Attention: Chairperson
Scrutiny of Acts and Regulations Committee, State of Victoria

CC: Attorney General, State of Victoria
Shadow Attorney General, State of Victoria
M.L.A. for Oakleigh (Constituency Mail)
M.L.C.'s for Southern Metropolitan (Constituency Mail)

Re: Enquiry into the *Charter of Human Rights and Responsibilities Act 2006*

Dear Mesdames et Messieurs,

I write in support of retention and also minor amendments to the *Charter of Human Rights and Responsibilities Act 2006*.

I ask that this individual submission to this issue be considered by the members of parliament on the Committee.

Yours Sincerely,

Andrew Oliver (copy with signature to follow by post.)
1.0 Introduction

I write from a standpoint not of human rights international law, but more from my intellectual understanding of this issue in political theory.

Bernard Crick has argued that socialists are motivated by outcomes and vision about equality, liberals and left liberals are motivated by rights, and conservatives are motivated by values and traditions. i

Morroe Berger reviewing the history of the United States legal system 1868 to 1968 has argued that litigation inherently offers neither help nor hindrance to the disadvantaged, but that equality by statute enables a path forward for the poor and disadvantaged there. ii It depends whether the judges side with the prejudiced and disadvantaged or not. In Morroe Berger’s opinion, the United States Supreme Court in 1937 began to undermine the caste order with its decisions.

I do not think that litigation alone will establish a socialist Utopia, and think that it offers nothing to the poor and ordinary people who lack the resources energy and time to litigate their rights.

2.0 Additional Rights: (1) (i)

May I suggest that for economic and social rights that free economic and social action may do more to actually cause the trickle down of the prosperity of our society to the poor and ordinary people than litigation or government action?

For example the Parliament could add rights:-

"the right of free workers to strike for higher wages"

and:-

"the right of business to retrench or lockout workers who do not generate business revenue"

but I recognise that these matters have been referred to the federal parliament, and that such provisions might be considered inappropriate for emergency workers during natural disasters ...

I think the best course of action in the current situation is to retain the Charter with some minor amendments.

3.0 Public Service and Public Authorities Compliance: (1) (ii)

I think no legislative action is indicated here.

In terms of Parkinson’s Law iii regarding the situational logic of empire building bureaucrats, I know that argument in the press is made about the costs of the Charter in terms of public service salaries and office supplies etc etc but that is a separate issue, of the government imposing its management will on the public service that there be effective and efficient government with resources targeted on the real social priorities of the government with as little waste as possible.

4.0 Drafting of Statutory Provisions: (2) (i)

I support high standards of grammar and correct clear terse concise legislative drafting. Part of the Scrutiny of Acts and Regulations remit is of quality control of the legislative process, not just for these considerations but also of human rights considerations.

One questions whether the Committee should be split in order that both types of quality control receive the time and consideration each deserves ... 

Badly drafted provisions impact on human rights frequently, and the reluctance of Parliament to when absolutely necessary enact retrospective legislation - also problematic - means that there is often no remedy.
5.0 Consideration of Statutory Provisions by Parliament: (2) (ii)

I believe in Parliamentary Sovereignty, in the rights of parliaments to be clothed with powers to address social questions, and that in general Parliament's statutes should take precedence over the Courts' declarations.

I see the Charter as a mission statement by the Parliament, a sort of commitment by the parliament to the people to do the right thing. It outlines human rights standards to be considered by the Parliament in its deliberations. The necessary check and balance is that when Parliament does not do so, the Courts can provide feedback to the Parliament to that effect.

6.0 Effectiveness of the Charter in Bettering the Public Service and Public Authorities: (2) (iii)

Apart from what the press says about public service numbers and expenditures, matters for the Executive to deal with in ensuring effective and efficient government, may I say that in my opinion the educational functions encompassed by the Charter should be able to be carried out by only a total of a few dozen public servants. Sufficient numbers to write and publicise the human rights proclaimed by the Charter and engage the general public in debate about human rights and community values. Persuading the general public and public servants to uphold human rights in their dealings with one another is difficult, but throwing money at this problem and producing loads of advertisements and unread booklets and unread websites does not necessary help. Better targeting of educational publicity on human rights real problems faced in the real world is needed.

7.0 Litigation: (2) (iv)

Better judicial education, and better judicial selection, are needed.

I do not think that litigation is a panacea. Further to what I said in my introduction to this submission, may I say that not only does it offers nothing to the poor and ordinary people who lack the resources energy and time to litigate their rights, it may actually make economic inequality worse.

Consider those on the unemployment scrapheap. I believe that ruthless discrimination in business and commerce is routine whenever they think they can get away with it. Ask any person over forty about age discrimination in employment, for which there is often no effective remedy. Consider employment law, the principle of fairness and the right to non-discriminatory treatment without proper grounds.

Sometimes the real issue in a lawsuit is the precedence and conceded exemptions of conflicting rights.

