I think that the Charter should be repealed because:

1. Our common-law system already protects civil rights, either explicitly or implicitly, and it does so in a far more nuanced manner than any charter of rights is able. Through the accumulated wisdom of centuries of jurisprudence, common law principles reflect our society’s delicate and highly effective manner of dealing with the vexed question of where one person’s rights and responsibilities end and where another’s begin. By contrast, vague human rights enacted in a charter do not.

2. There is no – and there can be no – consensus as to which rights ought to be included in the Charter. The very fact that successive governments will include or exclude rights according to their own whims and ideologies, politicising human rights in the process proves this.

3. Similarly, there is no consensus as to what a given right actually entails. For example the Charter enacts a right of protection for families, but fails to establish what might constitute a family, or what protection means, or against whom this right might be invoked.

4. Despite its volatile and vague nature, the Charter requires courts to interpret all legislation in accordance with its contents. That is, the flawed and fallible Charter becomes a volatile and vague filter through which decades (and even centuries) of carefully developed jurisprudence must be reinterpreted.

5. What’s more, section 32(2) of the Charter empowers judges to interpret Victorian law in light of international law. This effectively makes Victorian citizens subject to laws and rulings in foreign jurisdictions over which Victorians can themselves exercise no influence whatsoever. This is undemocratic, and if the Charter is not repealed in its entirety, then at the very least section 32(2) should be repealed.

6. The additional compliance process through which every new piece of Victorian legislation is required to pass adds a massive cost – in terms of time, money and additional resources – to the legislative process but with no guarantee that a court would agree with the Scrutiny of Acts and Regulations Committee’s assessment of the legislation’s Charter-compatibility.

7. Any proposal to mandate public reporting would similarly impose huge costs burdens on both the state, which would have to process and review such reports, and which would also inevitably be required to provide additional funding to those bodies required to prepare such reports. These costs deliver no advantage to the enjoyment of human rights, which are already well protected under Victorian law.

8. As the Institute of Public Affairs and others have pointed out, the Charter has been used in its first four years to interfere in the judicial determination of criminal matters, and in particular, to enhance the defences available to people who the courts would otherwise determine to have broken the law (see for example the Momcilovic).

9. Some elements of the community have suggested that the Charter should be amended to allow litigants to bring legal actions purely based on alleged breaches of the Charter. Allowing such actions would result in an inevitable surge in opportunistic litigants – predominantly against the state – and would therefore exhaust significant legal resources at
great expense to the taxpayer.

10. Given such shortcomings, and given that there is simply no need for the superfluous protections that the Charter purports to offer, the Charter should be repealed.

Maree Bourke