Victorian Independent Education Union

Submission to the Inquiry into the Charter of Human Rights and Responsibilities

June 2011
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Charter of Human Rights and Responsibilities

Background

1. VIEU is the professional industrial organisation representing principals, teachers and education support service staff across Victoria’s 500 Catholic schools, as well as other non-government independent schools and educational institutions. These include a wide variety of faith based schools, and privately run post secondary education providers.

2. VIEU’s total membership, inclusive of student teachers, is in excess of 19,000. More than 18,000 members are employed in schools and educational institutions in Victoria. VIEU is experiencing membership growth both among teachers and education support staff.

3. While the majority of members are engaged in teaching, VIEU’s membership also consists of staff at schools engaged in a wide variety of activities - teacher aides assisting students with disabilities, psychologists administrative staff, gardeners, cleaners and caterers.

4. VIEU’s membership is also diverse with respect to the types of schools included in its coverage. These range from very large schools with significant resources to extremely small rural schools with very limited resources. There are faith based schools, non-denominational schools, Catholic schools, Steiner schools, Montessori schools; in short schools representing a diversity of belief and culture in Victoria.
5. While VIEU represents the non-government school sector in Victoria all schools receive some level of State and Federal Government funding and are subject to State and Federal legislation and education guidelines and polices. Non-government schools are therefore closely linked to the operations of a variety of public authorities. Non-government schools also have mutual obligations and governance responsibilities to a variety of public authorities, for example, the Victorian Institute of Teaching, the Department of Education and WorkSafe Victoria.

6. VIEU therefore operates in an environment where there is a clear relationship between public authorities and private sector or non-government organisations.

7. VIEU made a submission to the Victorian Rights Consultation Committee in relation to the introduction to the Charter in September 2005 of which copy is attached. (attachment one)

Human Rights and Responsibilities and VIEU

8. VIEU has a strong commitment to the protection and promotion of Human Rights in Victoria. This is demonstrated in its Statement of Values marked attachment two. VIEU's values inform both internal decision making and the development of policies and strategies relevant to all members.

9. VIEU's members frequently face practical issues where consideration of human rights is central to analysing and resolving disputes. Issues that frequently arise include
• Balancing the needs of staff with family obligations and obligations to their employer
• Negotiating access for staff and students with disabilities or other special requirements
• Managing meeting the requirements of working at faith based schools with personal lifestyle choices

In all circumstances, VIEU aims to assist members in finding fair outcomes to disputes and relies on the use of natural justice principles, including the right to representation to resolve issues. The rights protected by the Charter support the work and values of VIEU and strengthen VIEU’s ability to advocate for those values.

10. VIEU considers that the Victorian Charter of Human Rights and Responsibilities, as it currently exists, is a highly significant and important part of the framework for supporting and promoting human rights in Victoria. This is demonstrated in what the Charter has achieved in the four years since its introduction. In addition, it provides a very valuable educational and aspirational reference for the work done by VIEU, its members and non-government educational institutions more broadly.

Terms of Reference

12. In addition, VIEU submits that the review should consider the incorporation of the rights embodied in the *Convention on the Elimination of All Forms of Discrimination against Women* into the Charter. This is particularly relevant to VIEU given the high proportion of women working in non-government schools. Over 75% of VIEU's total membership, which includes student teachers, are female. Of teachers, 73% are female and 82% of education support staff are female. Bureau of Statistics data supports that these figures are representative of the broader non-government education sector.

13. Women in non-government schools can be particularly vulnerable to discrimination with regard to pregnancy, being primary care-givers of children and/or elderly parents and with respect to marital status.

14. Article 11 of the Convention contains a number of rights with respect to employment and these are of particular relevance to VIEU's membership. Article 11 protects women's rights to:

- The same employment opportunities
- Promotion, job security and equal benefits and conditions
- Equal remuneration
- Social security and paid leave
- A safe workplace
- Prevention of discrimination on the grounds of marital status or maternity (parental status)
15. Whilst the above are relevant to all working women, it is the case that these issues can be particularly relevant in non-government schools. This can arise because faith based religious doctrine can influence decision making around engagement and retention of staff in schools, giving rise to potential conflict between rights to religious expression and freedom and the rights referred to above. The other area of particular interest to VIEU is staff engaged in non-teaching roles that are relatively low paid. VIEU statistics confirm that lower paid roles are predominantly performed by women and this adds to the vulnerable status of women in the workforce.

16. The recent amendments to the Equal Opportunity Act 2010 increase the level of vulnerability to discrimination in the work place. VIEU strongly supports strengthening alternative avenues to protect the rights of all workers against discrimination and unequal treatment in the workplace.