Sometimes a real issue needs to be addressed and sorted out by statutory provision by the Parliament.

Values education and human rights education may, for some social questions, be a better approach than litigation.

Values education and human rights education need to be addressed in the education system, in judicial education and in appropriate material for the general public.

And take political and social clubs. I do not think anyone since the outlawing of the Hitler youth in 1945 has argued that the government and its local leadership should choose people's friends for them. And as it has been argued, some political jobs require appropriate political commitments. And some social clubs exist for the benefit of particular social groups. Maybe more legislative guidance by the Parliament is needed rather than the precedent of old cases in discrimination law where the principle of hardship is applied rather inconsistently.
8.0 The Conflicting Rights of Religious Freedom and Other Human Rights

I think a distinction need to be made between religious faith and belief and thought and conscience on the one hand and lawful religious practice on the other.

I think that forced and arranged marriages should be unlawful.

However, I do not think that sincere religious adherents should be fined or jailed for refusing to participate in abortions.

Much of the debate about religious freedom centres on schools and hospitals.

Let us consider the example of devout regular church going Catholics who are dying of cancer. What they may want is to go to a Catholic hospital with Catholic staff, with cooks who prepare meals according to the covenants of their faith - fish on Fridays, for example - nurses and doctors who offer religious solace whenever they are attended to in person, etc etc. However this raises another question: if 10% of the population are regular churchgoers and 5% of these are Catholics why are so many hospitals funded by the state run by the Catholic Church?

For the sake of argument, and I do not have any recent Victorian figures, let us assume that:-

10% of the populations are atheists and agnostics;

10% of the population are regular churchgoers;

70% of the population are nominal Christians who only go to church for weddings and funerals and baptisms and maybe a few Christmas services;

10% of the population hold other faiths;

as a rough breakdown of the truth about the matter what does one do about the fact that so much more money is spent on church hospitals and church schools than seems warranted?

I believe that many parents send their children to nominally church schools because the public secular system is so dumbed down and because some public schools - for example some in the northern and western suburbs of Melbourne - are noted to be sub-standard, not because the parents are regular churchgoers.

I think the cant and insincerity of both parents and the government needs to be contested. And something should be done to raise the standard of such sub-standard schooling.

As to lawful parental rights regarding their children’s upbringing, I would note that politics and religion relate to outcomes about which many people totally disagree.

Some of these matters have to be resolved by the Parliament, which should provide more statutory guidance to the Courts and the Human Rights and Equal Opportunities Commission.

9.0 Remedies: (2) (v)

I think the current model of the Parliament being at the apex of the law is the right one. Putting the Courts at the apex would lead in my opinion to the wrong outcome, inter alia for reasons detailed elsewhere in this submission.

It should be made clear that even if a Court finds some right non justiciable in some lawsuit for specific reason, each party should have an express right to petition parliament together with those who agree with them to get legislative amendments or new statutes enacted as the remedy. The Parliament should deliberate and offer such petitions due consideration.

10.0 Overall Costs and Benefits of the Charter: (3)

The Charter does benefit Victoria through its impact on the legislative process.
11.0 Options for Reform or Improvement of the Charter's Human Rights and Responsibilities Regime: (4)

I think the Charter is best retained with minor amendments. I think some of it looks like it is poorly drafted by the standards of traditional grammar, say The King’s English by Fowler and Fowler. iv

Some suggestions for reform and improvement are the Appendix I below.

12.0 Conclusion

I ask that the committee consider the above in its deliberations.

13.0 Appendix I: Suggested Amendments to the Charter

I am no lawyer and have not studied law, but for a start ...

Section 6 (1) should start: "All natural persons ...
"To section 19 should be added:

"(3) Nevertheless this Act declares and enacts English to be the standard language of commerce in Victoria"

Section 20 should end: "the law."

Section 32 (1) should be deleted and replaced with the words:

"(1) So far as it is possible to do so consistently with their purpose, all statutory provisions shall be interpreted in such manner as is compatible with these enumerated human rights as set forth in sections 9 to 27."

Section 39 should be amended by adding at the end:

"(5) Whenevsoever a breach of this Charter be found by any court or tribunal and there be no other relief or remedy the parties to the action shall have the right to petition parliament for legislative amendment or a legislative enactment of a new statute, said petition to be given due consideration by the parliament."

Section 44 should be repealed.

Section 48 should be amended by inserting (1) before its current text and adding:

"(2) In particular in any legal proceedings in relations to damages relating to any lawsuit relating to industrial or transport accidents involving a pregnant woman and the loss of life of any unborn foetus shall be interpreted by the Courts pursuant to section 39 as if the woman were not pregnant if it is adjudged that the unborn foetus’s brain were not then electrically active, and as if the woman had lost an unborn child if it is adjudged that the unborn foetus's brain were electrically active, as the case may be.

