Submission to Inquiry on Charter of Human Rights and Responsibilities

Preamble:
I am proud that Victoria was the first state in Australia to introduce comprehensive human rights protections. But the Victorian Charter should protect all human rights. Rights such as access to a fair justice system, as well as health care and education are the rights that matter most to Australians, and are also the rights that are most at risk for many people.

The review of the Victorian Charter of Human Rights is an opportunity for the Charter to be strengthened and enhanced, rather than weakened and wound back. There must be a legal obligation on the government, and entities which carry out its legislated functions, to respect our human rights. The one exception is Section 26, the right not to be tried or punished more than once/double jeopardy is ludicrous in circumstances where the evidence is overwhelming that the original hearing was faulty. Common sense needs to be applied, something that in general seems to be sorely lacking in our legal system.

Victorians need access to effective legal remedies for violations of human rights. Courts have an important role to play to make sure that the government is held to account when they don’t respect our human rights. But courts themselves should be also be bound by the Charter, as should lawyers, as both at present regularly abuse people’s human rights, there being little or nothing to prevent or even discourage them from doing so.

Terms of Reference of Submission:
1. Options for reform or improvement, and
2. Whether further provisions are needed re public authorities' compliance

1. Options for reform or improvement – Inclusion of lawyers and courts

The Charter attests to covering public authorities, plus:
“entities that perform public functions on behalf of Victoria”
“entities that carry out functions of a public nature on behalf of a public authority”
“when the function is conferred by legislation”
“when the function is connected to or generally identified to functions of government”
“when the function is regulatory in nature”

While there are very many grounds for taking the view that lawyers should be bound by the Charter regardless of the above, I would like to strongly argue here that even under the existing provisions of the Charter that lawyers should be bound by it, as almost invariably the main reasons that most people need to engage a lawyer are in circumstances where the lawyer is effectively carrying out functions of a public nature, functions that almost invariably are conferred by legislation and/or are regulatory in nature.

I have read many accounts of lawyers breaching Sections 17 and 20 by stealing families’ money, property and businesses via a variety of nefarious means, well documented accounts including that written by former Fraud Squad Detective Lorne Campbell in his book ‘Brothers in Law: the Moe Hotel Fraud Case’, cases where the Legal Services Commission seems complicit in allowing such crimes to go unpunished – these cases surely provide both reason to ensure that lawyers are bound by the Charter, and reason to argue that further provisions are necessary to ensure that public bodies such as Legal Services Commissions abide by the Charter.
The courts surely should not be excluded as they are without any doubt public authorities, and with the immense power they wield over people's lives, the ability to deprive people of their liberty for many years, and with no Criminal Cases Review Commission as in the UK, our courts presently deny many innocent people of some of their most basic human rights on a whim, in particular people who are educationally and/or psychiatrically disadvantaged, while judges, like lawyers, are all but unaccountable for perpetrating such abuses.

Further, re:
Section 8 – Equality before the law
Section 24 – Right to a fair hearing
Section 25 – Rights in criminal proceedings

The above sections are nigh-on meaningless if courts and judicial decisions are excluded, and if their exclusion continues then these sections should be removed from the Charter altogether as they give people false hope by claiming to offer rights that the State of Victoria is presently unable to guarantee its people.

I have personally witnessed an educationally and psychiatrically disadvantaged person be subjected to a farcical part-trial run by a judge with erroneous pre-conceived ideas and corrupt defence lawyers; be effectively denied his right to trial by jury and forced to take a guilty plea against his will; and then have his subsequent Appeal miscarry through a combination of one of the corrupt trial lawyers, three judges who effectively turned a blind eye to evidence of said lawyer's dishonesty including evidence of financial fraud, combined with a system that caused the Appeal barrister to minimise mention of said lawyer's dishonesty because of his stated fears that raising such matters would turn the judges against the appellant and his witnesses' testimony, fears of bias that it appears were fully justified.

2. Whether further provisions are needed re public authorities' compliance

From personal experience with many public authorities connected to our legal system, most especially the Legal Services Commission and the courts in regards to the matter referred to in my previous paragraph, I can only conclude that further provisions are desperately needed to ensure compliance with the Charter as it appears that all such bodies favour the lawyer's version of events, no matter the evidence, certainly there is no equality of treatment in the LSC's investigations, nor in our courts. What those provisions should be I will leave to those more knowledgeable in such matters than myself, but can I give my strong opinion that it should not be lawyers making decisions on these matters because of their strong conflict of interest in the outcome.

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