8 June 2011

Mr Edward O’Donohue, MLC
Chairperson
Scrutiny of Acts and Regulations Committee
Parliament House
Spring Street
EAST MELBOURNE VIC 3002

Dear Mr O’Donohue,

Please find enclosed the submission of the Australian Macedonian Human Rights Committee (AMHRC) to the Scrutiny of Acts and Regulations Committee’s Inquiry into the Victorian Charter of Human Rights and Responsibilities Act 2006 (Vic) (Charter).

Pursuant to s 44(2) of the Charter, one of the areas that the Review must give consideration to is whether the right to self-determination should be included in the Charter. The AMHRC wishes to submit to the Committee that the right to self-determination should be included in the Charter. Our submission is founded on empirical experiences of the Macedonian community in Victoria and Australia generally.

The Executive Committee of the AMHRC is willing to make itself available to appear before the Committee to discuss matters contained in this submission and other issues related to the Inquiry should this be necessary.

Yours faithfully,

[Signature]
David Vitkov
Executive Member
Submission by the Australian Macedonian Human Rights Committee (AMHRC) to the Inquiry into the Charter of Human Rights and Responsibilities

Prepared by the Executive Committee of AMHRC

8 June 2011
Executive Summary

Established in 1984 the Australian Macedonian Human Rights Committee (AMHRC) is a non-governmental organisation that informs and advocates before international institutions, governments and broader communities about combating racism and promoting human rights. Our aspiration is to ensure that Macedonian communities and other excluded groups throughout the world, are recognised, respected and afforded equitable treatment.

We thank the Scrutiny of Acts and Regulations Committee inquiring into the Victorian Charter of Human Rights and Responsibilities Act 2006 (Vic) (Charter) for the opportunity to make a submission to this Review.

Pursuant to s 44(2) of the Charter, one of the areas that the Review must give consideration to is whether the right to self-determination should be included in the Charter.

The AMHRC wishes to submit to the Committee that the right to self-determination should be included in the Charter. Our submission is founded on empirical experiences of the Macedonian community in Victoria and Australia generally.

The Macedonian Community has been subjected to very specific acts by different levels of Government in Australia that have threatened the enjoyment of individuals belonging to the Macedonian Community, and the indeed the Macedonian Community itself, to the right to self-determination.

Whilst the right to self-determination in the context of Australia is generally viewed in light of its application and affect on Indigenous Australians, as will be demonstrated below, the inherent value of the right to self-determination does also have relevance to other individuals and communities.

The right of people to self-determination is now an accepted international human rights principle that is often referred to. It is extensively documented within international treaties and conventions, forms the basis of various Declarations and Resolutions, which makes it the subject of regular appeal by people. The right to self-determination is a principle that can apply according to existing individual circumstances. Whilst the antecedents to the right were based around the concept of some territorial equation, (therefore offering a 'peoples' the right to form a legal and political entity based on the common aspirations and characteristics shared by the 'peoples') it now also provides rights to minority groups being persecuted or discriminated against by the majority ruling group within existing states, and relevant to our
purposes, in some instances to individuals who have their very identity questioned or negated.

The application of the right to self-determination (for individuals) is manifested through the broader cultural group, especially through the ancillary right to self-identification. One of ‘the most sacred rights of humanity is to be ourselves and be in control of the making of ourselves. Our group identity and control over our lives is symbolised by the name we associate with ourselves.’ The ‘recognition of a people’s fundamental right to self-determination must include the right to self-definition and to be free from control and manipulation’. This includes the ‘right to inherit the collective identity of one’s people and to transform that identity creatively according to the self-defined aspirations of one’s people.’ Any attempt at (re)defining an ethnic identity that has been freely chosen by those individuals is inconsistent with international human rights standards.

The change to the Australian Constitution in the 1967 referendum recognised the need to remove discriminatory references to indigenous Australians, thereby enabling Parliament to include ‘Aboriginals’ in respect to legislation and national population statistics. Accordingly, ‘Aboriginals’ have been afforded the opportunity to retain their distinctive cultural identity. For example, whereas ‘Aboriginal’ peoples had been collectively referred to as ‘Aboriginal’ for many years, recognising that this practice of generalisation was inadequate, traditional nomenclature such as ‘Koori’ and ‘Muri’ were introduced to identify the various indigenous peoples. This is an example of groups and individuals invoking the right to self-determination as a right to identity.

The example we wish to put forward in this context and as part of our submission is that of the Macedonian Community in Victoria and Australia.

The Macedonian community, like all other immigrant populations in Australia represents a culturally unique group of people. However, it has found itself in a particularly unique position as compared to

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other minorities, as the only ethnic group in contemporary Australia to have its identity negated and its right to self-determination thwarted through institutionalised measures implemented at both the State and Federal Government levels.