(3) In particular in any legal proceedings in relation to any loss of life of any natural person pursuant to sections 39 and 9 the court shall deem that if a person were or be adjudged permanently brain dead as the circumstances of the case presented demand then the said person be also judged not to have the protection of this Charter and not being alive.”

14.0 Endnotes

Charter Of Human Rights Responsibilities Payments And Remedies Act 2015

Upon petition by the people of Victoria the Parliament do make and enact this Charter in recognition that the people are born free and equal in dignity and rights:

Whereas human rights be essential to a democratic and inclusive society that give respect to the rule of law human dignity equality and freedom:

Whereas human rights belong to all people without discrimination:

Whereas true justice be founded upon true liberty and true equality the scales of justice of necessity based on this essential duality:

Whereas diversity and difference merit celebration to enhance our sense of community and common purpose:

Whereas every human right comes with necessarily associated responsibilities in order that the people might exercise it in such manner as do respect the many and various human rights of others:

Whereas our community do hereby record the special importance to the Aboriginal peoples of Victoria the descendants of Australia’s first peoples of said Aboriginal people's diverse spiritual social cultural and economic relationship with their traditional lands and waters:

The Parliament of Victoria therefore declares and enacts as follows:-
Part I: GENERAL

1. (1) This Act may be cited as the Charter Of Human Rights Responsibilities Payments And Remedies Act 2015.

(2) The purpose of this Charter is to protect and promote human rights by:-
   (i) setting out the human rights this Parliament do choose to protect and promote: and
   (ii) Charter declaration declare and make further provision to ensure each and every statutory provision wheresoever enacted be interpreted so far as is possible in a manner that is compatible with human rights: and
   (iii) the impost on public authorities established under the law of Victoria of proper obligation to act in a manner that is compatible with human rights: and
   (iv) the impost of a procedural limitation upon this and subsequent Parliaments of Victoria that statements of compatibility with human rights were prepared in respect of each and every Bill read a second time in the Legislative Assembly or the Legislative Council:
   (v) special Charter declaration establish a joint standing Committee of the Parliament to wit the Scrutiny Of Acts And Regulations Committee said Committee a body politic judicial and legislative to make proper enquiry into matters relevant to the compatibility with human rights of the Victorian Legislative Statute Book all Regulations and delegated instruments thereto and furthermore make proper enquiry into matters relevant to the compatibility of human rights in respect of any Bill read a first time in the Legislative Assembly or the Legislative Council with a view to making proper report to be tabled in both the Legislative Assembly and the Legislative Council: and
   (vi) special Charter declaration grant the Supreme Court of Victoria a legislative power to declare that a statutory provision cannot be interpreted consistently with a human right set out as a protected human right pursuant to this Charter and furnish notice to the relevant Minister said notices further furnished to the Attorney General the Scrutiny Of Acts And Regulations Committee the Speaker of the Legislative Assembly and the President of the Legislative Council: and
   (vii) the impost of a public duty on Ministers of the Crown of the State of Victoria to make proper enquiry in respect of each and every notice pursuant to paragraph (vi) hereof with a view to remedy said breach of human rights pursuant to this Charter.
(3) In addition this Charter clothes the Parliament with the power of declarative legislation by which the Parliament may declare:-

(i) the Supreme Court wrong in law in respect of the specific application of this Charter to a statutory provision by express legislative enactment to so do:

(ii) the Scrutiny Of Acts And Regulations Committee wrong in law in respect of the specific application of this Charter to a statutory provision by express legislative enactment to so do:

(iii) the Victorian Equal Opportunities And Human Rights Commission wrong in law in respect of the specific application of this Charter to a statutory provision by express legislative enactment to so do.

2. (1) This Charter comes into operation on the first day of January 2016.


3. Definitions.

(1) In this Charter:-

"Act" includes a failure to Act and a proposal to Act;

"Commission" means the Victorian Equal Opportunities And Human Rights Commission;

"Court" includes the Supreme Court the Court of Appeal thereto the County Court the Magistrate's Courts and the Children's Court;

"human rights" means the civil political and legal process rights of natural persons set out in part II;

"override declaration" means a declaration made by Parliament pursuant to section 31;

"person" means a natural person unless the contrary intention be clear.

