Scrutiny of Acts and Regulations Committee
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Victorian Charter of Rights - an ingenious humbug subverting the institutions of liberty

"The political situation alarms me deeply, and so far I have found scarcely anybody who is not for giving Caesar what he demands rather than fighting it out."
Marcus Tullius Cicero, letter to Atticus (50 B.C.)

I oppose the Victorian Charter of Rights and Responsibilities and its intention to bring about a diminution of basic rights. Victorians' rights are protected under common law and can be enhanced by legislation passed by the Victorian Parliament to address the will of the people. The Charter is a 'first step' mechanism to limit rights by those who seemingly seek to stifle debate and comment and over-ride the will of the people.

The Charter failed in protecting the rights of the unborn to life. It further failed when the Victorian Abortion Law Reform Act 2008, Section 8, denies an individual doctor or nurse the basic right of conscience not to assist or participate in any part of the abortion process - consequently, the Charter is a dead letter and a sham. Therefore, the Charter should be repealed, for it is the turnkey against pre-existing rights and freedoms.
The Charter attempts to, and may eventually permit the Supreme Court to declare a law "incompatible with human rights". Currently, Parliament overrides such a declaration, yet even the thought of intervention by unelected judges distorts and reduces the electors' will as expressed by parliament. If unchecked, even our voice around self-government in Victoria will be so watered down that our ability to play a role in the political decision-making process will, reduce us to political servitude to the group, who Napoleon described as a 'bunch of lawyers', who have determined that they alone are in Washington's words the 'Palladium of [y]our political safety and prosperity'.

Jefferson cautioned about allowing judges power to govern, "Our judges are as honest as other men, and not more so. They have, with others, the same passions for party, for power, and the privileges of their corps. Their maxim is "boni judicis est ampliare jurisdictionem," and their power the more dangerous as they are in office for life, and not responsible, as the other functionaries are, to the elective control. The constitution has erected no such single tribunal, knowing that to whatever hands confided, with the corruptions of time and party, its members would become despots."

The separation of powers principle, a foundation stone of modern democracy, will be appropriated by an unelected legal elite who under this Charter enjoy interpretative powers to create laws willy nilly, so that the entire legitimacy of the courts and government is thrown into doubt. The melding of cultural, economic and other trendy social 'rights' with what should be fundamental rights is a confusion. The Charter ignores and fails to enshrine fundamental or inalienable rights; the so called rights are vague, ill-defined and can be removed by unelected elites who would bring their own political agendas to law making.

The legal elite determining our laws may not even be Australians; but rather so called 'eminent' Syrians, Libyans, North Korean or Communist Chinese judges and tribunals from an alien court over-riding Victoria's laws and customs and dictating on all aspects of our lives. Section 32 (2) usurps Victorians ability to self-determination and self-rule by stating; "foreign courts and tribunals relevant to a human right may be considered in interpreting a statutory provision." No limitation exists within Sect 32 as to what courts might set the legal precedent binding upon Victorians; rather the Charter is a blank cheque to any activist political court outside Australia pushing agendas around political issues and legal shams.

No thanks...we the Victorian people do not want this nonsense; so much for self-determination, or "government of the people, by the people and for the
people".

The Scrutiny of Acts and Regulations Committee ought read Geoffrey Searle's history, of the struggle for and the ascendency of democratic parliamentary processes in Victoria, during the 1850s gold rush. § Should the Committee read this history, it would appreciate that the people, are not so stupid as to willing hand over the governing processes of the state to an unelected elite. The issue of rights and what constitutes a right is the subject of intense historical, political and philosophical debate and controversy, all of which are ignored by the Victorian Charter. The concept of asking judges for empathy around social, cultural and economic issues and trendy rights presupposes an act of partiality by the judge, rather than impartiality, but this minor aberration of justice is missed by the advocates of the Charter.

Said John F. Kennedy the '...strength of free society is drawn from the will of a free people committed to great ends...'. The Victorian Charter, however, is the thing of 'disappointed absolutists' intent on over-riding the will of a free people with a revolution from above. The Victorian Charter will in time, if not repealed, rewrite King James I (1603-25), "Divine Right of Kings" into a more modern "Divine Right of Judges".

Said John F. Kennedy, "Our role in this embattled age is not merely to defend freedom. It is to extend its writ and strengthen its covenant...". The Charter fails to defend Freedom's writ or extend its covenant. As the Charter lessens the freedoms and the rights of Victorians, it will in due course allow and encourage unelected Talleyrands using an iron handed despotism to ignore the constraints of logic and precedent to rewrite their version of our rights.

**Conclusion**

The Victorian Charter should be repealed and confined into the political dustbin of history.

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Footnotes

† George Washington's Farewell Address, 17 Sept 1796, Para 5.


∞ Ibid. p. 4.