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

June 2015
Independent Education Union
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Background

1. IEU is the professional industrial organisation representing principals, teachers and education support service staff across Victoria’s 500 Catholic schools, nearly 250 non-government independent schools and a range of private educational institutions. These include a wide variety of faith based schools, a number of schools for students with special needs and privately run post secondary education providers.

2. IEU’s total membership, inclusive of student teachers, is in excess of 19,000. More than 18,000 members are employed in schools and educational institutions in Victoria.

3. While the majority of members are engaged in teaching, IEU’s membership also consists of staff at schools engaged in a wide variety of activities - teacher aides assisting students with disabilities, psychologists administrative staff, gardeners, cleaners and caterers.

4. IEU’s membership is also diverse with respect to the types of schools included in its coverage. These range from very large schools with significant resources to extremely small rural schools with very limited resources. There are faith based schools, non-denominational schools, Catholic schools, Steiner schools, Montessori schools; in short schools representing a diversity of belief and culture in Victoria.

5. While IEU represents the non-government school sector in Victoria all schools receive some level of State and Federal Government funding and are subject to State and Federal legislation and education guidelines and polices. Non-government schools are therefore closely linked to the operations of a variety of public authorities. Non-government schools also have mutual obligations and governance responsibilities to a variety of public authorities, for example,
the Victorian Institute of Teaching, the Department of Education and WorkSafe Victoria.

6. IEU therefore operates in an environment where there is a clear relationship between public authorities and private sector or non-government organisations.


8. IEU welcomes the opportunity to make a submission in relation to the eight year review of the Victorian Charter.

Human Rights and Responsibilities and IEU

9. IEU has a strong commitment to the protection and promotion of Human Rights in Victoria. This is demonstrated in its Statement of Values marked attachment one. IEU’s values inform both internal decision making and the development of policies and strategies relevant to all members.

10. IEU’s members frequently face practical issues where consideration of human rights is central to analysing and resolving disputes. Issues that frequently arise include

- Balancing the needs of staff with family obligations and obligations to their employer
- Negotiating access for staff and students with disabilities or other special requirements
- Managing meeting the requirements of working at faith based schools with personal lifestyle choices
- Ensuring natural justice and procedural fairness in disciplinary proceedings, including balancing questions of public interest and the fitness to teach against the worker’s interests.
In all circumstances, IEU aims to assist members in finding fair outcomes to disputes and relies on the use of natural justice principles, including the right to representation to resolve issues. The rights protected by the Charter support the work and values of IEU and strengthen IEU’s ability to advocate for those values.

11. IEU considers that the Victorian Charter of Human Rights and Responsibilities, as it currently exists, is a highly significant and important part of the framework for supporting and promoting human rights in Victoria. This is demonstrated in what the Charter has achieved in the eight years since its introduction. In addition, it provides a very valuable educational and aspirational reference for the work done by IEU, its members and non-government educational institutions more broadly.

12. IEU supports the Andrews’ government commitment to strengthen the Victorian Charter and reverse the cuts made under the Liberal government to education and training funding for government departments.

Terms of Reference

13. IEU does not intend to address each of the terms of reference for the review of the Charter in detail. IEU continues to support the outline response and proposals of the Victorian Equal Opportunity and Human Rights Commission Position Paper dated 19 May 2011 (attachment two). IEU submits that the review should consider the incorporation of the rights embodied in the Convention on the Elimination of All Forms of Discrimination against Women into the Charter. This is particularly relevant to IEU given the high proportion of women working in non-government schools. Over 75% of IEU’s total membership, which includes student teachers, are female. Of teachers, 73% are female and 82% of education support staff are female. Bureau of Statistics data supports that these figures are representative of the broader non-government education sector.