(2) In this Charter a reference to the exercise of a function where that exercise be a public duty pursuant to:-

this Charter: or

the Constitution of the State of Victoria: or

the Police Regulation Act 1958: or

the Equal Opportunities Act 1995: or

the Subordinate Legislation Act 1994 -

shall include a reference to the performance of said duty.
4. This Charter by impost on the public authorities of Victoria requiring the same to act in a manner compatible with human rights shall bind the Crown of the State of Victoria in that respect. Provided that for the purpose of this section whether or not a body politic and corporate or an unincorporated body situate in Victoria be such a said public authority shall be determined by reference to the following criteria in descending order of precedence:

(1) departments reporting to Ministers of the Crown of the State of Victoria;
(2) schools established or funded by the State of Victoria, save for religious schools in respect of which this Charter do recognise the precedence of section 116 of the Commonwealth of Australia Constitution;
(3) universities established or funded by the State of Victoria, save for religious universities religious colleges in respect of which this Charter do recognise the precedence of section 116 of the Commonwealth of Australia Constitution;
(4) hospitals established or funded by the State of Victoria, save for religious hospitals religious hospices religious nursing homes in respect of which this Charter do recognise the precedence of section 116 of the Commonwealth of Australia Constitution;
(5) councils within the meaning of the Local Government Act 1989;
(6) the Victorian Police Force;
(7) prisons wherein convicts pursuant to any law of the state of Victoria reside;
(8) corporations established pursuant to the Transport Act 1983, save for unlisted taxi corporations;
(9) such other public authorities described as such by express intent in the statute book of Victoria.

5. This Charter shall not be interpreted by any Court or Tribunal of the State of Victoria in respect of said Courts' or Tribunals’ administrative responsibilities as licence to deprive natural persons of fair treatment or natural justice.

6. A right or freedom not included in this Charter that arises or is recognised under international law common law the Constitution of the Commonwealth of Australia or the Commonwealth of Australia’s Legislative Statute Book shall not be taken to be abrogated or limited only because that right or freedom be not included in this Charter or because said right or freedom be included herein in limited partial form.

7. In respect of rights and freedoms declared in the International Covenant on Economic Social and Cultural Rights and other international treaties that if provided by the State of Victoria imply annual appropriations from the consolidated revenue of such magnitude as to impact the Parliamentary Sovereignty inappropriately should this Charter not exclude said rights and freedoms, these rights and freedoms shall be supported in a limited restricted manner to wit that the texts of said rights and freedoms be relevant evidence being benefits or detriments or non sequitur as the case may be in actions under this Charter pursuant to Part II in support of the human rights set out in Part II.
8. Corporations, partnerships, trusts and unincorporated associations do not have human rights. Only natural persons have human rights.

9. This Charter shall be interpreted as having force and effect and by impost of duty jointly and severally upon:-

   (1) The Parliament; and
   (2) The Courts and Tribunals of Victoria; and
   (3) The public authorities of Victoria.

10. A human right may be subject under law to such reasonable limits as can be demonstrably justified in a free and democratic society based on human dignity equality and freedom taking into account all relevant factors pursuant to procedural enquiry criteria being:-

   (1) The nature of the right; and
   (2) The importance of the purpose of the limitation; and
   (3) The nature and extent of the limitation; and
   (4) The relationship between the limitation and any relevant purpose; and
   (5) Any less restrictive means reasonably available to achieve the purpose that the limitation seeks to achieve.

11. Every natural person has the right to proper recognition as a person before the law and to enjoy his or her human rights without discrimination.

12. Every natural person is equal before the law and is entitled to the equal protection of the law without discrimination and the right to equal and effective protection against discrimination.

13. Measures legislative and regulatory or programmatic and budgetary or free actions by individuals or free actions by organisations undertaken for the purpose of assisting or advancing a person or persons disadvantaged because of inappropriate discrimination do not constitute discrimination.
PART II: PROTECTED HUMAN RIGHTS

14. Every person has the right to life and the right to not be arbitrarily deprived of life. Furthermore:

(1) This right to life shall be deemed to be from birth to the point of adjudged brain death;

(2) This section shall be deemed to give no cause of action whatsoever in respect of any fetus or unborn child;

(3) No person proven guilty merely of a crime passionnel shall by that mere fact alone be sentenced to death by capital punishment ever. Provided that this shall not apply to persons convicted of High Treason.

15. No person shall be subject to torture or treated or punished in a cruel inhumane or degrading way or subject to medical or scientific experimentation without his or her full free and informed consent. This section shall be deemed to apply in addition to its application to natural persons also to any fetus or unborn child should said fetus or unborn child have achieved sufficient brain stem function that said fetus or unborn child be adjudged capable of consciously feeling pain.

16. No person shall be held in slavery or servitude or be made to perform forced or compulsory labour, save for work or service:-

(1) required of a person subject to lawful arrest or lawful imprisonment;

(2) pursuant to Court ordered community work;

(3) requisite to addressing a declared emergency pursuant to a lawful public authority declaration;

(4) being part of normal civil obligations.

17. Every person lawfully present or resident in Victoria has the right to move freely within Victoria to enter and leave Victoria and whilst lawfully present or resident the choice of where to reside.

18. Every person has the right not to have his or her privacy family home correspondence or email unlawfully or arbitrarily interfered with. Furthermore every person has the right not to have his or her reputation unlawfully attacked.
19. Every person has the right to freedom of thought conscience religion and belief including the freedom to join a religious organisation or adopt a religious belief of his or her own free choice. Every person has the right to demonstrate his or her religion or belief in worship observance practice or teaching either individually or as part of a community of believers in public or private provided no harm whatsoever besets any single person not of that religion or belief.

