Submission to the Review of the Victorian Charter of Human Rights and Responsibilities

1. The Charter should reflect and recognise the relevant International law concerning human rights to the fullest extent.

2. Article 3 of the Victorian Charter should contain expansive and comprehensive definitions of ‘human life’ to include ‘human persons’ and ‘human beings’. This could include human life, either born, unborn, or in suspended development. Such a definition should be regardless of viability inside or outside the womb. It should recognise unborn children and ‘pre-viable’ embryos as human beings, and recognise that human life is an unbroken continuum from conception to natural death. Article 3 does not define ‘human’, ‘human life’, ‘human persons’ or ‘human beings’. The definition of human life should be sufficiently broad to include frozen embryos, living embryonic stem cells and all other forms of human life that exist independently, in laboratories or in human wombs.

Amendments should be made to Article 3 of the Charter of Human Rights and Responsibilities so that ‘person’ means a human being’ be amended to ‘person’ means a human being from conception until natural death’ This would make the Charter consistent with the Convention on the Rights of the Child, which is the International Covenant signed by the most countries of any International Covenant. The High Court is incorporating International Instruments and human rights in its decisions, and such a direction incorporates an International Covenant into Victorian domestic law, instead of having a Victorian Charter which conflicts with an International Covenant. This would also be consistent with Article 17 of the Charter subsection (2) which states that “Every child has the right, without discrimination, to such protection as is in his or her best interests and is needed by him or her by reason of being a child.” Without discrimination, it is suggested, would include discrimination on the grounds of age and place of residence. The unborn child is the youngest member of the species of human beings, and its place of residence is particularly vulnerable for him or her. Children need special safeguards and care before as well as after birth.

3. Article 9 of the Victorian Charter is not in any way inconsistent with a broad interpretation of human life, incorporating pre born and pre viable ‘human persons’ and ‘human beings’ under the definitions of Article 3.

The Convention on the Rights of the Child states, in its preamble: "Bearing in mind that, as indicated in the Declaration of the Rights of the Child, “the child, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection, before as well as after birth” The Charter fails to include legal protection for children before as well as after birth. While Article 9, the “Right to Life” states that “Every person has the Right to life and has the right not to be arbitrarily deprived of life” the word “person” is defined as meaning a “human being.”

4. International Law has traditionally recognised the rights and liberties of unborn children, and included them in the definitions of human persons and human life.
5. Other Victorian legislation should be consistent with an amended Article 3 of the Victorian Charter. The legislation should include a definition of ‘human life’, ‘human persons’, and ‘human beings’ as described under paragraph 2 of this submission.

6. Victorian legislation of critical importance to human rights, notably the Abortion Law Reform Act 2008, fails to acknowledge the human rights of unborn children. S.4 allows abortion for any reason up to 24 weeks gestation. This could include eugenic reasons, or racial, gender or disability based reasons. Such reasons could amount to legal discrimination contrary to rights for the disabled, equal opportunity legislation, or federal and state racial discrimination legislation. S.5 allows abortion for any reason after 24 weeks gestation. This is further to consultation by a medical practitioner with another medical practitioner. Both medical practitioners are required to consider the current and future psychological, physical, social and medical issues of the pregnant woman. This legislative regime allows great potential for human rights abuses against ‘viable’ and ‘pre-viable’ unborn children. The second medical practitioner may be an abortionist with a financial interest in any decision made. Effectively, the professional opinion of two medical doctors may allow abortion for any reason to occur up to birth in Victoria. S.7 of the Act allows a medical practitioner to order a nurse or pharmacist to administer or issue abortifacient medicines to a woman who is more than 24 weeks pregnant. There is no effective right for a nurse or pharmacist to refuse to comply with or to not otherwise accommodate such a demand. Similarly, under s.8 of the Act, this legislation also fails to recognise the religious and conscientious freedoms of objectors to abortion who work in health and related fields of employment. It requires them to publicly declare their conscientious objection, and to refer a woman to a medical practitioner without conscientious objections. This forces the conscientious objector to declare their position, and be party to an action about which they may wish to have no involvement. This is inconsistent with Article 14 of the Charter.

s.8 of the Act negates the freedom of thought, conscience, religion and belief and makes medical practitioners agents of the State. They cannot make a decision and act in accordance with their conscience. If they cannot perform an abortion due to their conscientious objection, they cannot, in good conscience, refer the mother to an abortionist. They are legally required to act against their conscience. Subsections (3) and (4) also require medical practitioners and nurses to act against their conscience. They cannot decide and act based on their medical judgment and conscience.

Article 14 of the Charter is derived from Article 18 of the International Covenant of Civil and Political Rights — Freedom of thought, conscience, religion and belief, and sets out:

(1) Every person has the right to freedom of thought, conscience, religion and belief, including -
   (a) the freedom to have or adopt a religion or belief of his or her choice; and
   (b) the freedom to demonstrate his or her belief in worship, observance, practice and teaching, either individually or as part of a community, in public or in private.
(2) A person must not be coerced restrained in a way that limits his or her freedom to have or adopt a religion or belief in worship, observance, practice or teaching.

7. Other legislation, including the Assisted Reproductive Technologies Act 2008, enabling assisted reproductive technologies and embryonic stem cell research, fails to acknowledge the human rights of human life from conception. Section 3 of this Act defines 'embryo' as a 'discrete entity' that has arisen 'either from the first mitotic division of an oocyte after fertilization, or from any process that initiates the organised development of a biological entity with a human genome, prior to eight weeks after the first mitotic division.' Enabling legislation like this allows embryonic human life to be used as a commodity. It establishes an arbitrary and artificial division between unborn (or test tube derived) human life at various stages of development. It denies all human rights to the earliest forms of human life. Such human life may be created, used, and disposed of for any reason whatsoever, without any protection under the current Victorian Charter of Human Rights and Responsibilities Act 2006.

8. The Charter includes a right of recognition and equality before the law; and the right to life. However, by the Savings Provision under Article 48 and the definitional gap in Article 5, the definition of human life is restricted to human persons capable of breathing unassisted outside a womb, and this excludes all unborn human life.

9. The limited definition of human life in Victoria, in conjunction with the practical effect of implementing the Abortion Law Reform Act has resulted in a corruption of the protective safeguards that should protect vulnerable human life. The consequence is that surviving aborted babies are allowed to die even when viable and breathing outside the womb unassisted. Aborting doctors are not held to account by any limiting legislation to protect aborted babies born alive, or legally effective and enforced provisions of the Charter of Human Rights and Responsibilities Act 2006.

10. In refusing to acknowledge the humanity of unborn children, the Charter in its current form is inconsistent with International Conventions and Treaties. Such documents of the UNHCR were drafted in the 1940s and 1950s, with no caveats or qualifications against the definition of a right to life for all humans.

11. "Article 48 Savings provision - Nothing in this Charter affects any law applicable to abortion or child destruction, whether before or after the commencement of Part 2." This makes a mockery of human rights to exclude particular groups of human beings from a Charter of Human Rights and Responsibilities. This Article conflicts with the right to life of unborn children.

Thank you for considering this submission.

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