17. The Charter is a means of confirming the rights which VIEU, through its work and membership, seek to protect and promote. VIEU strongly supports the continuation of the Charter without any reduction in its current form. In addition, VIEU supports strengthening and broadening:
the rights protected in the Charter
the means of ensuring that public authorities are accountable with respect to observing rights and responsibilities
providing that failure to observe protected rights can be give rise to remedial and enforceable action

Conclusion

18. Finally, VIEU endorses the concept that the existence of the Charter in Victoria has benefits that can be measured both tangibly in terms of outcomes and also as a powerful symbolic expression of values and ideals relevant to all Victorians. VIEU submits that these benefits significantly outweigh any costs associated with the development and implementation of the principles of the Charter through legislation and policy in the public sector. It is important to recognise the close link and influential role public sector policy has in the private sector.

19. VIEU maintains that the rights and responsibilities contained in the Charter should be extended to be applicable to private sector organisations. This would continue the ongoing process of embedding the concept of human rights in all aspects of decision making, policy development and treatment of all people in Victoria.

20. VIEU considers that recognition and promotion of Human Rights is fundamental to independent and Catholic schools’ continuing provision of high quality, value based education in Victoria.
VIEU

SUBMISSION OF THE VICTORIAN INDEPENDENT EDUCATION UNION

TO THE VICTORIAN DEPARTMENT OF JUSTICE HUMAN RIGHTS CONSULTATION COMMITTEE

HUMAN RIGHTS IN VICTORIA

SEPTEMBER 2005
1. **INTRODUCTION**

1.1 The Victorian Independent Education Union (VIEU) represents over 15,000 workers in Victorian non-government schools and educational workplaces. VIEU is the Victorian Branch of the Independent Education Union of Australia (IEUA). The IEUA represents over 60,000 members nationally.

1.2 VIEU wholeheartedly supports the introduction of a Victorian Charter of Human Rights.

1.3 VIEU congratulates the Victorian Government on the establishment of the Human Rights Consultation Committee and very much welcomes the opportunity to contribute in the consultation process.

1.4 In addition, the Attorney General is to be commended for placing the concept of a Charter of Human Rights firmly on the political agenda. This is a long overdue conversation the Victorian people need and want to have. A Charter of Human Rights is in itself a fundamental human right if indeed we value the core principles and objectives which define modern western democracy. It is a mature, responsible and respectful government that seeks to make a Human Rights Charter a meaningful lived reality for all citizens.

1.5 VIEU supports the Human Rights in Victoria Submission of the Victorian Trades Hall Council.

1.6 VIEU is committed to protecting and advancing the rights of workers. Beyond this VIEU is also committed to supporting broader social justice initiatives. Human rights are inter-related and VIEU's Statement of Values, which summarises our guiding principles in the work that we do on behalf of members, is underpinned by:

- The United Nations Charter of Human Rights
- The International Covenant on Civil and Political Rights
- The International Covenant on Economic, Social and Cultural Rights
- International Labour Organisation (ILO) Convention 87 and 98 Freedom of Association and the Right to Collective Bargain
- ILO Conventions 100 and 111, The Elimination of Discrimination in the Workplace.
The Victorian Independent Education Union Statement of Values is as follows:

### Section 1 - Fairness, Equality & Opportunity in the Community

VIEU believes:
- In a democratic Australia, which values all citizens.
- In the right of all citizens to employment and a decent standard of living, and to a fair share of the nation's wealth.
- That every Australian must have access to free, quality public health care, education and aged care, regardless of their socio-economic circumstances.
- That families and individuals must be guaranteed decent minimum living standards through the social security and taxation systems.
- That all Australians must have access to decent and affordable housing.
- In the right of all Australians to a secure and dignified retirement.
- That indigenous Australians are the original owners of our land, and that reconciliation between indigenous and non-indigenous Australians is a vital goal.
- In a multi-cultural and multi-faith tolerant Australia.
- That all Australians must be treated equally by the law and have access to legal representation as a right.
- In sustainable development that protects our environment.
- That governments have a central role in ensuring fairness, equality and opportunity throughout the community.
- In promoting peace and peaceful resolution of conflict.
- That discrimination in all forms including that based on race, religion, ethnicity, gender, age, disability, marital status, sexual preference and political beliefs is unacceptable and should be opposed.
- In Australia's independent participation in international cooperation to promote peace, security, human rights, labour standards and prosperity through fair trading arrangements.

