Dear Mr O’Donohue,

Further to the evidence we presented at the hearing on Thursday 21 July of the Scrutiny of Acts and Regulations Committee regarding the Victorian Charter of Human Rights and Responsibilities, I am pleased to provide some supplementary information and answers to the questions taken on notice.

**Question 1 (from Chairman Mr E. O’Donohue):**

Many other submitters, both in the first three days of hearing and also in written submissions, have put to the committee that the dialogue model, as it is described, does not undercut the separation of powers because there is no obligation on the Parliament to bow to the will of the judiciary. What is your response to that?

**Supplementary answer 1:**

The Victorian Charter of Human Rights and Responsibilities represents a significant shift from parliamentary sovereignty towards judicial sovereignty. The latter is fundamentally undemocratic because judges are not elected.

The “dialogue model” purports to preserve parliamentary sovereignty by restricting the courts to making a “declaration of inconsistent interpretation”. However the process triggered by such a declaration is biased towards the Supreme Court. The Attorney-General is put in a situation of being accountable to the Court.

Parliament is treated like a naughty boy being hauled before the school principal to account for his misbehaviour.

The “dialogue model” gives unelected judges the privilege of telling us what our so-called rights are, whereas parliament is cast in the role of taking away our so-called rights.

**Question 2 (from Ms C. Campbell):**

In recommendation 11 you state that the Charter inadequately protects freedom of religion. What would you consider to be adequate protection of freedom of religion? Do you consider this right should be subject to any limitations?
Answer 2:

The *International Covenant on Civil and Political Rights* (ICCPR) in Article 18 provides a helpful framework:

*Article 18*

1. Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.

2. No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice.

3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.

4. The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions.

However, as with all such general statements of “rights”, their generality implies uncertainty and ambiguity and a need for interpretation.

Limitations to protect “public safety, order, health, or morals” are less likely to be contentious. The problems are most likely to arise with protection of “the fundamental rights and freedoms of others” if these are interpreted to include a supposed right to “non-discrimination”. The supposed “right” of others to “non-discrimination” should not override the freedom of a person to adopt and manifest and practise his or her religion or beliefs in public or private.

**Question 3 (from Mr D. O’Brien):**

What is your view of an expansion of the charter into economic, social and cultural rights?

**Answer 3:**

The *International Covenant on Economic, Social and Cultural Rights* (ICESCR) includes numerous aspirational statements dressed up as rights.

Article 12 asserts a “right” to “the enjoyment of the highest attainable standard of physical and mental health”, that is to be *healthy*.

Article 11 asserts a “right” to “continuous improvement of living conditions”, that is to become *wealthy*.

Article 13 asserts a “right” to “education”, presumable to make one *wise*. 
So this covenant seems to assert a right to be healthy, wealthy and wise – and if I’m not, the government or someone else is at fault.

The charter should not be expanded to embrace such nebulous aspirational statements dressed up as rights.

Yours sincerely,

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