20. No person shall be coerced or forced or restrained in any manner whatsoever that limits his or her freedom to hold any belief or adopt any religion in worship observance practice or teaching. In particular no child over the age of eleven years shall be subject to coercion or force or restraint by said child’s parents or lawful guardians in respect of said child’s probable capacity to believe or not believe or willingness to participate or not participate in matters religious.

21. Every person shall have the right to food and drink necessary for basic sustenance and such clothing and shelter necessary for protection from the weather and the elements. The law shall make provision in respect of diverse classes of persons children prisoners workers lawful immigrants refugees the elderly the poor the Aboriginals or such other classes of persons as do be found by Court declaration likely to not obtain said basic sustenance to facilitate any lawful claims to basic sustenance by administrative or judicial process that any such person or persons do have against the State of Victoria the Commonwealth of Australia and any other corporations or organisations or partnerships or trusts or other bodies politic or corporate or any other person or persons who for any reason whatsoever have responsibility to so provide. Provided further that such claims should stand prioritised in the Court system, should stand prioritised throughout administrative process, treated as matters of urgency, and actively facilitated by incidental subsidy of legal costs legal representation if appropriate waivers of Court and Tribunal lodgment fees provision of requisite inspectorates and any other apposite or appropriate means.

22. Every person has the right to hold an opinion without interference. Every person has the right to freedom of expression which includes the right to seek receive and impart information and ideas of all kinds whether within or outside Victoria and whether orally or by way of writing or by way of print or by in artistic form or in any other medium chosen by him or her, subject to such lawful restrictions reasonably necessary to respect the rights and reputation of other persons, and further subject to such lawful restrictions reasonably necessary for the protection of national security public order public health public morals including such public order lawful restrictions that give such moral rights and recognition and limited payment rights the community do owe to artists and actors and musicians and other creatives in recognition of their rights to adequate food clothing and shelter and just payment for their work.
23. The rights of peaceful assembly and freedom of association shall not be abridged without ground, which shall include the right to form and join trade unions.

24. (1) Families constitute the fundamental group unit of society and shall be protected by society and the state.
   (2) Every child has a biological mother and a biological father. Every lesbian has a biological mother and a biological father. Every gay man has a biological mother and a biological father.
   (3) Whether families do stand united or having split asunder stand in divided factions, adult persons have the right to know the details of their ancestry, and shall subject to proper regulation have contact rights.
   (4) The best interests of the child take precedence in matters of administrative justice and in the Courts and Tribunals of Victoria in respect of each and every dispute to the rights of parents and the rights of foster parents and the rights of adoptive parents and the rights of such guardians appointed by the state or other process to guard the best interests of any child lacking an available parent for whatsoever reason willing and able to raise and rear and educate said child.
   (5) The legal presumption in cases of doubt shall be that the biological mother is more likely to protect the best interests of the child than other blood relatives or other relatives or such other parents or guardians appointed by the state or other process.
   (6) The legal presumption if the biological mother be unfit or unwilling or unable to provide for her child or children in case of doubt shall be that another blood relative is more likely to protect the best interests of the child mutatis mutandis.
   (7) The legal presumption if no blood relative be willing and able and suitable to provide for any child in case of doubt shall be that another close relative by marriage known to the child and assessed by interviews of the child and other said close relative to by reason of established family feelings be more likely to protect the best interests of the child mutatis mutandis.
   (8) All other appointments of parental responsibility being of foster parentage adoptive parentage or guardianship by the state or other process shall be subject to supervision by a state inspectorate in the name of the protection of the best interests of children.

25. Every person resident in Victoria has the right to participate in the conduct of public affairs directly or through freely chosen representatives.

26. Every person resident in Victoria ordinarily for nine months or more each year being an citizen of the Commonwealth of Australia shall have free and fair opportunity to vote and be elected at periodic state and municipal elections that guarantee the free and fair expression of the will of the electors. Provided that persons who have obtained the age of 16 years shall not be deprived of their electoral rights, nor shall those who have passed their Year 10 end of year exams, nor shall those in time of war who by enrolling in the armed forces join in the common defence.
27. Every person is recognised in all diversity as having cultural religious racial sexual and linguistic attributes and persons shall not be deprived of the rights in community with other persons of that background:-

(1) to enjoy his or her culture; and
(2) to declare and practice his or her religion; and
(3) to use his or her language.

28. Aboriginal persons in addition to rights under Section 27 shall not be deprived of the rights in community with other members of their tribe:-

(1) to enjoy their identity and culture;
(2) to maintain and use their language;
(3) to maintain their kinship ties;
(4) to maintain their distinctive spiritual material and economic relationship with the land and waters and other resources with which they have connection by tradition and custom.