14. Women in non-government schools can be particularly vulnerable to discrimination with regard to pregnancy, being primary care-givers of children and/or elderly parents and with respect to marital status.
15. Article 11 of the Convention contains a number of rights with respect to employment and these are of particular relevance to IEU’s membership. Article 11 protects women’s rights to:

- The same employment opportunities
- Promotion, job security and equal benefits and conditions
- Equal remuneration
- Social security and paid leave
- A safe workplace
- Prevention of discrimination on the grounds of marital status or maternity (parental status)

16. Whilst the above are relevant to all working women, it is the case that these issues can be particularly relevant in non-government schools. This can arise because faith based religious doctrine can influence decision making around engagement and retention of staff in schools, giving rise to potential conflict between rights to religious expression and freedom and the rights referred to above. The other area of particular interest to IEU is staff engaged in non-teaching roles that are relatively low paid. IEU statistics confirm that lower paid roles are predominantly performed by women and this adds to the vulnerable status of women in the workforce.

17. IEU also supports the submission of Victoria Trades Hall Council (VTHC) to adopt Articles 20, 23 and 24 of the Universal Declaration of Human Rights into the Victorian Charter.

18. IEU seeks the reversal of the amendments to the Equal Opportunity Act 2010 introduced by the Equal Opportunity Amendment Bill 2011. Employment in religious schools is of particular relevance to members of IEU.
19. The Amendment Bill introduced changes to sections 82 and 83 of the Principal Act. Those amendments removed the requirement of a religious body or religious school respectively, to demonstrate that discrimination in employment could only be exempted on the basis the discrimination was necessary to meet the inherent requirements of the job. The removal of the ‘inherent requirements test’ broadens employers capacity to discriminate on grounds of religious belief or activity, sex, sexual orientation, lawful sexual activity, marital status parental status and gender identity without reference to the nature of the work to be performed of the interests of the worker being considered. The amendments increase the level of vulnerability to discrimination in the work place.

20. IEU submits that sections 82 and 83 of the Equal Opportunity Act 2010 should be reinstated as they were prior to the 2011 amendment.

21. It is submitted that the above amendments to the Equal Opportunity Act 2010 are consistent with the principles of the Victorian Charter and with the proposal to include Article 23 of the Universal Declaration of Human Rights. IEU strongly supports strengthening alternative avenues to protect the rights of all workers against discrimination and unequal treatment in the workplace and as such supports reinstatement of the Equal Opportunity Act 2010 as it was prior to the adoption of the Amendment Bill. IEU strongly supports the reinstatement of the powers the Victorian Equal Opportunity and Human Rights Commission reduced as a result of the Amendment Bill.

22. The Victorian Charter is a means of confirming the rights which IEU, through its work and membership, seek to protect and promote. IEU strongly supports the continuation of the Charter without any reduction in its current form. In addition, IEU supports strengthening and broadening:

- the rights protected in the Charter
- the means of ensuring that public authorities are accountable with respect to observing rights and responsibilities
- providing that failure to observe protected rights can be give rise to remedial and enforceable action
Conclusion

23. Finally, IEU endorses the concept that the existence of the Charter in Victoria has benefits that can be measured both tangibly in terms of outcomes and also as a powerful symbolic expression of values and ideals relevant to all Victorians. IEU submits that these benefits significantly outweigh any costs associated with the development and implementation of the principles of the Charter through legislation and policy in the public sector. It is important to recognise the close link and influential role public sector policy has in the private sector.

24. Acknowledging that both public and private institutions collectively contribute to effective public policy in Victoria, IEU maintains that the rights and responsibilities contained in the Charter should be extended to be applicable to all organizations operating within the non government education sector. This would continue the ongoing process of embedding the concept of human rights in all aspects of decision making, policy development and treatment of all people in Victoria. This extension would also reflect the reasonable expectation that non-government organisations in receipt of public money should also act consistently with the public values expressed in this charter.

25. IEU supports maintaining an ongoing four yearly review of the Charter which will aid in continuing to promote the benefits of the Charter, provide the opportunity to assess further possible amendments and highlight opportunities to strengthen the Charter through related legislative change, government funding and programs.