### Section 2 - Security & Fairness in the Workplace

VIEU believes:
- That workplaces should be safe, secure, healthy and free of harassment, intimidation, violence and discrimination.
- That workers have a right to a decent wage and fair working conditions.
- That all workers have a right to secure employment and protection against unfair dismissal or unfair treatment by the employer.
- That workers have the right to join and be represented by a union.
- That all employees have the right to collectively bargain.
- That workers have the right to withdraw their labour.
- That workplace union representatives should have rights enabling them to carry out their role.
- That unions have the right to recruit, organise and represent workers.
- That workers should be consulted and informed about issues affecting their employment.
- That Australian businesses and their executives have a responsibility to engage in legal and ethical conduct and environmentally sustainable practices at all times with employees, stakeholders and the community.
• That working parents must have access to good quality, affordable childcare.
• That working parents have a right to employment standards that enable them to manage work and family.
• That working parents must have the time and opportunity to form and maintain relationships with their children that foster the child’s development.
• That workers must have the time and opportunity to meet their responsibilities for those that they have carer responsibilities for.
• That officers and representatives of VIEU should conduct themselves in a manner consistent with this Statement of VIEU Values.

Section 3 - The Education Sector

VIEU believes:
• In a strong, well-resourced and viable public education system.
• That parents and communities have the right to establish non-government schools.
• That new schools should only be opened and funded where a demonstrated need exists, where the opening of the school would not severely impact on existing schools and where the school can demonstrate that it is financially and educationally viable.
• That governments have a responsibility to provide funding to non-government schools and this should be provided to schools on the basis of need.
• That non-government schools are, and should be accountable to the Australian community and governments to ensure that appropriate educational and industrial standards are being met.
• That the students who attend non-government schools receive quality education that is consistent with state curriculum and national goals and expectations of schooling.
• That staff employed in non-government education are entitled to the same industrial and legal rights as all Australian employees, including full protection under Anti-Discrimination and Equal Opportunity laws.
• That education involves a partnership between teachers, other school staff, students, parents, school employers, communities, business, system authorities and governments. This partnership recognises the expert knowledge and professionalism of education staff and respects the legitimate interests and rights of other members of the partnership. This partnership can only be successful if respectful relationships are established and fostered between all parties.

1.7 Therefore it is our belief that a Victorian Charter of Human Rights would assist VIEU in the work that we do by strengthening the social, political and legal framework and its processes. The empowerment of all citizens/workers so as to effectively participate in the democratic process and enjoy a dignified standard of living and quality of life is core Union business. The Union’s values reflect International treaties and conventions as cited above, as does the Bracks Government’s policy on Victoria’s international obligations with respect to workforce rights.

"The rights of the workforce
We are part of a nation that has set some fine standards for workplace co-operation and employment rights. In government Labor will make sure those standards, set out in international treaties and conventions, are maintained and complied with. Labor will ensure that any legislation it introduces and administers complies with Australia's international treaty obligations and core labour rights."

1.9 Consequently, VIEU believes that for the protection of Victorian citizens it is essential that our international human rights obligations be enshrined in both federal and state legislation.

1.10 We acknowledge the obvious limitations that the Victorian Government has in relation to federal law. However in order to highlight the need for the legislated protection of our human rights it is worth noting that some Federal Acts clearly breach a number of treaties and conventions precisely because we do not have necessary legislated protection.

1.11 One case in point is features of the Federal Workplace Relations Act 1996 (WR Act). The ACTU submitted a complaint in 1997 to the ILO Committee of Experts in relation to Australia's alleged breach of Convention 87. The specific concern pertained to the right to industrial action. The Committee noted:

"...that by linking the concept of protected industrial action to the bargaining period in negotiation of single-business certified agreements, the Act effectively denies the right to strike in the case of the negotiations of multi-employer, industry-wide or national-level agreements, which excessively inhibits the right of workers and their organisations to promote and protect their economic and social interests. The committee notes further that the Act prohibits industrial action with the aim of coercing an employer to make payments in relation to period of industrial action which also in the view of the committee, excessively limit the subject matter of a strike." (March 1999)

1.12 The WR Act is arguably in breach of ILO C 98 - The Right to Organise and Collective Bargaining. The ACTU submitted a complaint to the ILO Committee of Experts in relation to the breach of C98 on the grounds that an employer reserves the right to deny collective bargaining even if requested by the majority of workers. The Committee noted:

"...the choice of bargaining level should normally be made by the parties themselves, and the parties are in the best position to decide the most appropriate bargaining level (see General Survey on Freedom of Association and Collective Bargaining, 1994, paragraph 249). The Committee requests the Government to review and amend
these provisions to ensure conformity with the Convention”.

1.13 A speech delivered to the ILO Committee on the Application of Standards by Sharan Burrow, President of the Australian Council of Trade Unions in June 2005, illustrates how the WR Act breaches ILO Convention 98.

"It offends Convention 98 in that it fails to encourage collective bargaining. It offends Convention 98 in that it actively discourages collective bargaining. It offends Convention 98 in that it offends the autonomy of the parties to reach agreement independently and without interference......If the right to Collectively Bargain is not guaranteed as an unenforceable right, then Freedom of Association and the Right to Organise is similarly fictitious."

1.14 Another example is Australia’s policy of mandatory detention for refugees and asylum seekers. This represents a radical departure from any other country that has signed Universal Declaration of Human Rights (UDHR).

