Charter review submission attached

Test of attached letter as follows

Mr Edward O’Donohue MLC,
Chairperson, Scrutiny of Acts and Regulations Committee
Parliament of Victoria,
charter.review@parliament.vic.gov.au


The United Nations Association of Australia (UNAA) formed in 1945. It is a federation of State Divisions committed to propagate the ideals and work of the United Nations. Each Division has both organizational and individual members, and there is also a newly established national academic network.

The World Federation of United Nations Associations began in 1946 as a peoples’ movement for the United Nations. As a member of WFUNA, the United Nations Association of Australia is part of a network linking United Nations Associations (UNAs) in over 100 nation states. The programs of the UN Association in Australia and the youth wing UN Youth Australia include Model UN conferences, human rights education and regular media and parliamentary briefings on UN matters. The UNAA Status of Women Network links members with an interest in the new entity UN Women and in the implementation of the Conventions to which Australia is signatory, with an impact on the lives of women and their families.

This submission has been prepared by a working group, led by members of the UNAA Victorian Division Status of Women Committee, with input from members, and others across Australia with relevant knowledge and opinions.

The Victorian Charter and the Charter Review are significant steps in building a broader awareness in the community of the importance of the international human rights treaty system.

The UNAA Status of Women Network and the UNAA itself is committed to supporting such initiatives.

I am pleased to reaffirm the support of the UNAA Status of Women Network for the Charter of Rights and Responsibilities.

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Thursday June 30, 2011

Mr Edward O’Donohue MLC,  
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Submission for the 2011 review of the  


From United Nations Association of Australia - Status of Women Network

Submitted by Sheila Byard, Convenor, UNAA Status of Women Network  

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1. UNAA Status of Women Network, its work to promote awareness of the UN human rights treaty system and especially of CEDAW

1.1 UNAA Status of Women Network is one of more than fifty national groups affiliated with the women's sector Equality Rights Alliance, one of the six national Women’s Alliances funded through the Office for Women. Thus, as a civil society organisation, it is able engaging strategically with the Government to further its commitment work towards gender equality for the most vulnerable women and children in Australia and beyond.

1.2 The UNAA Status of Women Network and its individual members and NGO partners have for many years worked for the implementation of the main UN Conventions to which Australia is signatory. In furtherance of this objective, the Network has been represented on working groups with the Australian national committee for UN Women, the periodic NGO projects with YWCA Australia on Australia's compliance with the UN Convention on the elimination of All Forms of Discrimination Against Women. Outcomes of this work include the UNAA Status of Women Network 2011 Roundtable, CEDAW, Civil Society & the Law” will be held on August 4 in Perth, WA. The focus will be detailed discussion of the action sheets produced by the 2009-11 project team for the Australian CEDAW shadow or NGO report.

1.3 The Status of Women Network was also involved in the drafting of Equality Rights Alliance submission to the Commonwealth Attorney-General focusing on gender based discrimination with key recommendations for the Government to adopt in the process of preparing a draft bill for a consolidated anti-discrimination Act. The submission has been endorsed by over 50 organizations and is available at www.equalityrightsalliance.org.au/projects.
2. Section 44.1 – The Review and education about Rights & Responsibilities

2.1 We note that Section 44.0 of the Act requires that the report on the four year review must be laid before each House of Parliament on or before 1 October 2011. Given it is the Scrutiny of Acts and Regulations Committee has been charged by the Attorney in this instance with the conduct of the Review, we hope it will be possible for the report to be made widely available both online and in print so as to further public understanding of the way Australia’s human rights treaty obligations intersect with Victorian law.

2.2 It is now apparent that the impact of the Charter during its first 4 years of operation has been to provide an important adjunct to parliamentary oversight of public sector programs, contributing to the building of public confidence in the work of the public sector agencies. Both in relation to the Charter and in relation to a better understanding of how the Charter stands in relation to other legislation the educative work of the Victoria Equal Opportunity and Human Rights Commission and other entities such as the Castan Centre, VICOSS and the Human Rights Law Resource Centre have all played their part over the last four years.

2.3 At the same time, the adoption of a rights culture inside public sector agencies is not merely a consequence of the introduction of the Charter in 2006 but is also as a result of wider changes in the Australian community, and greater awareness of the benefits to Australia of its repute as nation built on the common law for strong respect for human rights as encapsulated in the international human rights treaty system.