26. IEU considers that recognition and promotion of Human Rights is fundamental to independent and Catholic schools' continuing provision of high quality, value based education in Victoria.
The Independent Education Union Victoria Tasmania has prepared this statement of values in order to guide the work of the union and its officers and representatives.

As the union representing staff in Victorian non-government education our chief goal is to continually improve the wages, conditions and job security of employees working in our sector and to improve the status of teachers and those working in education.

We are also called on to vote, provide feedback and comment on a range of other issues. We realise that the range of values and beliefs of IEU members on many issues will be as diverse as our membership. With this in mind, we have formulated this statement of values to hopefully reflect areas of broad consensus among members.

**Section 1 - Fairness, Equality & Opportunity In The Community**

IEU believes:

1.1 in a democratic Australia, which values all citizens.
1.2 in the right of all citizens to employment and a decent standard of living, and to a fair share of the nation's wealth.
1.3 that every Australian must have access to free, quality public health care, education and aged care, regardless of their socio-economic circumstances.
1.4 that families and individuals must be guaranteed decent minimum living standards through the social security and taxation systems.
1.5 that all Australians must have access to decent and affordable housing.
1.6 in the right of all Australians to a secure and dignified retirement.
1.7 that indigenous Australians are the original owners of our land, and that reconciliation between indigenous and non-indigenous Australians is a vital goal.
1.8 in a multi-cultural and multi-faith tolerant Australia.
1.9 that all Australians must be treated equally by the law and have access to legal representation as a right.
1.10 in sustainable development that protects our environment.
1.11 that governments have a central role in ensuring fairness, equality and opportunity throughout the community.
1.12 in promoting peace and peaceful resolution of conflict.
1.13 that discrimination in all forms including that based on race, religion, ethnicity, gender, age, disability, marital status, sexual preference and political beliefs is unacceptable and should be opposed.
1.14 in Australia's independent participation in international cooperation to promote peace, security, human rights, labour standards and prosperity through fair trading arrangements.

**Section 2 - Security & Fairness In The Workplace**

IEU believes:

2.1 that workplaces should be safe, secure, healthy and free of harassment, intimidation, violence and discrimination.
2.2 that workers have a right to a decent wage and fair working conditions.
2.3 that all workers have a right to secure employment and protection against unfair dismissal or unfair treatment by the employer.

2.4 that workers have the right to join and be represented by a union.

2.5 that all employees have the right to collectively bargain.

2.6 that workers have the right to withdraw their labour.

2.7 that workplace union representatives should have rights enabling them to carry out their role.

2.8 that unions have the right to recruit, organise and represent workers.

2.9 that workers should be consulted and informed about issues affecting their employment.

2.10 that Australian businesses and their executives have a responsibility to engage in legal and ethical conduct and environmentally sustainable practices at all times with employees, stakeholders and the community.

2.11 that working parents must have access to good quality, affordable childcare.

2.12 that working parents have a right to employment standards that enable them to manage work and family.

2.13 that working parents must have the time and opportunity to form and maintain relationships with their children that foster the child's development.

2.14 that workers must have the time and opportunity to meet their responsibilities for those that they have carer responsibilities for.

2.15 that officers and representatives of IEU should conduct themselves in a manner consistent with this Statement of IEU Values.

Section 3 - The Education Sector

IEU believes:

3.1 in a strong, well-resourced and viable public education system.

3.2 that parents and communities have the right to establish non-government schools.

3.3 that new schools should only be opened and funded where a demonstrated need exists, where the opening of the school would not severely impact on existing schools and where the school can demonstrate that it is financially and educationally viable.

3.4 that governments have a responsibility to provide funding to non-government schools and this should be provided to schools on the basis of need.

3.5 that non-government schools are, and should be accountable to the Australian community and governments to ensure that appropriate educational and industrial standards are being met.

3.6 that the students who attend non-government schools receive quality education that is consistent with state curriculum and national goals and expectations of schooling.

3.7 that staff employed in non-government education are entitled to the same industrial and legal rights as all Australian employees, including full protection under Anti-Discrimination and Equal Opportunity laws.

