29 June 2011

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

Via email: charter.review@parliament.vic.gov.au


Dear Mr O’Donohue,

Please find below a submission by the Victorian Gay and Lesbian Rights Lobby (VGLRL/the Lobby) to the Review of the Victorian Charter of Human Rights and Responsibilities Act 2006. VGLRL thanks the Scrutiny of Acts and Regulations Committee for the opportunity to make this submission.

VGLRL also supports the submissions to this Review of the Federation of Community Legal Centres, Liberty Victoria, the Human Rights Law Centre and TransGender Victoria.

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About the Victorian Gay and Lesbian Rights Lobby (VGLRL)

The VGLRL aims to achieve equality and social justice for gay, lesbian, bisexual, transgender, intersex and queer (GLBTIQ) people living in Victoria. We do this by working with the media, undertaking and supporting research, conducting community education and directly lobbying politicians across all levels of government. The VGLRL works cooperatively and constructively

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within the political framework, and the community at large, to achieve its aims. The VGLRL maintains a high level of community relevance through active collaboration with other organisations. Comprising a consultative membership base, the VGLRL is directly accountable to, and takes direction from, the GLBTIQ community.

Terms of Reference

We do not propose to address each of the terms of reference separately but, rather, to provide an overview of our perception of how Victorian Charter of Human Rights and Responsibilities Act 2006 (the Charter) operates – from a GLBTIQ perspective.

Current Operation of the Charter

The VGLRL believes that, since it took full effect in 2008, the Charter has demonstrated its value and fulfilled its purpose such that it should be maintained.

The VGLRL believes that the continued operation of the Charter will demonstrate the full potential of its benefits to Victorians. These will continue to evolve - over time - with the gradual development of a human rights culture in the legislature and bureaucracy. With the use of Statements of Compatibility, a balance has been established between the judiciary’s ability to declare a new piece of legislation to be incompatible with human rights and parliamentary members’ rights to proceed with the legislation, regardless.

The very fact that individuals and community organisations such as ours are able to make submissions to this Scrutiny of Acts and Regulations Committee’s Review of the Victorian Charter and have input to the human rights debate renders the democratic process more transparent. If citizens know about the human rights they possess, they are better able to negotiate with government authorities to have these rights respected, rather than having to rely solely upon court actions to achieve their ends.

The VGLRL urges SARC to strengthen the Charter by including additional human rights in its purview and providing legal remedies for those Victorian citizens - especially those from vulnerable populations - whose human rights are abused by public authorities.

For the proper functioning of the Charter, it is absolutely essential that mandatory regular auditing of public authorities to assess compliance with human rights be retained, via the mechanism of parliamentary Statements of Compatibility and other means.

Additional Human Rights Recommended

Any law that is not enforceable is not an effective law. The fact that there are very few legal remedies for citizens who have had their human rights infringed upon is one of the greatest weaknesses of the existing Charter. Therefore, the VGLRL recommends that the Charter not only be retained but, in fact, strengthened to include additional rights and legal enforceability at the domestic level.

The fact that there have not been significant numbers of court cases arising out of the incorporation of civil and political rights into the Charter should lend this Committee some confidence in incorporating economic, social and cultural (ESC) rights into the Charter. However, it is important for people to know that, as a measure of last resort, they can take legal

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action against public authorities that have breached their human rights. It is also very important for government agencies to know that, if they fail to respect citizens’ human rights, they may be held to account in this way.

Additionally, the VGLRL recommends that women’s and children’s rights should be incorporated into the Charter. There is scant, or non-existent, recognition in the Convention on Elimination of All Forms of Discrimination Against Women (CEDAW) of lesbian women’s right to freedom from violence.

A need for the incorporation of ESC rights into the Charter, specifically to protect the rights of LGBTIQ people is evidenced by endemic levels of violence and harassment directed specifically at this marginalised group, not only at community but also institutional levels.

For instance, in one online survey of 390 GLBT (gay, lesbian, bisexual, transsexual, transgender) Victorians (Leonard et al, 2008) commissioned by the Law Institute of Victoria and Victoria Police some of the relevant findings were as follows: lifetime experience of heterosexist violence or harassment 85%; in past 2 years 70%; between 70%-80% had experienced actual violence in the past two years, depending whether they were alone, or in a group. 5% had suffered sexual assault in the past two years. Of cases concerning violence and harassment, the prejudice-motivated nature of the crimes was evident from the fact that 85% of incidents were preceded or accompanied by heterosexist language. There were multiple perpetrators in over three-quarters of cases. 14% of respondents live in fear of heterosexist violence (Leonard et al, 2008). Berman and Robinson (2010) characterised GLBTIQ people as experiencing ‘constant low-level non-violent abuse and harassment’ but, as can be seen from the above, it is not always non-violent.

Some harassment, abuse, and even violence against GLBTIQ people is perpetrated by people in public authorities and agencies. Research commissioned by Matrix Guild (Vic) Inc demonstrated that abuse and discrimination against all members of the GLBTIQ community was widespread among community and residential aged care services (2008). Walton acknowledged this in her final report on the Aged Care Complaints system when she stated that ‘Some submissions to this review however, supported the availability of anonymous complaints, particularly as a safety mechanism to support complainants where there is genuine fear of retribution. This was specifically raised in relation to gay lesbian bisexual transgender and intersex care recipients or carers because of the fear of homophobic/ transphobic retribution. Some care recipients have been threatened with ‘outing’ by providers if they raise a complaint about service standards’ (2009).

On the basis of the above, the VGLRL recommends that the provisions of the Yogyakarta Principles (2007) also be incorporated into the Victorian Charter in order for GLBTIQ citizens to have some legal recourse if their human rights are breached.

**Self-Determination**

VGLRL believes that that part of the ICCPR which deals with self-determination should be incorporated into the Charter, for instance, GLBTIQ people’s decisions on whether to marry, or not.

**Other Terms of Reference**

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The VGLRL refers the Committee to the submissions of the Federation of Community Legal Centres, Liberty Victoria, the Human Rights Law Centre and TransGender Victoria for a better understanding, and discussion of the finer points of law, required to answer the remaining Terms of Reference of this Review.

Conclusion

The Victorian Gay and Lesbian Rights Lobby again thanks the Scrutiny of Acts and Regulations Committee for the opportunity to make a submission to this Review and we are eager to attend a consultation on this matter if one is to be held, in the future, in Melbourne. We strongly support the retention of the Victorian Charter of Human Rights and Responsibilities.

Reference List


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