

Mr Edward O'Donohue,
MLC Chair,
Scrutiny of Acts and Regulations Committee
Parliament House
Spring Street
EAST MELBOURNE VIC 3002
Email: charter.review@parliament.vic.gov.au

Dear Mr O'Donohue,

Re: Review of *Charter of Human Rights and Responsibilities Act 2006* (Charter)

Thank you for the opportunity to make this submission on behalf of the 'Doctors in Conscience' group. We are group of Victorian doctors that was formed in 2008 in response to the coercive anti-conscience clause contained within the Victorian Abortion Law Reform legislation. We are from a range of medical specialties, with diverse backgrounds, representing various faiths and none. Our website can be viewed at: www.doctorsconscience.org

In regard to your committee's invitation for submissions to comment on the "*options for reform or improvement of the regime for protecting and upholding rights and responsibilities in Victoria*", our association wishes to address one particular area of concern.

The freedom of thought, conscience, religion and belief.

Despite Section 14 of the Charter describing the idea that "every person has the right to freedom of thought, conscience, religion and belief", in 2008 Victorian health-workers suffered an unjust curtailment of their basic human rights when the Abortion Law Reform Act was passed enforcing health workers to act against their conscientious beliefs and to participate in the taking of human life in the form of abortion.

This legislation has had a terrible impact on many health-workers in Victoria including many members of our association. It has led to the ongoing fear of professional sanction by registering bodies and the possibility of civil litigation. There has been the threat by medical defence organisations to revoke the professional indemnity insurance of doctors for failing to act against their conscience, thereby impacting on their livelihood and exposing them to significant financial penalties.

The result has been that many doctors have felt the need to considerably modify their practices. Some have left the state of Victorian in order to continue their work unimpeded by these Victorian human rights anomalies. Others have had to significantly restrict their medical practice, limiting the type of patients they see, the times at which they consult and the types of consultations they conduct. They have been forced to declare their conscientious position publically, as recommended by the Victorian AMA, impacting on their rights to privacy and the freedom to hold an opinion without interference. In some instances this has led to difficulties and unnecessary complications and arrangements in the working relationships with colleagues.

This coercive element in regard to conscience that now exists within Victoria's Abortion legislation is out of step with all other legislatures in Australia and is at variance with the Good Medical Practice Guide of the Australian Medical Council, the code of ethics of the Australian Medical Association and the ethical guidelines of the National Health and Medical Research Council.

The curtailment of the freedom of conscience in this instance is also contrary to the 1948 Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights (ICCPR). Both of these documents, to which Australia is a signatory, recognise the centrality and importance of the freedom of conscience to the dignity and fulfilment of the human person as well as the common good of society. They also recognise the fundamental and non-derogable nature of the right to a freedom of conscience, which according to Article 4 of the ICCPR, cannot be removed nor derogated by the state 'even in time of public emergency which threatens the life of the nation'.

The gravity and regard in which the international community upholds the freedom of conscience, as is reflected by these documents, contrasts starkly with the Victorian Charter's terrible failure to protect these basic human rights for Victorian health-workers.

Our association contends that the reason that such coercive and anti-conscience legislation that was able to be enacted in Victoria is directly attributable to two main areas of anomaly and weakness within the Charter itself.

We submit that the Charter should be revised in the following manner to better protect the freedom of thought, conscience, religion and belief for all Victorians in the future.

1. The strengthening of the protection of the freedom of thought, conscience, religion and belief in accordance with the provisions within the ICCPR.

The fundamental and core freedoms of thought, conscience, freedom and religion which are enshrined by Article 18 of the ICCPR and reinforced by Article 4 of the ICCPR.

In contrast, section 7(2) of the Victorian charter seeks to limit the freedom of conscience without the clarity of Article 18(3) of the ICCPR and by regarding it as merely one of many competing rights. However, to coerce the exercise of conscience, as exemplified in the Victorian Abortion legislation, is to inflict a fundamental harm to the dignity, wellbeing and fulfilment of the human person and contradicts the very heart of the protection of human rights.

The freedom of conscience, in line with the ICCPR, should be accorded a special status within the Charter and be regarded as fundamental and non-derogable. Its limitations would be better served by replacing section 7(2) with wording in accordance with Article 18(3) of the ICCPR. That is:

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.

2. The removal of Section 48 Savings provision.

This section of the Charter states that “Nothing in this Charter affects any law applicable to abortion or child destruction, whether before or after the commencement of Part 2.” This addendum to the Charter has inadvertently undermined its objective to protect and promote human rights in Victoria. It resulted in the inadequate scrutiny of the Abortion legislation in 2008 and its broader compatibility with the freedoms otherwise protected by the Charter.

We believe that this section was not intended to result in the compulsion of doctors to act against their reasonable and conscientiously held conviction that abortion involves the direct and intentional ending of a human life, and enforce their participation in this process. However, this is what has resulted from the Abortion Law reform Act 2008 and it reveals the unnecessary and dangerous breadth of this provision and its vulnerability for interpretation contrary to the intentions and objectives of the Charter as a whole.

This section has also resulted in the stifling of important debate concerning issues of ‘abortion’ and ‘child destruction’ as they pertain to the right of access to proper care and information for vulnerable pregnant women and for their protection against coercion from third parties. It also has hindered serious debate about the care obligated to those children born alive following ‘failed abortions’.

In this way it, contrary to the intentions of the Charter, it has inadvertently resulted in the diminishing of protections for some of our most vulnerable members. It has also helped to undermine one of the most fundamental and basic human rights, the freedom of conscience. It should therefore be removed from the Charter to prevent any future abuses and to redress the harm it has already caused.

In conclusion, the Charter in its current form is unworthy of support and needs considerable improvement to better protect the basic human rights of all Victorians. This submission has tried to focus on only one area of concern, the freedom of conscience, however there are other areas of concern that we hope will be addressed by other submissions which include better protection for the rights of the unborn and vulnerable pregnant women as well as greater protection for religious freedom.

We thank you for the opportunity to make this submission.

Yours Sincerely,

Dr Eamonn Mathieson
On behalf of the Doctors in Conscience group