3.8 that education involves a partnership between teachers, other school staff, students, parents, school employers, communities, business, system authorities and governments. This partnership recognises the expert knowledge and professionalism of education staff and respects the legitimate interests and rights of other members of the partnership. This partnership can only be successful if respectful relationships are established and fostered between all parties.
Four-year review of the Charter of Human Rights and Responsibilities

> Position Paper

19 May 2011

Prepared by the Victorian Equal Opportunity and Human Rights Commission
Four-year review of the Charter of Human Rights and Responsibilities

Victorian Equal Opportunity and Human Rights Commission position paper

The Attorney-General has announced a review of the Charter of Human Rights and Responsibilities Act 2006 (the Charter). A Parliamentary Committee – the Scrutiny of Acts and Regulations Committee (SARC) – is undertaking the review.

The review is an important milestone for the Charter and for our community. It will give Victorians an opportunity to have their say about the importance of human rights, and to suggest ways to strengthen the Charter to enhance the protection of our rights, improve service delivery and hold government accountable.

This position paper briefly sets out the Commission’s views on some of the key issues SARC will consider. These views are based on the evidence that the Commission has collected over the past four years. This evidence has been gained through our annual reporting process, which has been accompanied by extensive stakeholder engagement. These are all documented and can be found on the Commission’s website at www.humanrightscommission.vic.gov.au/charterreview. In addition, evidence has been gathered through our engagement at the community level, education and training sessions, our legal intervention function and through our policy interactions with public authorities. This evidence will inform the Commission’s submission to SARC.

How can I have my say?

The simplest way to participate in the review is to make a submission.

Submissions are a way of telling SARC your ideas or opinions about the Charter. Submissions can be anything from a personal story about how the Charter has affected you, to a research paper complete with footnotes and bibliography.

It does not matter if you only have one or two points to make; your submission is just as important and will be considered by SARC.

What is my submission used for?

Submissions will help SARC understand different views and experiences of the issues it is considering. Information in submissions is used by the Committee to help develop its report and recommendations to the Government.

SARC will consider all the submissions in light of the terms of reference for the Charter review (at www.parliament.vic.gov.au/sarc/article/1448). These terms of reference set out the scope of the review, and are the key questions SARC will be considering.
How do I make my submission?

There is no particular format to follow. It can be a short letter or email, or a longer formal document. All that matters is that you express your views.

Submissions can be made by:
- Mail: Parliament of Victoria, Melbourne, 3002
- Email: charter.review@parliament.vic.gov.au

Submissions should be addressed to Mr Edward O’Donohue MLC, Chairperson, Scrutiny of Acts and Regulations Committee.


The closing date for submissions is Friday 10 June 2011.
Commission position on key issues in the four-year review

This paper sets out the Commission’s preliminary position on the issues under consideration in the four-year review of the Charter.

The Commission supports the Charter because of its demonstrated value to the people of Victoria. The last four years have shown that government services are better services when they put human rights at the centre of their day-to-day work — and the Charter facilitates this happening. No person will be worse off when their rights are observed, and no public service is diminished by treating people with dignity and respect.

1. Victorians want human rights protection

The Commission’s consultations with the Victorian community over the past four years have confirmed that people across the state value human rights and want their rights protected in law. The views of the community and our experience working with the Charter have informed our understanding of the Charter, the significant role it has already played in protecting the rights of Victorians and how it can be enhanced. The evidence indicates that the Charter helps public authorities to put citizens at the centre of their concerns in policy and service delivery.

2. Ensuring all human rights are protected by law

Currently, the Charter protects 20 rights and freedoms, including the right to vote, freedom of assembly, freedom of religion, protection of children and protection of the family. These are essential entitlements of all Victorians and should remain in the Charter.

