Mr Edward O'Donohue MLC  
Chairperson  
Scrutiny of Acts and Regulations Committee  
Parliament of Victoria  
Melbourne Vic 3002

Dear Mr O'Donohue,


As a solicitor, I am deeply sceptical as to the efficacy of the Charter in protecting the human rights of the citizens of Victoria.

In particular, I note the following:

1. The Charter disenfranchises the citizens of Victoria.

   By a variety of mechanisms the Charter privileges the views of the judiciary over those of the citizens of Victoria. Thus, for example, in the 'interpretation' provision in s32, the Charter requires that the judiciary interpret all statutory provisions in a manner compatible with 'human rights'. This type of provision invites abuse by judges seeking to impose their personal views on a contentious issue (see, for example, the notorious UK case of CC v KS by his next friend IS (2005) 195 FLR 151).

   More insidiously, and thus more dangerously, the Charter takes it for granted that the judiciary are the appropriate arbiters of 'human rights'. This is notion is pervasive throughout the Charter. Almost all Victorians support 'human rights'. Many Victorians differ as to the precise meaning and content of these rights. Does, for example, the right to life preclude abortion? Does 'freedom from forced work' preclude 'work for the dole'? How does the right to privacy relate to the right to freedom of expression? Does freedom of religion extend to the use of drugs, protection of cults etc?

   Privileging the interpretation of the judiciary can only disenfranchise the citizens of Victoria, who under democratic principles are equally qualified to determine the meaning and content of 'human rights'.
2. The Charter is divisive.

There are many examples of hotly contested issues in the field of human rights. Some of them are listed above. At any time, there will be many deeply and sincerely held views on these issues throughout the community.

Democracy has a particular genius for dealing with such divisions, because those whose views do not prevail always have the opportunity to engage with their fellow citizens and parliamentary representatives and thus bring about the change they seek. However, if an 'official' view is allowed to be formed on controversial human rights issues by an unelected judiciary, the legitimacy of such debate is jeopardised. This can only act to polarise the community in an unhealthy way.

3. The Charter inevitably politicises the judiciary.

As is clear from the examples listed above, the Charter inescapably involves political issues. This cannot be avoided. Judges forced to rule on human rights arguments will be effectively forced to enter the political fray. Over time, this will inevitably politicise the judiciary and undermine public confidence in it. Public confidence is hard won and easily lost.

For these reasons, I strongly submit that the costs of the Charter to the fundamental democratic structures of Victoria far outweigh the benefits. I submit that the Charter should be repealed.

Yours faithfully

Chris Andrews