Whitehorse City Council


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?

Amongst other Convention’s Australia is a signatory to each of the following Covenants and Conventions.
   (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

As a signatory to a number of UN Conventions it is imperative that Victorian laws do not contravene either directly or indirectly the intentions and objectives of the Conventions. Victoria has taken a lead role in ensuring that Human Rights are considered in all legislation and policy directions through public authorities. To continue this journey Whitehorse City Council considers it important that additional rights contained in these Conventions and Covenants be considered in the next iteration of the Victorian Charter of Human Rights and Responsibilities Act.

- Economic, Social and Cultural Rights cover life areas that are fundamental and essential for people to live a dignified life. For the Victorian Charter of Human Rights and Responsibilities Act (2006) to be truly meaningful to the community, rights associated with access to appropriate and affordable housing, gender pay equity, and disadvantages in the areas of education, training, employment, health need to be considered. These are key issues of concern expressed by the community. Australia already has state based programs that should be considered in relation to a Human Rights Approach such as social and public housing, state/federal funded training opportunities with intended employment outcomes. Economic, Social and Cultural rights as articulated rights in the Charter would then require governments to demonstrate progressive attainment and require government action and spending.

- Convention on the Rights of the Child (CRC) Australia ratified the CRC in December 1990, but it has not yet been incorporated into Australian law.

Some of the core principles in the CRC are:

- The right to survival and development;
- Respect for the best interests of the child as a primary consideration;
- The right of all children to express their views freely on all matters affecting them; and
- The right of all children to enjoy all the rights of the CRC without discrimination of any kind.

Whilst many of the rights covered in the CRC relate to Economic, Social and Cultural Rights it is important that the Rights of Children be considered in relation to the Victorian Charter of Human Rights and Responsibilities. Many of these rights are safeguarded in current legislation

- Child Employment Act 2003
- Child Wellbeing and Safety Act 2005
- Children’s Services Act 1996
- Children, Youth and Families Act 2005
Each of these legislative documents have provisions based on the best interests of the child and whilst not explicitly stated are connected to the economic social and cultural rights of children under the age of 18. Ensuring that the CRC is explicitly mentioned in the Victorian Human Rights and Responsibilities Act will also ensure that what is now a legislative requirement also becomes a Rights Based Approach that will enhance the position of children and young people in the Victorian community. This inclusion will also enhance and contribute to the consideration of child-based facilities and services in the City of Whitehorse.

- Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)

Many of the rights contained in the Convention on the Elimination of All Forms of Discrimination against Women are contained in existing Federal and State discrimination and equal opportunity legislation. Again the expression of the relationship between CEDAW and the Victorian Charter will strengthen the position of women in Victoria.

The overt connection between rights contained in the listed Covenant and Conventions will strengthen the rights of Victorian residents and serve to construct a continuous improvement model for Victorian Policy through the progressive attainment framework that is applied to the Covenant and Conventions.

2. Whether the right to self-determination should be included in the Charter?

Whilst largely debated in relation to the rights of Indigenous people the right to self determination is central to a rights based approach. Whitehorse City Council has a strong commitment to its Indigenous community through its Reconciliation Policy and Action Plan.

According to the Victorian Human Rights and Equal Opportunity Commission without doubt the most controversial aspect of the debate on reconciliation in Australia has been over the implications of the right to self-determination. There are widely differing views on the relevance of self-determination to the reconciliation process.

It can be argued that for Indigenous people, self-determination is viewed as essential for the full realization of all other human rights. But for governments, and many non-Indigenous people, it can be considered unacceptable for reconciliation to involve recognition of Indigenous people's self-determination. Self-determination can be viewed as a threat to national unity that, if realized, could lead to the establishment of 'separate rights' or in the extreme view, the secession of Indigenous people from Australia. Governments of Australia have viewed self-determination as 'merely an end in itself' rather than a process which has at its end the goal of social and economic equality.

Self determination is about choice, participation in decision making and control over the persons own life. Whilst there is debate regarding what self determination means to Indigenous people the right to self determination is clearly articulated in the Victorian Disability Act 2006 where the focus is on choice, participation in decision making and control over their lives through self directed approaches.

Whitehorse City Council considers it may be an oversight not to include self determination as part of the Victorian Charter of Rights and Responsibilities Act to ensure that all Victorians are able to take a lead role in decisions that impact on their lives.

3. Whether there should be mandatory regular auditing of public authorities to assess compliance with human rights.

The auditing of compliance with human rights may be viewed as completing the commitment to human rights and may give the public greater confidence that their human rights are being valued, protected and progressively enhanced. However, public authorities may have difficulty in releasing resources for the conduct of such audits. Careful consideration needs to be made of the impact of an audit regime on the valuable resources (staffing, cost) required by public authorities to complete these audits and the multiple demands made on public
authorities for a range of audits and services, of which human rights is only one demand on these resources. We recommend a continuation of the current self assessment regime.

4. Whether the charter should include further provisions with respect to legal proceedings that may be brought or remedies that may be awarded in relation to acts of decisions of public authorities made unlawful by the Charter. No. Whitehorse City Council considers that this could impose a significant cost to the community in defending actions or non-compliance. At this stage, limited case law is available to determine the full extent of claims under the Charter and to include further provisions related to remedies in relation to actions made unlawful as a result of the Charter would potentially be imposing reparations for contraventions that have not been fully identified.

5. What have been the effects of the Charter Act on –
   a. the development and drafting of statutory provisions: Considered when drafting local laws.
   b. the consideration of statutory provisions by Parliament: N/A
   c. the provision of services and the performance of other functions, by public authorities: Considered. For example, council has added “check list” information to Council agendas to ensure that decisions are made giving consideration to Charter rights and responsibilities.
   d. litigation and the roles and functioning of courts and tribunals: N/A
   e. the availability to Victorians of accessible, just and timely remedies for the infringements of rights. N/A

6. What have been the overall benefits and costs of the Charter?

   Benefits of the charter include an increased awareness by Council employees and councillors of the rights and obligations of the Council to all members of the community. However, this has not been without cost. Costs associated with the charter include:
   • Extensive training of all employees and councillors;
   • Review of Council policies, operations and practices to ensure compliance;
   • Response/investigation to issues raised under the Charter.
   • Management time for ongoing administration.

7. What options are there for reform or improvement of the regime for protecting and upholding rights and responsibilities in Victoria?
   • Enhanced promotion/education of the Charter to the community by the State Government.
   • Extension of the Charter requirements to all businesses. Currently, there is an unfair burden of absorbing the cost of the Charter placed on government and public authorities who have to make a choice to either reduce services or increase fees to ensure compliance.

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