1.15 Former Prime Minister, Malcolm Fraser succinctly summarises the state of affairs in relation to these breaches in a speech delivered on the Inaugural Harmony Day Oration at Murdoch University, 21 March 2001.

"It would seem clear that our approach to the problem is indeed in breach of the Universal Declaration of Human Rights Conventions. It would seem to be in breach of the International Covenant of Civil and Political Rights. This view is supported by the Human Rights and Equal Opportunity Commission. It is also in breach of the Convention of Rights of the child. Current practice runs counter to UNHCR guidelines on detention. Australia is seriously out of step in these matters.”

Note: VIEU’s Submission addresses the key questions posed in the Discussion Paper: Have your say about human rights in Victoria

2    IS CHANGE NEEDED IN VICTORIA TO BETTER PROTECT HUMAN RIGHTS?

2.1 VIEU believes that Victorians have a right to a Charter of Human Rights

2.2 Human rights are non-negotiable. Human rights are the inalienable fundamental basis to any person’s existence and override any political ideology and the wishes of powerful special interest groups. The examples cited previously illustrate the ‘politicisation’ of human rights in the absence of legislated protection. Moreover, these examples
highlight the powerlessness of citizens in not having redress to a complaints process or legal remedy.

2.3 The Victorian Government is responsible for health, education, public housing, child protection services, regional development, occupational health and safety, community services, police, water, aboriginal affairs, energy et al. These are key areas in relation to delivery and protection of basic rights and minimum standards of living. In many of these areas, Victoria currently has less than acceptable standards. For example;

- In any one night in Victoria there are 3,000 homeless people being denied the right to affordable public housing
- In our schools there is a clear shortage of support staff for teachers with students with special needs. These students are being denied the right to a quality education
- The educational outcomes of Aboriginal students in Victoria are lower than those of non-aboriginal students. The Victorian Government does not contribute financially to indigenous education. Many indigenous students are being denied access to quality education let alone the successful completion of that education.
- The State Government as an employer can demonstrate leadership in the area of industrial relations by preserving and improving the entitlements, conditions and rights that will be removed by the proposed Federal Government’s Industrial Relations legislation. (It should be acknowledged that the recent commitments made by the State Government in this area to support those workers who are employed under state-based legislation are pleasing, however a large percentage of Victorian workers are outside of this protection.)
- With an increasingly ageing population there needs to be a sustained commitment to adequate and affordable access to health services for these Victorians.

2.4 The need for a Victorian Charter is thus compelling. It will enshrine a minimum standard in the community of what individuals have a right to and what each can expect from their government.

2.5 VIEU believes that any society should be judged against the measure of how well it protects and supports those who are the marginal and vulnerable within it. A Charter of Human Rights would therefore assist in protecting the rights of the most vulnerable in our community.

2.6 A Charter would see the creation of a social context whereby legal and human rights literacy was advanced. Citizens would become aware of their rights, empowered by the knowledge of the historical development of UN/ILO conventions and Australia’s obligations under such international treaties. Such awareness would also be applied in the federal area. More importantly in our view, a Charter would make a valuable contribution in making Victoria a more robust democracy and
enhance the level of government accountability which is currently sadly diminishing.

2.7 Finally a Charter of Human rights would enable Australians to move closer to countries we like to compare ourselves to. We note that Australia is the only western country that does not have a Charter of Human Rights of some sort. What is more, we would not be permitted to join the European Community because we fail to have a basic prerequisite — a bill of rights.

3 IF CHANGE IS NEEDED HOW SHOULD THE LAW BE CHANGED TO ACHIEVE THIS

VIEU supports the change to be administered as an act of parliament as per the New Zealand and ACT model.

3.1 VIEU wholeheartedly supports the Government’s position noted in the Statement of Intent, “A Government should be able to pass laws and make policies that effect human rights on the basis that it will be accountable for those actions through the ballot box”.

3.2 In relation to the monitoring of human rights, VIEU sees merit in the Canadian model in that the courts, rather than parliament reviews legislation and has the power to declare it invalid if it breaches the Charter of Human Rights.

3.3 The Union supports a statutory body having responsibility for the receiving and investigating of complaints and the power to enforce remedies. To this end VIEU envisages a broadening of the role of the existing Equal Opportunity Commission.

3.4 VIEU supports the appointment of a Human Rights Commissioner who would report annually to parliament

3.5 More specifically, VIEU believes the critical function of the Human Rights Commission includes:

- the power to review the operation of Victorian legislation and common law to assess consistency with human rights
- advise the Government on human rights issues generally
- fulfil an educative role in the community particularly in schools
- the power to conciliate and arbitrate on complaints/breaches
- the power to conduct systemic investigations
3.6 In addition, if the complaint is not resolved by the Commission the next appropriate step would be the option to take the matter to the Victorian Civil and Administrative Tribunal (VCAT). VCAT's jurisdiction could be extended to include a Human Rights Division. The VCAT model is preferred for its affordability compared to the courts, which due to costs, would render the complaints process prohibitive for ordinary Victorians.

