Dear Mr Edward O'Donohue, Chairperson,

Thank you for the opportunity to make this submission on Victoria's Charter of Rights and Responsibilities. I wish to convey my views as a Christian. I am motivated to make this submission by the Christian teachings expressed through the Bible, which calls me to:

"Defend the weak and the fatherless, uphold the cause of the poor and the oppressed. Rescue the weak and the needy", Psalm 82:3-4a.

As a Christian, I believe that the rights people have are theirs by virtue of being human, made in God's image (Genesis 1). This gives them inherent 'human dignity', the ethical and moral starting point of human rights. Furthermore, we are responsible for protecting the dignity of others, which is expressed in Jesus' parable of the Good Samaritan. The Samaritan went out of his way, crossing cultural and religious boundaries to care for a victim of injustice victim on the road to Jericho (Luke 10:25-37). Followers of Jesus Christ are called to "love the Lord your God with all your heart and with all your soul and with all your mind and all your strength", while also to "love your neighbour as yourself" (Mark 12: 29 – 31). Advocating for the protection of the human rights of Victorians is just one example of love for God and for our neighbours, and hence the underlying reason for this submission.

Therefore I am committed to values and institutions which uphold the dignity, freedom and equality of everyone. Human rights are a social and apolitical function that allow for the protection of human dignity and human life in modern democracies.

How the Victorian Charter helps protect

In my experience, Victoria's Charter has had the following protective effects (to just name a few) on those who are most vulnerable and needy:

- It has taken Human Rights principles and international law, and made it effective through domestic legislation. Without human rights being legislated in Australia, their usefulness for the protection of the vulnerable and needy is greatly diminished.
- It stipulates that all people - no matter their cultural, ethnic, social, economic or religious background – are "equal before the law and is entitled to the equal protection of the law without discrimination and has the right to equal and effective protection against discrimination" (Section 8(3))
- That people are protected from cruel, inhumane and degrading treatment (Section 10)
- That people are protected from forced labour or slavery (Section 11)
- That people have the right to freedom of thought, conscience, religion and belief (Section 14)
- That everyone, no matter their affiliation, has right to freedom of association with others (Section 16(1)).
- That a person must not be subjected to arbitrary arrest or detention (Section 21(2)).
- That a person "must not be tried or punished more than once for an offence in respect of which he or she has already been finally convicted or acquitted in accordance with law" (Section 26). The Government's recent announcement to introduce double-jeopardy legislation goes against this long standing legal convention and human right. This human right must be protected otherwise old
judgements will be open to politicisation and we would run the risk of a miscarriage of justice and vilification.

One example of the importance of how the Charter has protected peoples human rights was when the Director of Public Prosecutions successfully argued in court that it was against the human rights of two children, victims of child molestation, to have their evidence restricted from being heard in court as a result of a three month lapse since the incident occurred. The prosecution argued that it was part of the children’s human rights as recorded under “protection of families and children” (Section 17) to have their evidence heard. The judge ruled that exceptional circumstances “should be made with a view to preserving the rights of the child”.

Another example of the protection offered by the Charter can be seen in the case of Ben as referred to on www.isalahOne.org:

“Ben” had lived in housing commission with his mother for 18 years. When she passed away in 2005 he was evicted for rental arrears. At the age of 29 he became homeless, moving between temporary but unaffordable short term accommodation while dealing with his mother’s loss. He became depressed (which was undiagnosed) and struggled in his work as a tradesman. For about 4 years he lived on and off with his partner until moving in permanently with her in mid-2009. Then in mid-2010 his partner died suddenly.

Although sharing his partner’s house for a year, Ben was not listed with her as a resident. The Housing Office told him he would have to move out and join the waiting list (approximately 40,000 people). Ben’s application to transfer the tenancy from his partner to him was rejected.

At this stage the Homeless Person’s Legal Clinic became involved. It used the Charter to negotiate a better outcome for Ben by having the Housing Office officials give consideration to his personal circumstances (including by that stage a brief period of hospitalisation for his depression). Section 38(1) of Victoria’s Charter states that,

“If it is unlawful for a public authority to act in a way that is incompatible with a human right or, in making a decision, to fail to give proper consideration to a relevant human right.”

