1st July 2011

Mr Edward O'Donohue, MLC
Chairperson
Scrutiny of Acts and Regulations Committee
Victorian Parliament House
Spring Street
EAST MELBOURNE VIC 3002

Dear Sir,


Thank you for the opportunity to make a submission to the abovementioned inquiry. This submission will specifically look at a particular matter that has, and continues, to profoundly discriminate against and deny fundamental freedom of conscience rights of registered health practitioners and registered nurses in the state of Victoria.

Outlined below are the key matters that I wish to draw to the attention of the Committee:


The Preamble to the Act provides:

"Preamble

On behalf of the people of Victoria the Parliament enacts this Charter, recognising that all people are born free and equal in dignity and rights.

This Charter is founded on the following principles——

- human rights are essential in a democratic and inclusive society that respects the rule of law, human dignity, equality and freedom;

- human rights belong to all people without discrimination, and the diversity of the people of Victoria enhances our community;

- human rights come with responsibilities and must be exercised in a way that respects the human rights of others;"
• human rights have a special importance for the Aboriginal people of Victoria, as descendants of Australia's first people, with their diverse spiritual, social, cultural and economic relationship with their traditional lands and waters." (emphasis added)

The Act in Section 14 provides:

"14. Freedom of thought, conscience, religion and belief

(1) Every person has the right to freedom of thought, conscience, religion and belief, including—

(a) the freedom to have or to adopt a religion or belief of his or her choice; and

(b) the freedom to demonstrate his or her religion or belief in worship, observance, practice and teaching, either individually or as part of a community, in public or in private.

..."

The Act further contains the following savings provision in Section 48:

"Nothing in this Charter affects any law applicable to abortion or child destruction, whether before or after the commencement of Part 2."

2. Australia is a signatory nation to both the Universal Declaration of Human Rights 1948 and the International Covenant on Civil and Political Rights 1966. Both these key pieces of international human rights law provide clear and unambiguous freedom of conscience rights (Article 18 in both instruments). Furthermore, article 4(2) of the International Covenant on Civil and Political Rights 1966 specifically describes the rights laid out in Article 18 as non-derogating rights.


The Act in Section 8 provides:

"8 Obligations of registered health practitioner who has conscientious objection

(1) If a woman requests a registered health practitioner to advise on a proposed abortion, or to perform, direct, authorise or supervise an abortion for that woman, and the practitioner has a conscientious objection to abortion, the practitioner must—

(a) inform the woman that the practitioner has a conscientious objection to abortion; and

(b) refer the woman to another registered health practitioner in the same regulated health profession who the practitioner knows does not have a conscientious objection to abortion.

(2) Subsection (1) does not apply to a practitioner who is under a duty set out in subsection (3) or (4)."
(3) Despite any conscientious objection to abortion, a registered medical practitioner is under a duty to perform an abortion in an emergency where the abortion is necessary to preserve the life of the pregnant woman.

(4) Despite any conscientious objection to abortion, a registered nurse is under a duty to assist a registered medical practitioner in performing an abortion in an emergency where the abortion is necessary to preserve the life of the pregnant woman."

4. In the second reading speech dealing with the proposed abortion legislation that was delivered in the Legislative Assembly on 19th August 2008 the Minister for Women's Affairs, Ms Morand, completely failed to acknowledge and give due recognition to the freedom of conscience rights that are held by all Victorians, and specifically registered health practitioners and registered nurses, by virtue of the Universal Declaration of Human Rights 1948 and the International Covenant on Civil and Political Rights 1966.

5. The practical impact of the application of Section 8 of the Abortion Law Reform Act 2008 is to unambiguously deny registered health practitioners and registered nurses their conscientious objection rights with respect to the practice of abortion in Victoria. Notwithstanding what is a clear conscientious objection that an individual registered health practitioner or registered nurse may have with respect to the practice of abortion, Section 8 of the Act compulsorily binds them into participating in abortion; a practice that many people believe is the deliberate taking of another person's life i.e. the killing of another human being.

6. The practical impact of the application of Section 8 (1) (b) of the Act is to bind a registered health practitioner, who otherwise has a conscientious objection to abortion, to act in a way that will facilitate the requested abortion. This act of binding the registered health practitioner is extraordinary when one considers that ready access to information about individual practitioners and organisations that will both facilitate and conduct abortions is readily available in telephone directories, the Yellow Pages in particular, and via the internet.

7. With respect to Section 8 (3) and (4) of the Act I note that the meaning of the term "emergency" is not clear. As others who have made submissions to this inquiry have pointed out the term itself is legally contentious. Its precise meaning in a clinical setting is, I would argue, highly ambiguous.

8. There can be no question that Section 8 of the Abortion Law Reform Act 2008 fundamentally compromises the conscientious objection rights of Victorian registered health practitioners and registered nurses with respect to the practice of abortion. Indeed I have not been able to find an equivalent provision in any other jurisdiction in the world that so grossly trespasses on the conscientious objection rights of health professionals. Indeed, I would argue that it is a clear breach of fundamental human rights under international law impacting on tens of thousands of Victorians working and engaged in the vocations of medicine, health and allied services in that
state. I respectfully request that this review of the Charter of Human Rights and Responsibilities Act 2006 makes a specific recommendation that this unacceptable position be properly corrected by the Victorian Parliament.

If there are any matters that you wish to raise further with me, can you please call me on (02) 9230 2280.

Yours sincerely,

[Signature]

Greg Donnelly MLC