3.7 VIEU supports the establishment of a Human Rights parliamentary committee to oversee compliance of all current and proposed legislation.

3.8 VIEU supports the establishment of a Human Rights Advisory Committee made up of key stakeholders representing a cross-section of the community.

4 IF VICTORIA HAD A CHARTER OF HUMAN RIGHTS WHAT SHOULD IT PROTECT?

4.1 VIEU firmly believes that at a minimum a Charter of Human Rights should include basic rights as expressed in the:

- Universal Declaration of Human Rights (UDHR)
- International Convention on Civil and Political Rights (ICCPR)
- International Convention on Economic, Social and Cultural Rights (ICESCR)

4.2 It is also our view that Charter ought to include reference to all other Conventions and Treaties that Australia is a signatory to.

4.3 The VIEU strongly believes that contrary to the Statement of Intent, the Committee should look at the rights contained in the International Convention on Civil and Political Rights and the rights contained in the International Convention on Economic, Social and Cultural Rights

4.4 The reason for the separation of the two Conventions, CCPR and ICESCR dates back to the politics of the Cold War rather than the notion that human rights are independent of each other. The VIEU notes the following Declaration adopted at the Vienna World Conference on Human Rights in 1993.

'All human rights are universal, indivisible and interdependent and interrelated. The international community must treat human rights globally in a fair and equal manner, on the same footing and with the same emphasis. While the significance of national and regional particularities and various historical, cultural and religious backgrounds must be borne in mind, it is the duty of States, regardless of their political, economic, and cultural
systems, to promote and protect *all* human rights and fundamental freedoms.

4.5 An approach that distinguishes between rights contained in ICCPR and ICESCR will weaken the moral authority of the government in advocating for human rights legislation.

5. **WHAT SHOULD BE THE ROLE OF INSTITUTIONS OF GOVERNMENT IN PROTECTING HUMAN RIGHTS?**

Please refer to our comments in point 5.

6. **WHAT SHOULD HAPPEN IF A PERSON’S HUMAN RIGHTS ARE BREACHED?**

6.1 VIEU believes that if human rights are breached, affordable and accessible recourse to rectify or remedy the breach should be made available to all citizens.

6.2 As already stated VIEU supports the Equal Opportunity Commission under the direction of the Human Rights Commissioner the power to investigate breaches. If the complaint is not resolved by the Commission, VCAT would be the next logical option or through the court system if appropriate.

6.3 The remedy would obviously depend on the nature of the complaint. For example:

- A complaint could warrant a systemic investigation by the Commission. The outcome of which could be a recommendation to the government to rectify the breach. An example would be if a prisoner rights group claimed that prisoners are denied the right to vote. The Commission would investigate the 'systemic complaint' and make recommendations to the parliament.

- An elderly person in a private nursing home can lodge a complaint that he/she is being denied the right to a healthy, safe and clean environment. An appropriate remedy would be the Commission ordering the nursing home to meet a certain standard and awarding the individual financial compensation for pain and suffering.

- A 35 year old women is fired by her employer when he became aware that she had a criminal record for a crime committed (prostitution) when she was 18 years of age. The women can lodge a complaint with the Commission. The remedy is either reinstatement or financial compensation for loss of earnings.
7. WHAT WIDER CHANGES WOULD BE NEEDED IF VICTORIA BROUGHT ABOUT A CHARTER OF HUMAN RIGHTS?

7.1 When being sworn in by the Governor all Government ministers should commit to being guided by the Charter of Human Rights in their roles as servants of the people.

7.2 All state government departments should be required to publish annually details of their compliance with the Charter of Human Rights.

8. WHAT ROLE COULD THE WIDER COMMUNITY PLAY IN PROTECTING AND PROMOTING HUMAN RIGHTS?

8.1 The community is deserving of a significant role in both the protection and promotion of human rights. However this can only be possible if the community is educated on the Charter of Human Rights, its practical application and what avenues are available to people/communities if their rights are breached.

8.2 Schools should be encouraged and resourced to integrate human rights education and education regarding the Charter into school curriculum.

8.3 The Government must provide adequate funding to relevant community groups to develop materials to promote the Charter of Human Rights Charter and how it relates to the lives of people in their particular organisations. For example, Migrant Resource Centres.

8.4 As already stated, the VIEU supports the establishment of a Human Rights Government Advisory Body with representatives from key community groups.

9. WHAT OTHER STRATEGIES ARE NEEDED TO BETTER PROTECT HUMAN RIGHTS?

9.1 A well funded, ongoing public awareness and media campaign is critical. Along side this, is the need to adequately resource the education unit of the Equal Opportunity Commission and VCAT.