Macedonians in Australia have had their identity negated at three levels:

- As regards the manner in which those who originate from the Republic of Macedonia have their country of birth labelled, namely ‘FYROM’ (Former Yugoslav Republic of Macedonia);

- The implementation by the Federal Government of an inaccurate and offensive nomenclature directive whereby Macedonians that originate from the Republic of Macedonia have been renamed to that of ‘Slav Macedonian’, and Macedonians that originate from contemporary countries outside the Republic of Macedonian (eg: Greece, Bulgaria, Albania etc…), have been categorised as ‘individuals associated to Slav-Macedonians’, thereby not even being afforded their own ‘ethnic identity’, rather denigrated as mere associates (Ethnicity Directive); and

- The implementation by the State Government of Victoria of an equally inaccurate and similarly offensive nomenclature directive whereby the language of the Macedonian people was renamed to that of ‘Macedonian Slavonic’ (Language Directive). 

All three levels of institutionalised negation of a Macedonian identity have, and continue to have a detrimental affect on the Macedonian Community. The Ethnicity Directive and in particular the Language Directive have resulted in immeasurable damage to the community as a whole.

In re-naming the Macedonian language and ethnicity the Victorian and Australian Governments have marginalised the Australian Macedonian community. This has had an overall demoralising affect on the community and has eroded the foundations upon which multiculturalism has successfully thrived in Australia.

An appeal to self-determination in Australia by the Macedonian community has not met the interests of this community, especially as no such right has been formalised by a statute enabling direct recourse. Currently it has a racial qualifier imposed on it by the Federal Government against its wishes. The ‘Slav’ prefix adopted by the government to define individuals belonging to this group is seen as discriminatory and racist by the community. It not only continues

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4 Following successful legal action by the AMHRC, the Language Directive was ultimately declared unlawful under the Racial Discrimination Act 1975 (Cth), see Australian Macedonian Human Rights Committee (Inc) v State of Victoria H97/189 (2000) HREOC (8 September 2000) ( Alexander Street SC).
the de-humanising experience encountered by individuals from this community in their country of birth, having faced forced assimilation and denial of the existence of their ethnicity, but it knowingly refuses the community its right to self-identification. Self-determination is a human right that can afford the Macedonian Community (or any other individual or Community) the relevant protection from enforced nomenclatures that deny that individual or Community their existential experience by adoption of the principle of self-identification.

Currently, the Macedonian community appears to be treated differently to any other community, as no other group is subject to qualification of their ethnic identity. In comparison, other ethnic groups have 'recognition, enjoyment and exercise' of their rights without any government directives effectively re-naming their ethnic identity. This should not be possible and by including the right to self-determination in the Charter and giving individuals the ability to seek recourse by invoking such a right as a direct cause of action would provide affected individuals with the ability to seek the exercise of this important right. Incorporation of the right to self-determination within the Charter will provide legal protection for this important human right. Unfortunately, it also appears to be necessary. There should be no room for any individual or community to be the subject of such an existential threat.

We respectfully call that:

1. the right to self-determination be included in the Charter;

2. the Charter provide for a direct cause of action when any human right is found to have been violated;
The UN Covenants: Self-Determination and the Individual

Probably the most important documents in relation to international human rights law are the two Covenants approved in 1966, namely the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR). In relation to self-determination, both Covenants open with an identical Article 1 that mirrors Declaration 2 in the 1960 Declaration on the Granting of Independence to Colonial Territories and Peoples. For example:

All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.\(^5\)

Given the supposed universal applicability by these two human rights treaties, a suggestion may be made that the reference to ‘All peoples’ in both documents, might well indicate that the right to self-determination could be applied outside of the de-colonisation process and incorporate peoples other than those in formerly colonial territories. Indeed, to limit the application of the principle of self-determination only to newly de-colonised peoples ‘would have confined the right ... most narrowly. ... The notion that cultural and national identity is limited, for the purposes of the peoples’ right to self-determination, to formerly colonial states cannot be accepted ... it also denies the generality of the language of the [UN] Charter, the Universal Declaration and [Importantly] the Covenants’.\(^6\)

The right to self-determination being included in these two human rights treaties establishes the idea of self-determination being a ‘human right’.

Given that self-determination is a human right incorporated into United Nations human rights instruments and if we accept that it has application to individuals, it is necessary to then consider its relevance on individuals as part of a broader community, especially in relation to its association with self-identity. Article 27 of the ICCPR provides a statement of rights that are essential to the defence of minority identity and thus encapsulates the ‘right to an identity’. It represents ‘the essence of the case for minorities within the corpus


\(^6\) Michael Kirby, above n 17, 342.
of human rights - the claim to distinctiveness." The Article reads as follows:

"In those states in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their language."

Article 27 does not grant these rights specifically to minorities as an unequivocal collective right, but instead to persons belonging to such minorities. This is explained by the reluctance of states 'to concede rights to collectivities which may come to rival the state itself.' If the right of self-determination means the right to cultural, economic and political development then the right to identify as belonging to a particular ethnicity, religious denomination or linguistic group must form the basis of self-determination for the individual. Ethnic self-identification is an important component of self-determination, moreover, language and identity are related to self-determination to the extent that our mother tongues form and are symbols of our identity, despite any physical and psychological changes over time.

