quality and stage 4 restrictions in place for 4 continual years]

Health and safety

k) To highlight the lack of compensatory measures to balance water restrictions and lack of a water plan such as alternative storages, subsidized tanks, guaranteed emergency supplies for fire fighting.
How could water tank provision or alternative water options be better valued as a way of ensuring an alternative water supply for home food gardens and food choice and subsistence in an identified disadvantaged area.

m) To improve the inadequate community engagement and participation mechanisms to ensure regular analysis, monitoring of and support for, water disadvantaged townships water needs.

n) To improve the responsiveness of authorities in regard to a wide range of concerns connected to water.

o) To assist the alleviation of any identified water related health issues.

p) To remedy possible anomalies and inequity between the treatment of stock and domestic farm water allocation and township water allocation quality and quantity. This is illustrated by the example as illustrated by the:

7000 litres daily 'house and garden' water allowance to some farms under the current bulk water supplier compared with,

indefinite Stage 4 water restriction [nil outside watering] and no compensatory provisions, in nearby towns under the water retailer.

q) To identify a prototype water HRF was specially constructed for a non indigenous, rural, disadvantaged community that appears to have all the necessary infrastructure and governance already in place.

It is an observation that there appears to be considerably more awareness and planned frameworks for third world and indigenous/very remote communities re water improvement and human rights.

r) To improve community participation and education about water and human rights

s) To assist the problem of local government parochialism and inequity in addressing township water funding needs.
t] The incorporation of a gender analysis and human rights framework into the water corporation’s next water planning cycle.

u] To protect depleted local River and ground water sources.

CONCLUSION

A final quote from a letter of support from the Victorian Women’s Trust/Watermark to the Murray Darling Basin Authority current inquiry into Sustainable Diversion Limits

‘People in the towns of [de-identified], areas already experiencing economic disadvantage, have been unable to drink any of their mains water for more than a decade, let alone use it on their gardens. This is occurring when a city of four million people not far away, are still enjoying absolute water security and limited water restrictions. How can this be justified?’

All of these questions could appear to involve matters that may be related to a Water and Human Rights Framework and gender analysis approach.

Date: Revised and de-identified 8/6/11