10. IF VICTORIA INTRODUCED A CHARTER OF HUMAN RIGHTS WHAT WOULD HAPPEN NEXT?

10.1 The VIEU acknowledges the progressive realisation of all areas of Human Rights. However we remain firmly of the view that the human rights included in the Charter should be broader than those stated in the Government’s Statement of Intent. (ie inclusion of both ICCPR and ICESCR).
10.2 The VIEU would therefore support an action plan that commits to meeting the objectives of a Human Rights Charter over a four-year period with an initial review within the first two years.

10.3 Review of the Charter and community consultation should be ongoing. The committee is an appropriate tool to monitor the implementation of the Charter, provide feedback and recommendations to the Attorney General on an annual basis.
STATEMENT OF VALUES

The Victorian Independent Education Union has prepared this statement of values in order to guide the work of the union and its officers and representatives.

As the union representing staff in Victorian non-government education our chief goal is to continually improve the wages, conditions and job security of employees working in our sector and to improve the status of teachers and those working in education.

We are also called on to vote, provide feedback and comment on a range of other issues. We realise that the range of values and beliefs of VIEU members on many issues will be as diverse as our membership. With this in mind, we have formulated this statement of values to hopefully reflect areas of broad consensus among members.

Section 1 - Fairness, Equality & Opportunity In The Community

VIEU believes:

1.1 in a democratic Australia, which values all citizens.
1.2 in the right of all citizens to employment and a decent standard of living, and to a fair share of the nation’s wealth.
1.3 that every Australian must have access to free, quality public health care, education and aged care, regardless of their socio-economic circumstances.
1.4 that families and individuals must be guaranteed decent minimum living standards through the social security and taxation systems.
1.5 that all Australians must have access to decent and affordable housing.
1.6 in the right of all Australians to a secure and dignified retirement.
1.7 that indigenous Australians are the original owners of our land, and that reconciliation between indigenous and non-indigenous Australians is a vital goal.
1.8 in a multi-cultural and multi-faith tolerant Australia.
1.9 that all Australians must be treated equally by the law and have access to legal representation as a right.
1.10 in sustainable development that protects our environment.
1.11 that governments have a central role in ensuring fairness, equality and opportunity throughout the community.
1.12 in promoting peace and peaceful resolution of conflict.
1.13 that discrimination in all forms including that based on race, religion, ethnicity, gender, age, disability, marital status, sexual preference and political beliefs is unacceptable and should be opposed.
1.14 in Australia’s independent participation in international cooperation to promote peace, security, human rights, labour standards and prosperity through fair trading arrangements.

Section 2 - Security & Fairness In The Workplace

VIEU believes:

2.1 that workplaces should be safe, secure, healthy and free of harassment, intimidation, violence and discrimination.
2.2 that workers have a right to a decent wage and fair working conditions.

2.3 that all workers have a right to secure employment and protection against unfair dismissal or unfair treatment by the employer.

2.4 that workers have the right to join and be represented by a union.

2.5 that all employees have the right to collectively bargain.

2.6 that workers have the right to withdraw their labour.

2.7 that workplace union representatives should have rights enabling them to carry out their role.

2.8 that unions have the right to recruit, organise and represent workers.

2.9 that workers should be consulted and informed about issues affecting their employment.

2.10 that Australian businesses and their executives have a responsibility to engage in legal and ethical conduct and environmentally sustainable practices at all times with employees, stakeholders and the community.

2.11 that working parents must have access to good quality, affordable childcare.

2.12 that working parents have a right to employment standards that enable them to manage work and family.

2.13 that working parents must have the time and opportunity to form and maintain relationships with their children that foster the child's development.

2.14 that workers must have the time and opportunity to meet their responsibilities for those that they have carer responsibilities for.

2.15 that officers and representatives of VIEU should conduct themselves in a manner consistent with this Statement of VIEU Values.

Section 3 - The Education Sector

VIEU believes:

3.1 in a strong, well-resourced and viable public education system.

3.2 that parents and communities have the right to establish non-government schools.

3.3 that new schools should only be opened and funded where a demonstrated need exists, where the opening of the school would not severely impact on existing schools and where the school can demonstrate that it is financially and educationally viable.

3.4 that governments have a responsibility to provide funding to non-government schools and this should be provided to schools on the basis of need.

3.5 that non-government schools are, and should be accountable to the Australian community and governments to ensure that appropriate educational and industrial standards are being met.

3.6 that the students who attend non-government schools receive quality education that is consistent with state curriculum and national goals and expectations of schooling.

3.7 that staff employed in non-government education are entitled to the same industrial and legal rights as all Australian employees, including full protection under Anti-Discrimination and Equal Opportunity laws.