29. No person shall be deprived of his or her property or that which is declared to be his or her property other than by due process of law to wit the laws of the Commonwealth of Australia and the laws of the State of Victoria.

30. Every person has the right to liberty and security.

31. No person shall be subject to arbitrary arrest or detention. No person shall be deprived of his or her liberty save for ground in accordance with the law.

32. A person who is arrested or detained shall be informed at the time of arrest or detention of the reason for the arrest or detention and furnished timely notice of any proceedings to be brought against him or her.

33. Persons arrested or detained on a criminal charge have right to be promptly brought before a Court in order to have any trial not unreasonably delayed.
34. No person awaiting trial shall be subject to indefinite continued custody without trial. Subject to a person's personal assurances and pursuant to proper statutory controls by Act or Regulation with a view to guarantee said person do properly appear (i) for trial, (ii) when served proper notice any other stage of the judicial proceeding, and as the case may be if relevant (iii) for execution of judgement.

35. No person shall be imprisoned only because of his or her inability to perform a civil contractual obligation by reason of poverty or injury or sickness or unemployment or civil indebtedness or bankruptcy or other statutory proper ground.

36. All persons deprived of liberty shall be treated with humanity and due respect for the inherent dignity of the human person.

37. An accused person who is detained or a person detained without charge must be segregated from other persons who have been convicted of criminal offences and under sentence therefor.

38. All accused children detained and all children detained without charge must be separated from all detained adults.

39. Any child convicted of an offence shall be treated in such manner as be just in consideration of his or her age.
40. A person charged with a criminal offence or a party to a civil proceeding shall have the right to have the charge or proceeding determined by a competent independent and impartial Court or Tribunal after a fair and public hearing. Provided that for proper statutory ground before a Court or Tribunal the members of the media or the general public or such other persons relevant to the nature and concept of the statutory ground in question may be excluded from all or part of a hearing. Furthermore all judgments or decisions or determinations made by any Court or Tribunal must be made public unless the best interests of a child otherwise requires or a law other than this Charter otherwise permit for statutory proper ground.

41. All person or persons charged with a criminal offence shall have the following rights:

(1) to be presumed innocent until proven guilty;
(2) to be informed promptly and in detail of the nature and reason for the charge in a language a type of communication that he or she speaks or understands;
(3) to have adequate time and facilities to prepare his or her defence and to communicate with a lawyer or advisor or advocate freely chosen by him or her;
(4) to be tried without unreasonable delay;
(5) to be tried in person and to defend himself or herself personally or through freely chosen counsel or some other advocate representing some organisation freely chosen by him or her and if absolutely necessary for proper statutory ground by counsel provided and paid for by the state;
(6) to be furnished with information about eligibility for legal assistance by the state and appropriate forms and writing instruments should they elect to apply;
(7) to have legal counsel provided in the name of justice to other parties if the interests of justice do demand it such legal counsel to be deemed as not compensable and not compensation in respect of all claims and cross claims in said prosecution and each and every related criminal trial and civil proceeding;
(8) to examine or have examined witnesses against him or her, save for when the law declares this do deprive third parties of justice by express statutory declaration, in which case in substitution thereof shall be offered a form of election presenting said person with an additional option of charged persons pleading not proven according to the Scottish tradition thereof mutatis mutandis together with a right to make an unsworn statement from the dock;
(9) to obtain the attendance and examination of witnesses on his or her behalf;
(10) to have the free provision of an interpreter by judicial discretionary ruling;
(11) not to be compelled to testify against himself or herself or to confess guilt.
42. A child charged a criminal offence has the right to considerate treatment in the light of his or her age in the name of the promotion of rehabilitation of said child under such special consideration procedures as exist throughout statutory or common law.

43. All convicted persons have the right to have any original conviction and any sentence imposed in respect of it reviewed by process of appeal by a higher Court.

44. No person shall be tried or punished more than once for an offence in respect of which he or she has already been finally convicted or acquitted.

45. No person shall be found guilty of a criminal offence because of conduct that was not a criminal offence when said conduct did occur said retrospective criminal prosecution being in essential conflict as contradicting the values of the people of Victoria by this Charter declared. Provided that this section shall have no effect in respect of prosecutions in the International Criminal Court at The Hague in the Netherlands for war crimes or other crime prosecutable in that Court.

46. Should any person claim that a charge preferred against a named defendant person be part of a criminal conspiracy to pervert the course of justice by a person or persons unknown said claim shall be referred to the proper authorities and notice of said claim furnished to the defendant who shall should the prosecution process be unaltered and said claim ignored or details in respect of said claim suppressed, said defendant may make election to plead not proven according to the Scottish tradition thereof mutatis mutandis together with a right to make an unsworn statement from the dock. Provided that any defendant so electing may be compelled to give evidence at any hearing of any resultant charge for conspiracy to pervert the course of justice and compelled to submit to cross examination by counsel defending any alleged defendants to said conspiracy charges.
PART III: PROCESSES

DIVISION I: STATEMENTS OF COMPATIBILITY

47. No Bill shall proceed to a second reading in Parliament till a statement of compatibility be prepared and tabled in the House in which said second reading should occur.

