Submission on the Charter of Human Rights and Responsibilities

To:-
Scrutiny of Acts and Regulations Committee
Parliament House
Spring St.
East Melbourne Vic 3002

From:
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On behalf of AARB

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Acknowledgement

Action for Aboriginal Rights, Bendigo, acknowledges the Indigenous Nations of Victoria, and in particular the Jaara of the Kulin nation, as the traditional owners of Victoria’s lands and waters. AARB thanks them for the ecological wisdom they did and continue to pass to us and apologizes for not listening and for the human rights and environmental mess and destruction we have been responsible for.

Submission

Action for Aboriginal Rights, Bendigo (AARB) welcomes the current inquiry into the Charter of Human Rights and Responsibilities as it provides the opportunity to improve the human rights in Victoria by expanding the range of rights currently protected by the Charter.

Consequently, AARB submits that the following rights be added to the Charter:-

- The right of the natural environment in all its diversity to exist and reproduce so that its life maintaining ecosystems can function effectively thus providing us with the essential foundation for future sustainability in all of its forms;
• The rights listed in the UN’s Declaration on the Rights of the Indigenous Peoples (DRIP) which Australia signed on 3rd of April 2009;

• The right to self-determination as per Article 1 of the International Covenant on Civil and Political Rights. This right should be expressed as a complement and not as a replacement of the inherent right of the Indigenous Peoples to self-determination enshrined in the UN’s DRIP;

• The rights listed in the International Covenant on Economic, Social and Cultural Rights (ICESCR);

• The rights listed in the Convention on the Elimination of All Forms of Discrimination Against Women;

• The rights listed in the Convention on the Rights of the Child.

The need for the addition to the Charter of the Right of the natural environment

It is a fundamental truth inherent to the real world we live in that society is a part of and dependent on the natural environment while economy is part of society and therefore dependent on both the society and the natural environment (Australia, State of the Environment, 1996, Executive Summary, p. 15). It follows from this that the protection of the natural environment is crucial to the very existence of our society including its economy and all of the human rights, including the very basic right to clean air, clean water, food and shelter, that the Charter is at present designed to protect. Because biodiversity is the measure of the health and resilience of the natural environment and its ecosystems, effective legal protection of Victoria’s biodiversity is crucial to the achievement of ecological sustainability without which no other form of social sustainability is achievable.

Yet as found by the Standing Committee on Environment, Communications and the Arts, the current laws are far from being adequate to provide this desired protection, a finding verified by the current biodiversity crisis of our making that Australia finds itself in in spite of the current environmental laws (see for example the State of the Environment and Australian Terrestrial Biodiversity Assessment Reports). The crisis for the failure of our current legal system to protect the natural environment stems from our cultural delusion that sees our society as being apart from and independent of the natural environment and in control of infinite resources and space. Consequently our environmental laws fail to recognize the reality that the destruction of the environment is inherently negative and consequently treat it as property without any rights of its own.

AARB’s proposal to ensure that the natural environment receives adequate protection in the future by including its rights in the Charter is not new. It has been proposed by the US based Community Environmental Legal Defence Fund, implemented in Ecuador and promoted by the London based barrister Polly Higgins in her framework
for a Universal Declaration of Planetary Rights which she presented to the UN in 2008 and the Tallberg Foundation in 2009.

The need for the addition to the Charter of the rights listed in the UN’s DRIP

The second of importance to the protection of human right in Victoria is the protection of the rights of the Indigenous Peoples as listed in the UN’s DRIP. This follows from the fact that all the rights so far won by the Indigenous Peoples in Australia and consequently in Victoria are continuously being challenged and eroded by governments and governments’ policies as evident from the history of land rights and native title, the suspension of the Racial Discrimination Act, the governments’ challenge in the Yorta Yorta Native Title High Court Case, the denial of the right to self-determination to the Lake Tyers Community and so on.

AARB stresses here that the UN’s listed rights are intrinsic to the status of the Aborigines as the Indigenous Peoples of Victoria and have nothing to do with race or racism as is being claimed by some of the people opposing the implementation of these rights. Because the Indigenous Peoples have been discriminated from the very beginning of the establishment of the Victorian Colony, the inclusion of their rights in the Charter is crucial to the process of rectifying this injustice.

The need for the addition to the Charter of the remaining of the listed above rights

The importance of ensuring the protection of these basic human rights and hence the need for adding them to the Charter is self-evident.

Conclusion

AARB’s proposal to add the right of the natural environment and of the rights listed in the UN’s DRIP to the Charter, poses a challenge to two cultural illusions that are deeply ingrained in our society, namely the illusions that perpetual growth as both possible and desirable on our planet and that prior to European colonisation, Australia was a “Terra Nullius” land that was peacefully explored and settled by our forbearers.

Because these delusions form the basis of our property rights and economy driven decision processes, the proposal will inevitably attract opposition and backlash from representatives of vested interests who are afraid that this proposal will be to their financial disadvantage (Boyd, 12-12 -2004) as of course it happened in the past with environmental protection and Aboriginal land rights and native title legislation.

AARB therefore appeals to the Committee to give full consideration to the social benefits that will flow to the community from the addition of these rights to the Charter and to the cost that will be incurred by future generations from the collapse of the natural environment and human rights if the proposed additions are not accepted (Catton, 1982).
References:

- Allen (2001), Valorie – “Growing Pains – a Planet in Distress”; I Universe


- Lowe (2005), Ian – “A big Fix, radical solutions for Australia’s Environmental Crisis”; Black Inc.

- Possingham (2003), Hugh Prof. – “The End of Land Clearing”; Australasian Science, September 2003, pp 27 – 30