3.8 that education involves a partnership between teachers, other school staff, students, parents, school employers, communities, business, system authorities and governments. This partnership recognises the expert knowledge and professionalism of education staff and respects the legitimate interests and rights of other members of the partnership. This partnership can only be successful if respectful relationships are established and fostered between all parties.
Four-year review of the Charter of Human Rights and Responsibilities

> Position Paper

19 May 2011
Four-year review of the Charter of Human Rights and Responsibilities

Victorian Equal Opportunity and Human Rights Commission position paper

The Attorney-General has announced a review of the Charter of Human Rights and Responsibilities Act 2006 (the Charter). A Parliamentary Committee – the Scrutiny of Acts and Regulations Committee (SARC) – is undertaking the review.

The review is an important milestone for the Charter and for our community. It will give Victorians an opportunity to have their say about the importance of human rights, and to suggest ways to strengthen the Charter to enhance the protection of our rights, improve service delivery and hold government accountable.

This position paper briefly sets out the Commission’s views on some of the key issues SARC will consider. These views are based on the evidence that the Commission has collected over the past four years. This evidence has been gained through our annual reporting process, which has been accompanied by extensive stakeholder engagement. These are all documented and can be found on the Commission’s website at www.humanrightscommission.vic.gov.au/charterreview. In addition, evidence has been gathered through our engagement at the community level, education and training sessions, our legal intervention function and through our policy interactions with public authorities. This evidence will inform the Commission’s submission to SARC.

How can I have my say?

The simplest way to participate in the review is to make a submission.

Submissions are a way of telling SARC your ideas or opinions about the Charter. Submissions can be anything from a personal story about how the Charter has affected you, to a research paper complete with footnotes and bibliography.

It does not matter if you only have one or two points to make; your submission is just as important and will be considered by SARC.

What is my submission used for?

Submissions will help SARC understand different views and experiences of the issues it is considering. Information in submissions is used by the Committee to help develop its report and recommendations to the Government.

SARC will consider all the submissions in light of the terms of reference for the Charter review (at www.parliament.vic.gov.au/sarc/article/1448). These terms of reference set out the scope of the review, and are the key questions SARC will be considering.
How do I make my submission?

There is no particular format to follow. It can be a short letter or email, or a longer formal document. All that matters is that you express your views.

Submissions can be made by:
- Mail: Parliament of Victoria, Melbourne, 3002
- Email: charter.review@parliament.vic.gov.au

Submissions should be addressed to Mr Edward O'Donohue MLC, Chairperson, Scrutiny of Acts and Regulations Committee.


The closing date for submissions is Friday 10 June 2011.
Commission position on key issues in the four-year review

This paper sets out the Commission’s preliminary position on the issues under consideration in the four-year review of the Charter.

The Commission supports the Charter because of its demonstrated value to the people of Victoria. The last four years have shown that government services are better services when they put human rights at the centre of their day-to-day work – and the Charter facilitates this happening. No person will be worse off when their rights are observed, and no public service is diminished by treating people with dignity and respect.

1. Victorians want human rights protection

The Commission’s consultations with the Victorian community over the past four years have confirmed that people across the state value human rights and want their rights protected in law. The views of the community and our experience working with the Charter have informed our understanding of the Charter, the significant role it has already played in protecting the rights of Victorians and how it can be enhanced. The evidence indicates that the Charter helps public authorities to put citizens at the centre of their concerns in policy and service delivery.

2. Ensuring all human rights are protected by law

Currently, the Charter protects 20 rights and freedoms, including the right to vote, freedom of assembly, freedom of religion, protection of children and protection of the family. These are essential entitlements of all Victorians and should remain in the Charter.

The four-year review provides an opportunity to deliver increased protection. In particular, the Charter should include:

- All civil and political rights that Australia has signed up to under international treaties, unless the issue is a purely federal matter, such as immigration.
- The right to self-determination. In 2010 the Commission conducted a statewide consultation about the issue of Aboriginal self-determination, which is to be included as part of the review, and based on that evidence the right to self-determination should be included in the Charter.
- The protection of economic, social and cultural rights should be included in the Charter as they provide access to essential services such as adequate education, housing and health. Many people in the community consider these rights to be the most basic needs for people to participate fully in the community, particularly for Indigenous people, older people, children and families, and people with disability.
3. Improving service delivery through transparency and accountability of public authorities

People want the government to be accountable to the standards set by the Charter. The Charter should include:

- Mandatory compliance reporting to help track the progress of government and ensure transparency. Mandatory reporting exists for other laws concerned with better government such as multiculturalism, freedom of information legislation, occupational health and safety, and environmental laws. An integrated reporting framework would not be an additional burden on government but would ensure accountability and transparency to the community.

- The Commission's independent annual report to the Attorney-General on the operation of the Charter should be maintained to ensure transparency, oversight and a consistent vehicle by which systemic issues can be highlighted to parliament.