2.4 The Australian government’s work on the so-called consolidation project announced in April 2010 is relevant to this enquiry. It recognises that current statutory provision relating to human rights in Australia has resulted in a complex and confusing set of laws. After much work at committee level in the Parliament of Australia, the Attorney General’s Department has been involved in stakeholder meetings designed to revisit the anti-discrimination acts and attempt to bring them into line with each other so that complexities are eliminated and compliance cost are cut, one of the stated aims of the Consolidation Project is to ‘reduce the regulatory burden on and drive greater efficiencies and improved productivity outcomes by reducing compliance costs for individuals and business, particularly small business’.

3. Comments on Section 44.2.a – reference to additional treaty rights

3.1 Grafting of the Charter onto a legal context based largely on the Common Law principles including that protection of the vulnerable should be approached via ‘duty of care’ was always going a difficult exercise. Thus the idea of making the basis of the Charter the International Covenant on Civil and Political Rights was in a sense taking the easy path, in that many of the sections of ICCPR reflect rights we have take for granted in Australia. However each time Australia commits to a Covenant, a pressure arises for Victoria to decide how to respond to the Treaty in terms of local provision.
3.2 Certainly there should be a way of making reference to other treaty rights not least the Convention on the Elimination of All Forms of Discrimination against Women; the Convention on the Rights of the Child; and the right to self-determination. One matter problem not addressed by the current charter, and raised at the Attorney General’s recent NGO forum on human rights held in Canberra is the discriminatory practice of non-therapeutic sterilisation of persons, especially underage females, without the principle of informed consent being applied.

3.3 Thus we urge that the Charter Review should include reference to the need for substantive and meaningful equality for women, and to such suitable temporary special mechanisms needed to address systemic discrimination and inter-sectional discrimination. We are not clear on how the Charter could be amended to deal with systemic and intersectional discrimination but we are concerned that priority needs to be given to policies that can be seem as having an adverse impact on those of culturally and linguistically diverse background, of women and children of indigenous background, who also have disabilities, and or who come into the corrections system etc.

4. Section 44.2.d - Cost and Benefits of the Charter

It is our view that while there may have been debate before the introduction of the Charter of Human Rights and Responsibilities Act in 2006, as to whether this might impose on Victoria a vexatious set of proceeding and award of remedies in relation acts or decisions of public authorities made unlawful because of the Charter, this has not proved to be the case. Where Charter matters have come to Courts or Tribunal, while there have been associated costs for the public sector agency involved as well as for the Justice budget, each of these matters have contributed to a wide public understanding of what a culture of rights could mean at best.

5. Section 44.2.c – Possible further powers under the Charter

5.1 Section 44.2.c asks if regular auditing of public authorities to assess compliance with human rights should be made mandatory; the report supplied by the EO & HR Commission have varied in their scope of the past four years; the last report of Commissioner Fiona Smith’s term was very detailed across a number of portfolios. It is evident that some agencies have already adopted a vigorous internal rights program for example Victoria Police have a dedicated unit providing in-house training for sworn members region by region. Thus it may not be necessary to mandate such a regime if it is seen by public sector managers as part of a necessary management of risk strategy.

5.2 There seems to be a view in the community that the Commission - and the other entities alludes to above - constitute some sort of improper and aggressive human rights lobby. Our experience has been that for example in the forums conducted by the Commission across a range of human rights issues there has been space for a diversity of views to be expressed. For example our members took part in the 2009 Commission consultation reported in 2010 publication Advancing Women’s Rights, and also in the forum that offered an opportunity to be updated on the COWBAR matter.

5.3 One way of ensuring an enlarged scope for the Charter is to broaden the role accorded the Commission in providing advice to the Attorney General on desirable amendments to the Charter’s coverage as well an overview of
Charter compliance. However, it may be that rather relying on the EO and HR Commission to facilitate discussion, the Victorian Attorney-General could consider holding an annual NGO forum of the type held by the Commonwealth AG's Department as a way of providing a public space where diverse views can be expressed rather than having the issues dealt with by the media alone. Our preference is for a full and open consultation process with all stakeholders.

Sheila Byard, Convenor UNAA Status of Women Network.

1,500 words