48. In cases of dispute and confusion and in respect of contested claims as to who shall prepare and table a statement of compatibility it shall be prepared by the Scrutiny Of Acts And Regulations Committee. Provided that no second reading shall proceed till this said statement of compatibility be tabled.

49. Statements of compatibility shall not bind the Courts and Tribunals of Victoria.

50. The Scrutiny Of Acts And Regulations Committee must consider any Bill introduced into Parliament and report to the Parliament as to whether or not the Bill be compatible with human rights. Provided that said Committee may elect to table consolidated reports in the Parliament in respect of related pieces of legislation or unrelated pieces of minor legislation of peripheral impact on human rights or other consolidated reports in accordance with procedures adopted as standing resolutions of the Scrutiny Of Acts And Regulations Committee by majority vote of the Committee said standing orders being voted upon only during such periods as when said Committee do have no vacancies in its membership, subject variously to this Charter the Standing Orders of the Legislative Assembly and the Standing Orders of the Legislative Council.

51. An Act of the Victorian Parliament enacted to commence after the first day of January 2016 by defective process pursuant to this Division shall be voidable should the Full Bench of the Supreme Court so void said Act as a remedy to an action in the Supreme Court by a person or persons with legal standing affected by said Act.
DIVISION II: OVERRIDE DECLARATIONS

52. Parliament may expressly declare in an Act that that Act or a provision of that Act or another Act or a provision of another Act have effect despite being incompatible with human rights or despite anything else set out in this Charter. Provided that to so do the words “override declaration” must occur in the text of said Act. Furthermore provided that said override declaration shall be deemed to extend to any relevant subordinate instrument made under or for the purpose of that Act or provision.

53. No Act containing an override declaration shall proceed to a second reading in Parliament till a statement be read out and tabled in both Houses furnishing the exceptional circumstances and fully explaining thereby to both Houses the reasons and grounds that justify the inclusion of said override declaration.

54. This Charter do record the intent and deliberation of the Parliament hereby stated to the peoples or the world and posterity that an override declaration should be made rarely and only in exceptional circumstances.

55. Said override declarative statements may be read out and tabled by leave of the Legislative Assembly or Legislative Council as the case may be.

56. Said override declarations may be made by a member of Parliament appointed to so do by motion to suspend standing orders to so do not less than 28 days’ notice of which were given in the notice papers of both Houses.

57. Should an override declaration be made in respect of a statutory provision then to the extent of the declaration this Charter shall not apply.

58. Override declarations made under the Charter of Human Rights and Responsibilities Act 2006 shall continue in force indefinitely provided the relevant override Act enacting same do continue in force and provided also that the phrase “override declaration” do occur in the text of the said override Act and provided furthermore that the said phrase not be removed from said Act by legislative enactment or administrative corruption.
DIVISION III: INTERPRETATION OF LAWS

59. So far as is possible to do so consistently with this Charter and the original purpose or purposes of any statute Act or Regulation or other legislative instrument each and every statutory provision shall be interpreted in a way that be compatible with human rights.

60. International law and the historical judgments of domestic foreign and International Courts and Tribunals may be adjudged due consideration in interpreting any statutory provision.

61. This Division does not affect the validity of any Act or provision of any Act that is deemed incompatible with a human right. This Division does not affect the validity of any subordinate instrument or provision of any subordinate instrument that is deemed incompatible with a human right.

62. Should in any proceeding of any Court or Tribunal any question of law do arise that relates to the application of this Charter or a question do arise with respect to the interpretation of any statutory provision in accordance with this Charter that question may be referred to the Supreme Court should an application for said referral be made by any party to said proceeding or the Court or Tribunal become of the opinion that said referral be more appropriate for determination by the Supreme Court.

63. The proceeding shall be declared as standing adjourned pending the determination of the true state of the law by the Supreme Court.

64. Any referral by the Trial Division of the Supreme Court shall be made to the Court of Appeal.

65. The Attorney General by this Charter have inherent right to intervene in and to be joined as a party to any proceeding before any Court or Tribunal in which a question of law do arise pursuant to this Charter or any question do arise with respect to the interpretation of a statutory provision in accordance with this Charter. Furthermore such intervention or joining as a party shall by this Charter make the Attorney General have status as a party to any appeal from any order made in said proceeding.
66. Whensoever any referral to the Supreme Court or Court of Appeal pursuant to this Division be made the parties to the original proceeding or the members of the Court or Tribunal the original proceeding be before shall cause proper notice to be furnished to the Attorney General the Scrutiny Of Acts And Regulations Committee and the Victorian Equal Opportunities And Human Rights Commission of said referral.