The value of these cultural identity rights cannot be fully appreciated by the individual without being able to share in the enjoyment of these interests with others. The UN Human Rights Committee similarly determined that even though 'the rights protected ... are individual rights, they depend in turn on the ability of the minority group to maintain its culture, language and religion. Accordingly, positive measures by the States may also be necessary to protect the identity of a minority and the rights of its members to enjoy and develop their culture ... in community with other members of the group.'

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8 *International Covenant on Civil and Political Rights*, above n 29, art 27.
9 Patrick Thornberry, above n 14, 880.
The UN Human Rights Committee clarifies that ‘the persons designed to be protected [by Article 27] are those who belong to a group and who share in common a culture’. In order to enjoy one’s culture, it must be understood that this includes the right to belong to a particular ethnic identity, which is defined by the cultural group itself. The ‘right to an identity must remain a key element in any overall system to protect minorities’ and ‘what is at stake is the ability of ethnic minorities to preserve their cultural identity and their cultural inheritance, their own culture’. Accordingly, it recognises that the right to an identity is implicit in Article 27. A government decision to change the name by which a people identify with, also redefines the whole culturally and historically evolving process by which they come to identify as such.

The UN Human Rights Committee has recognised the need to preserve the identity of particular groups and has held that ‘objective ethnic criteria in determining membership of a minority’ should not be ignored. A Government’s manipulation of an ethnic identity is not compatible with the human right to self-determination.

Article 27 has also inspired the United Nations Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities. Whilst it is not a binding instrument, it does establish standards to which states should aspire. At the outset, Article 1 asserts that:

States shall protect the existence and the national or ethnic ... identity of minorities ... and shall encourage conditions for the promotion of that identity.

The cultural and ethnic dimensions of existence are fundamental to the Declaration, since ethnic minorities could be effectively denied their existence through different government policies.

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14 Ibid para. 5.1.
16 Ibid 187.
17 For example see Sandra Lovelace v Canada CCPR/C/R.6/24, 29 December 1977, para.17.
21 Patrick Thornberry, The UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities: Background, Analysis and Observations (1993) 20 (but also generally).
Conclusion

The initial drafting of self-determination as a human right in United Nations Human Rights Treaties intended to have application to the entire inhabitants of a colonial territory only. Article 1 of the ICCPR opens with ‘All peoples have the right of self-determination’. However, as discussed, the reference to ‘All peoples’ now suggests ‘peoples’ outside of the colonial context and includes separate national groups seeking some form of autonomy, but not limiting its application by including minority groups who do not have secessionist pretensions and are ready to appropriate the vocabulary of self-determination. Consequently ‘persons belonging to such minorities’ or individuals also have a right to self-determination especially through the empowering principle of self-identification.

In Australia, the affect of Government directives that have impacted on the existential experience of members of the Macedonian Community is inconsistent with the right to self-determination. Any manipulation of the name of the ethnic identity of the Macedonian community, even for administrative purposes, is to deny the Macedonian community recognition of their human right to self-identification. The Committee on the Elimination of Racial Discrimination has stated clearly that the ways in which individuals are identified as being members of a particular ethnic group is to ‘be based upon self-identification by the individual concerned.’

Accordingly, there should be explicit acknowledgment that the self-ascription the community upholds is to be treated as being valid. Manipulating the name of a Community introduces a new label for the community and the one based on self-identification essentially ceases to exist. This has the effect of nullifying or impairing the recognition of the right to self-identify.

Moreover, being denied the right to use the ethnic name that is based on self-identification diminishes the enjoyment and exercise of this human right. Unfortunately, a satisfaction from possession or a right to use or use itself of the self-ascribed name, is not, in all instances evident when it comes to the Macedonian community in Australia.

The Macedonian community appears to be treated differently to any other community, as no other group is subject to qualification of their ethnic identity. In comparison, other ethnic groups have ‘recognition, enjoyment and exercise’ of their rights without any government directives effectively re-naming their ethnic identity. Other groups have ‘recognition, enjoyment and exercise’ of their identity on a different and unequal footing to that of the Macedonian community.

22 CERD General Recommendation VIII, Identification with a particular racial or ethnic group (Art.1, par. 1 & 4) 38th session, UN Doc. A/45/18, (22 August 1990).
It is unacceptable for Government to impose offensive nomenclature on individuals or on an entire community that effectively questions their very existence. No ethnic group should be required to justify their ethnicity. No individual or community in Victoria (and Australia generally) should be placed in a position of permanent social and cultural disadvantage.

The very fact that ‘Ethnicity and Language Directives’ have been implemented in Victoria (and Australia), as has been the case with members of the Macedonian Community, is clear evidence of the need to include the right to self-determination in the Charter and to provide for a direct cause of action to ensure that such human rights are afforded effective legal protection to those who need it.

We respectfully call that:

1. the right to self-determination be included in the Charter;

2. the Charter provide for a direct cause of action when any human right is found to have been violated.