

Submission
of the
Mornington Peninsula Human Rights Group
to the
Inquiry into the Charter of Human Rights and Responsibilities

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Introduction

The **Mornington Peninsula Human Rights Group** is a small local group of citizens most of whom live on the Peninsula and who since November 2005 have worked to promote understanding of and respect for human rights.

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BENEFITS OF THE CHARTER

The benefits of Victoria's *Charter of Human Rights and Responsibilities Act 2006* from our point of view include:

1. A Public Symbol

The Charter is a public symbol for us of belief in the inherent dignity of the human person and that all people have certain fundamental human rights. This belief is classically expressed in the *Universal Declaration of Human Rights* (1948) and given legal effect in many international and national charters. Unfortunately, Australia alone among liberal democracies has no national charter of rights. However, our Victorian *Charter of Human Rights and Responsibilities* affirms for all Victorians that we believe all human beings without exception have certain rights which should be respected, promoted and protected.

On 3 May 2006 we organised a Forum to allow Peninsula citizens to hear Professor Haddon Storey QC outline the plans for a Victorian Charter that had been recommended by the Consultation Committee of which he was a member. That nearly three hundred people attended is an indication of

public interest in human rights legislation. A motion from the floor at the end of the meeting in support of the Consultation Committee's plan was overwhelmingly carried on the voices. Our various programs since have been aimed at providing community education on such human rights issues as torture, Aboriginal affairs, asylum seekers, the role of armed forces and homelessness, and all have been strongly supported. We are convinced that there is strong support within our community for our *Charter of Human Rights and Responsibilities* and would be dismayed if it were repealed or weakened.

2. A Clear and Significant List of Human Rights

The Charter brings together in one place various rights from throughout our constitution, statutes and common law together with many of the rights identified in the *International Covenant on Civil and Political Rights*. It does not claim to be an exhaustive list and leaves the way open for future additions. It specifically states (s.5) that the omission of a right from its list does not imply that such a right does not exist.

Because the National Human Rights Consultation had not scheduled a Roundtable for the Mornington Peninsula, we arranged for Fr Frank Brennan to conduct a special Roundtable in Mornington on 19 May 2009. Seventy-seven people participated and shared their concerns for the observance of human rights in Australia. These ranged from concern for the homeless, the mentally ill and minority racial, social and religious groups to distress at our treatment of asylum seekers and Aboriginal people. There was a clear call for a national charter which would identify, list and protect the rights of all people, but especially of the weak and marginalised. The list of rights in Victoria's Charter was seen as a model that could be adopted and expanded.

3. A Human Rights Culture

The Charter is helping to build a climate of respect for human rights among legislators, judges, lawyers, public administrators, police and ultimately the general public. The requirement for a 'statement of compatibility' with human rights when legislation is introduced, the provision for the judiciary to make a 'declaration of inconsistent interpretation' when a law cannot be interpreted consistently with a human right, and the stipulation that the actions and decisions of public authorities be compatible with human rights, all have the potential over time to create a 'human rights culture' in our society.

After the Act was passed but before it came into effect, our Group was asked by the Shire to conduct an audit of its Access and Equity Policy in the light of the Charter. We arranged a workshop on 11 December 2006 called 'State Charter: a local perspective' which brought together officers of the Mornington Peninsula Shire, some of our members, and representatives of various community organisations concerned with disadvantaged people, including Good Shepherd Youth and Family Service, New Hope Migrant and Refugee Service, Peninsula Drug and Alcohol Program, Peninsula Refugee and Asylum Seeker Support and Centrelink. The workshop was addressed by two officers of the Equal Opportunity Commission and by the Chief Executive Officer of the Shire. In the sessions which followed, the Shire's Access and Equity policy and the services provided under it were generally affirmed and a number of recommendations made for their enhancement. We believe that, since then, the Shire has undertaken a review of its operations in the light of the Charter. This is a positive illustration of the way the Charter is shaping attitudes to human rights in our community.

4. A Means for Tackling Breaches of Rights

Although the Charter does not directly provide for aggrieved persons to seek legal remedies, it does give moral support to those who believe an injustice has occurred. By its effect on both government, public authorities and the general public it has the power to strengthen the quality of our democracy.

On 30 July 2007 we wrote to the Attorney-General expressing concern at the treatment of a group of men, known as the Barwon 13, charged under the Federal Government's ant-terrorism laws and held on remand in Victoria's Barwon Prison. We asked if there had been breaches of Victoria's new *Charter of Human Rights and Responsibilities*. The following is an extract from our letter:

The conditions in the 'supermax' Acacia Unit of Barwon Prison where the men are held are harsh. We have heard reports that these men are kept in solitary confinement for up to eighteen hours per day with only a small room for exercise, are given very limited contact with family and lawyers, have leg irons and manacles regularly used on them, and are frequently strip searched. It has been reported to us that convicted murderers in Barwon Prison enjoy better conditions than these unconvicted remand prisoners. During the committal hearing, there were complaints that detainees were being underfed. On 14 August 2006, Magistrate Paul Smith heard how the men were being given only a pie or a roll in the course of twelve hours in court. He said that underfeeding constituted "cruel and unusual punishment", and demanded an explanation from Corrections Victoria. We have also heard that, at the prison, detainees have been served meals with pork, have been denied the right to pray together, and are banned from reading literature in languages other than English. All of these matters, as you would be aware, concern the work of Corrections Victoria, which comes under the Department of Justice. As the responsible Minister, we respectfully ask whether, on your watch, s.10 (b), s.19 (1) and s.22 of the Charter have been breached?*

* This should read "on court days".