67. In dealing with said referral of questions of law or interpretation, but subject to any relevant override declarations, the Supreme Court shall give due consideration to all matters relevant to the referral and properly hear the Attorney General on the matter and properly hear the Commission on the matter and should the Court in consequence become of the opinion that a statutory provision cannot be interpreted consistently with a human right the Court may make a declaration to that effect.

68. A declaration of inconsistency with human rights does not affect the validity operation or enforcement of the respective statutory provision nor give any person any legal right nor give rise to any civil cause of action. Provided that the Attorney General may by address by leave to both Houses offer remedy or remedies to any person or class of persons adversely and detrimentally affected by reason of personal deprivation of each said person's individual human rights.

69. The Supreme Court must cause a copy of said declaration of inconsistency with human rights to be furnished to the Attorney General who shall arrange said declaration's tabling in both Houses within 28 days and furnish said declaration to the commission.

70. Whensoever the referral be made of necessity to the Court of Appeal sitting in lieu of the Supreme Court and exercising the original jurisdiction of the Supreme Court in determining said referral this Division shall be applied mutatis mutandis.

71. No later than six months after said declaration of inconsistency with human rights be tabled in both Houses the Attorney General shall cause to be tabled in both Houses a suggested remedy or remedies to said breach of human rights.
DIVISION IV: STANDARD REMEDIES FOR LAWFUL BREACHES OF HUMAN RIGHTS

72. The default standard remedy shall be a draft terms of reference for a Joint Select Committee investigating all matters relevant to the lawful breach of human rights said Committee to consist of two backbenchers from the Legislative Assembly and two backbenchers from the Legislative Council.

73. Another remedy should proper ground exist may be the granting of a pardon by the Governor and release from imprisonment of any person who has suffered adversely and detrimentally by said human rights breach.

74. Another remedy should proper ground or grounds exist in case of major injustice to a person subject to breach of the right to fair trial for technical or evidentiary ground or otherwise shall be the granting of a pardon by the Governor together with an apology from the State of Victoria made by speech of a Minister of the Crown to the Parliament.

75. Should the breach of human rights be of the right to use and enjoyment of personal property by lawful expropriation thereof the remedy may be a Bill for an Act to repeal or amend or supplicate to relevant purpose as the case may be by detailing in seriatim in respect of each item of said declared stolen property the remedial legislative expropriation measures or instruments that apply by way of remedy.

76. The Attorney General shall give due consideration to any other legislative remedies that be relevant to the breach of the person-in-questions’ civil or political or legal process rights and may recommend to the Parliament a relevant legislative remedy relevant and proportionate and moot and just to the nature and concept of the claims regarding the matters in question.
DIVISION V: ALTERNATIVE REMEDIES TO LAWFUL BREACHES OF HUMAN RIGHTS

77. The Attorney General may offer an ex gratia financial payment to a person or persons whose civil or political or legal process rights have been adversely and detrimentally breached proportionate to a proper fair assessment of the quantum of said adverse detriment.

78. Should any persons' human rights be breached adversely and detrimentally but the Attorney General be of sincere opinion that the breach be technical and inconsequential the Parliament may offer an ex gratia financial payment not exceeding two hundred dollars to any single person. Provided that said ex gratia financial payment of two hundred dollars may not be offered to any person previously in receipt of such a payment.

79. Should the Parliament carry by resolution its opinion that any person or person's human rights have been subject to merely technical breaches and further that by reason of the person's or the persons' vexatious litigation in relation thereto the amount of ex gratia financial payment shall be reduced and shall be set at a maximum of two dollars.
DIVISION VI: PROFESSOR-ADVOCATES OF HUMAN RIGHTS

80. At each four yearly state poll of elections for the Parliament there shall be elected three Professor-Advocates of Human Rights.

81. The method of election shall be by the whole state voting as one electorate with each elector marking twice on the ballot either two X’s for two different candidates or two X’s for one single candidate.

82. In order to stand for election a candidate born and raised in Victoria having attained the age of thirty years shall be nominated and seconded as such a candidate Professor-Advocate of Human Rights by two electors signing to that effect thereto being resident in each and every Legislative Assembly District not later than 12 months preceding the scheduled date of said four yearly state poll of elections for the Parliament.

83. Professor-Advocates of Human Rights shall be paid an annual sum not less than the annual sum paid to each Supreme Court Justice by way of payment for full time service to the state.

84. In addition Professor-Advocates of Human Rights may join with others in organisations diverse free and righteous fighting for the cause of Human Rights and in terms with each said organisation’s rules campaign for human rights and advocate human rights.

85. Professor-Advocates of Human Rights may resign as such by signing and dating a letter of resignation to the Governor giving notice of the date of effect of said resignation.

86. Otherwise Professor-Advocates of Human Rights shall be appointed for life.