- A human rights audit function which allows the Commission to review public authorities for human rights compliance. Currently, the Commission may help a public authority in reviewing policies and practices for consistency with human rights only when an authority asks for a review. The experience in the ACT has shown that human rights auditing by the Commission can help find solutions to day-to-day practice issues. This would be of great benefit to services in Victoria by helping to identify potential problems and fixing them before they escalate to a case before the courts.

- Coverage for all public authorities. The law should no longer allow some organisations, such as the Parole Board, to be excluded from the Charter's operation. After four years all public authorities have had time to ensure they comply with the Charter and respect the human rights of Victorians.

4. Strengthening the role of Parliament

The community wants human rights protections, but does not want the role of the Parliament to be usurped.

- An important part of the Charter is the requirement that when the Government wants to bring legislation to Parliament it must first make sure that it meets human rights standards. This is reflected in a 'statement of compatibility'. This tells Parliament how the law complies with human rights. This process must be maintained. Statements of compatibility need not be overly long or legalistic, but they should be comprehensive and reflect the full-range and seriousness of the issues being considered.

- If an override declaration is maintained, the Charter should recognise (even if a future Parliament cannot be bound) that some rights under international law, such as the right to life and the freedom from torture, can never be suspended. When an override declaration is made, the Government should also be required to report back to Parliament at least every twelve months on the reasons for its continuation. This would help Parliament to monitor the actions of the Government and ensure that rights are reinstated as soon as possible.
• There should be special oversight where an override declaration is not used but statements nevertheless indicate that some elements of a law are incompatible with Charter rights. A simple way to do this would be to introduce the procedure that SARC comment on the Bill and propose ways the legislation could least restrict human rights, before the Bill moves through the Parliament.

• SARC must be adequately resourced to fulfil its mandate of providing robust, transparent and comprehensive human rights assessments. Consideration should be given to establishing a specialist human rights sub-committee.

5. Ensuring resolution of issues for Victorians

The community wants timely, accessible and effective ways to raise its concerns about breaches of human rights with Government and have those concerns addressed.

• The Charter should allow for conciliation of complaints about alleged breaches of the Charter by the Commission, as the authority with expertise in the Charter and an established dispute resolution service for equal opportunity matters. This would allow for coverage of all public authorities and help people whose rights are not observed to get quick resolution of their problems.

• Victorians should have a right of action so they have recourse against government when it breaches their human rights, similar to other circumstances where the government has not met its duties such as in contract, negligence or occupational health and safety. The Charter should inform the development of accreditation schemes, service standards and other measures to improve the quality of services, but it should also be enforceable to ensure compliance and provide an opportunity for breaches to be addressed where individual citizens are adversely impacted.

• The Charter should allow the redress to match the seriousness and the results of the breach of the law. As with other areas of law, and other human rights jurisdictions, the courts should have the discretion to award damages where it assesses it is an appropriate remedy.

• There should be a continued commitment for financial support from Government for education and advocacy work so that the community can get the most out of the Charter.

6. The role of the Courts and helping develop the law

As with other areas of law the Courts have an essential role in developing Charter jurisprudence and interpreting legislation by hearing and determining matters that raise Charter issues, and deciding when government authorities have breached a person’s human rights.

• The Courts play a proper role in interpreting legislation. The Charter should continue to ask the Courts to interpret legislation consistently with human rights to the extent that is it possible to do so on the ordinary meaning of the words.

• The Commission’s intervention role should be maintained at this early stage in the development of Charter case law. The Commission conducted a review of our intervention function which revealed that the courts have found this role to be useful and have benefited from the Commission’s specialist knowledge. This issue should be considered again at the eight-year review in light of the development of the jurisprudence.
• Notification of cases raising Charter issues in the superior courts should also be maintained, as it not only alerts the Government and the Commission to Charter cases and therefore facilitates their involvement, but also helps put people on both sides of cases in touch with the Commission to get information about the Charter and how it operates. However, there should be discretion for courts to waive this requirement in certain circumstances so it does not cause undue delay.

7. The costs and benefits

The community recognises that investment in human rights is an investment in the long-term social and economic wellbeing of Victoria, and that government should be accountable by providing evidence of the immediate and long-term benefits of that investment.

• The Commission supports scrutiny of the Charter and how it has been operating. This analysis should recognise that we are only four years into the operation of the Charter and this legislation is about long-term cultural change.

• Securing more equitable, fair and accessible services for all Victorians has the potential to deliver future cost savings through risk management and directly reducing economic and social disadvantage within our community.

• The Charter also forms part of a broader regulatory system concerned with the quality, transparency and accountability of government. In common with freedom of information laws, the Ombudsman, the Auditor-General and others, the investment associated with the Charter contributes to democratic and community benefits that are not easy to quantify on a traditional cost–benefit model.