A common sense solution was found when the Housing Office offered Ben a vacant one bedroom unit (his deceased partner’s house was 3 bedrooms). Ben willingly accepted, saying, “I’m not greedy, I just don’t want to be on the streets.” The result avoided the courts and didn’t add Ben to end of an extremely long housing list. Crucially, the action may well have steered Ben’s life away from a downward path (with society having to deal with the fallout).

“Ben” is a name used to protect the privacy of the real person involved. (source: Homeless Persons Legal Clinic, a resource provider for homeless people run by the Public Interest Law Clearing House, or PILCH)

Victoria’s Charter has highlighted the need for the public service to be conscious of human rights in their service delivery. This places a unique obligation on all public authorities in Victoria. It is means that not only do the Bills of Parliament passed by Members need to uphold human rights, but the bodies enacting legislation must do the same. This increases the level of accountability throughout all arms of government and those who have authority over citizens. Furthermore, it is critical that a culture of respect for and understanding of human rights be bred within public authorities. Developing this culture will see bureaucracies better serve the public through internationally accepted moral and legal principles.

---

Improvements to the Charter

The following improvements could be made to the Charter:

- The scope of the limitation clause (Section 7 (2)) – This clause is applicable to all rights in the Victorian Charter – even those deemed under international law as non-derogable rights, such as the right to freedom of religion, conscience and thought. A non-derogable right is one that cannot be limited, withdrawn, restricted or restrained - even in the case of a ‘public emergency’. Due to the limitation clause, there is the potential in the current charter for government to argue it is acting consistently with the Charter and restrict these and other human rights. If this limitation clause was removed, particularly with respect to non-derogable rights such as the freedom of religion, concerns within the community (particularly from cultural, ethnic and religious minorities) would be nullified, and the charter would operate in symmetry with international conventions. On a broader point, I do not agree with the claims by some lobby groups that the Charter represents a threat to religious freedom. Furthermore, I am not aware of any negative effects on religious freedom as a result of the Charter being in force for over 4 years. However, it is worth stating as part of the limitation clause that certain human rights are regarded as non-derogable, and do away with concerns and scepticism of the Charter within religious communities in Victoria.

- The operation of the overriding provision (Section 31) – There is no need for an overriding provision in response to a declaration of incompatibility from the Supreme Court. This is because Section 36(5) states that a Declaration ‘does not affect in any way the validity, operation, or enforcement of the statuary provision in respect of which the declaration was made.’ Hence section 31 is redundant as the Victorian charter does not allow a court to invalidate or suspend the operation of any law through the Charter.

- Economic, social and cultural rights need to be reflected in the Charter. The International Covenant on Economic, Social and Cultural Rights (ICESCR) cannot and should not be considered as secondary to that of the International Covenant on Civil and Political Rights (ICCPR). Without economic, social and cultural rights respected and upheld, civil and political rights become difficult to attain – and vice versa. For example, Article 7 in the ICCPR says that everyone has the right to ‘the enjoyment of just and favourable conditions of work.’ If this right was protected in the Victorian Charter it would add to the protection against forced labour, slavery and servitude (Section 11). Furthermore Article 12 says everyone has the right to ‘the enjoyment of the highest attainable standard of physical and mental health.’ Having this right protected allows for people to enjoy good health and consequently realise their civil and political rights, rather than risk citizens slipping into ill health with reduced ability to advocate for their broader human rights. Recognising this convergence of rights, the Charter needs to reflect the spectrum of rights as seen in the International Bill of Human Rights. Countries such as South Africa have (in their constitution) managed to include economic, social and cultural rights alongside political and civil rights to great affect, and the review should look to such examples as evidence that it can be done.
Conclusion
As a Christian and a Victorian, I see that the Victorian Charter protects the human rights of those who are unprotected in our community, whose lives are potentially at risk of exploitation and abuse. The Charter should not be repealed or removed, and I urge the government to uphold human rights in Victoria.

Jacob Sarkodee
Coburg, 3058