We received a detailed reply from the minister's office denying any breaches of the human rights of the Barwon 13, but acknowledging that changes and improvements in the conditions of their detention had recently been made. We felt justified in our concern by the admission that improvements had been made. We felt completely vindicated by the statements and actions of the trial judge, Justice Bernard Bongiorno. On 20 March 2008 he declared that the men's treatment was intolerable and made their trial unfair, and he ordered that they be moved from the maximum security Acacia Unit of the Barwon Prison.

It was the fact of the Charter, whose enactment we had strongly supported, that gave us confidence to write to the Attorney-General. Being able to refer to specific sections of the Charter greatly strengthened our letter, because it helped preclude a vague and general reply. No doubt there were other factors influencing the changes that occurred, but we believe the Charter was a significant one.

RECOMMENDATIONS

1. Affirm the Charter

We are proud of our Charter. Something of our experience of working for it and under it is sketched above. We believe the Charter has positioned Victoria as a leader in human rights in Australia, and this is a position we hope we can continue to be proud of. We were alarmed by statements attributed before the last election to the Attorney-General, the Hon Robert Clark, that he favoured the repeal of the Charter. The symbolism of repealing a Charter of Human Rights would have an immensely adverse impact on the reputation of our new Government and could only bring international condemnation. We would be deeply dismayed if it were repealed or so amended as to emasculate it. We urge the Committee to seek the Charter's continuance and enhancement by making recommendations that are in the spirit of its Preamble and Section 1.

2. Expand the List of Human Rights

Most of the rights listed in Part 2 of the Charter are civil and political rights. Section 44 of the Charter requires that the review of its first four years of operation consider whether certain economic, social and cultural rights as set out in a number of United Nations treaties should be added. In our experience these are the rights most likely to be at risk in our society. They were certainly the concerns most often raised by the people who participated in our special Roundtable of 19 May 2009 - concerns about poverty, homelessness, unemployment, the needs of the mentally ill, the treatment of

Aboriginal people and various forms of discrimination. There was also great concern about asylum seekers but that is a federal matter.

We recognise the difficulty in legislating for rights whose effective realisation depends on the availability of resources. A law to ban homelessness achieves little unless the finances to provide cheap housing are available and local communities are willing to accept social housing in their neighbourhoods. Nevertheless, we believe that the rights listed in the international treaties referred to in s.44 of the Charter can be realistically and effectively added. We urge the Committee to recommend the inclusion of such rights as the following:

- the right to work
- the right to a fair wage and safe and healthy working conditions
- the right to rest, leisure and reasonable holidays
- the right to join a trade union and the right to strike
- the right to choose one's marriage partner
- the right to bring up one's children in safety and security
- the right to an adequate standard of living, including adequate food, clothing and housing
- the right to social security
- the right to medical services
- the right to education.

3. Retain the Role of the Judiciary

The myth that charters of human rights hand power to unelected judges is widely promoted. The charge is certainly not true of the Victorian Charter. That judges should draw to the attention of Parliament instances where it is impossible to interpret a legal provision consistently with a human right is most desirable. Parliament is still sovereign for it makes the decision whether to retain or amend that provision. The alternative of having a parliamentary committee vet legislation, though desirable in itself, is less than adequate. In times of community alarm and fear, such as those following the terrorist bombings of New York, parliaments are under pressure to enact draconian legislation. Parliament cannot both enact such legislation and judge its human rights appropriateness. The role of judges, on the other hand, includes impartially determining the meaning and implication of the words of statutes. It is right that they should publicly draw the attention of Parliament to inconsistencies between laws it has enacted and the Charter. We urge the Committee to retain this role for the judiciary.

4. Do Not Weaken the Obligations on Public Authorities

The actions and decisions of officials in public authorities, such as government departments, public bodies, municipal councils, government schools and the police, are felt directly by members of the general public. These actions and decisions are where breaches of the human rights of individuals are most likely to occur. The requirement in the Charter that these officials act and make decisions consistently with human rights is therefore most desirable. Over time it will help build a human rights culture in our society. We urge the Committee to avoid any weakening of the obligations on public authorities.

5. Provide Means of Redress

The myth that human rights charters open the floodgates to litigation may have influenced the decision not to provide in the Charter any means of legal reparation for those whose human rights have been violated by a public authority. The United Kingdom experience, where there is such provision in its *Human Rights Act 1998*, is that there has been no flood of litigation. We think it is a matter of justice that there be the means for redressing a case of breached rights. While the Victorian

Charter in its present form can be expected to slowly build a human rights culture among those in public administration, the possibility of being sued for human rights failures would certainly concentrate their efforts to avoid such failures. We therefore urge the Committee to recommend the provision of affordable and effective remedies for human rights breaches.

Summary of Recommendations

We urge the Committee to recommend:

1. supportive and enhancing amendments of the Charter and not its repeal
2. an expansion of the list of human rights in the Charter by adding economic, social and cultural rights
3. the retention of the role of the judiciary in being able to make a declaration of inconsistent interpretation when a law cannot be interpreted consistently with a human right
4. the retention and not the weakening of the obligation on public authorities to act and make decisions consistently with human rights
5. the provision of affordable and effective remedies for human rights breaches.

Conclusion

The Mornington Peninsula Human Rights Group looks for the enhancement of human rights protection in Victoria through the strengthening of our *Charter of Human Rights and Responsibilities*. Our Group will continue to promote understanding of and respect for human rights through programs of community education, and to seek ever stronger legislative protection of human rights at both state and federal levels.