The four-year review provides an opportunity to deliver increased protection. In particular, the Charter should include:

- All civil and political rights that Australia has signed up to under international treaties, unless the issue is a purely federal matter, such as immigration.
- The right to self-determination. In 2010 the Commission conducted a statewide consultation about the issue of Aboriginal self-determination, which is to be included as part of the review, and based on that evidence the right to self-determination should be included in the Charter.
- The protection of economic, social and cultural rights should be included in the Charter as they provide access to essential services such as adequate education, housing and health. Many people in the community consider these rights to be the most basic needs for people to participate fully in the community, particularly for Indigenous people, older people, children and families, and people with disability.
3. Improving service delivery through transparency and accountability of public authorities

People want the government to be accountable to the standards set by the Charter. The Charter should include:

- Mandatory compliance reporting to help track the progress of government and ensure transparency. Mandatory reporting exists for other laws concerned with better government such as multiculturalism, freedom of information legislation, occupational health and safety, and environmental laws. An integrated reporting framework would not be an additional burden on government but would ensure accountability and transparency to the community.

- The Commission's independent annual report to the Attorney-General on the operation of the Charter should be maintained to ensure transparency, oversight and a consistent vehicle by which systemic issues can be highlighted to parliament.

- A human rights audit function which allows the Commission to review public authorities for human rights compliance. Currently the Commission may help a public authority in reviewing policies and practices for consistency with human rights only when an authority asks for a review. The experience in the ACT has shown that human rights auditing by the Commission can help find solutions to day-to-day practice issues. This would be of great benefit to services in Victoria by helping to identify potential problems and fixing them before they escalate to a case before the courts.

- Coverage for all public authorities. The law should no longer allow some organisations, such as the Parole Board, to be excluded from the Charter's operation. After four years all public authorities have had time to ensure they comply with the Charter and respect the human rights of Victorians.

4. Strengthening the role of Parliament

The community wants human rights protections, but does not want the role of the Parliament to be usurped.

- An important part of the Charter is the requirement that when the Government wants to bring legislation to Parliament it must first make sure that it meets human rights standards. This is reflected in a 'statement of compatibility'. This tells Parliament how the law complies with human rights. This process must be maintained. Statements of compatibility need not be overly long or legalistic, but they should be comprehensive and reflect the full-range and seriousness of the issues being considered.

- If an override declaration is maintained, the Charter should recognise (even if a future Parliament cannot be bound) that some rights under international law, such as the right to life and the freedom from torture, can never be suspended. When an override declaration is made, the Government should also be required to report back to Parliament at least every twelve months on the reasons for its continuation. This would help Parliament to monitor the actions of the Government and ensure that rights are reinstated as soon as possible.
• There should be special oversight where an override declaration is not used but statements nevertheless indicate that some elements of a law are incompatible with Charter rights. A simple way to do this would be to introduce the procedure that SARC comment on the Bill and propose ways the legislation could least restrict human rights, before the Bill moves through the Parliament.

• SARC must be adequately resourced to fulfil its mandate of providing robust, transparent and comprehensive human rights assessments. Consideration should be given to establishing a specialist human rights sub-committee.

5. Ensuring resolution of issues for Victorians

The community wants timely, accessible and effective ways to raise its concerns about breaches of human rights with Government and have those concerns addressed.

• The Charter should allow for conciliation of complaints about alleged breaches of the Charter by the Commission, as the authority with expertise in the Charter and an established dispute resolution service for equal opportunity matters. This would allow for coverage of all public authorities and help people whose rights are not observed to get quick resolution of their problems.

• Victorians should have a right of action so they have recourse against government when it breaches their human rights, similar to other circumstances where the government has not met its duties such as in contract, negligence or occupational health and safety. The Charter should inform the development of accreditation schemes, service standards and other measures to improve the quality of services, but it should also be enforceable to ensure compliance and provide an opportunity for breaches to be addressed where individual citizens are adversely impacted.

• The Charter should allow the redress to match the seriousness and the results of the breach of the law. As with other areas of law, and other human rights jurisdictions, the courts should have the discretion to award damages where it assesses it is an appropriate remedy.

• There should be a continued commitment for financial support from Government for education and advocacy work so that the community can get the most out of the Charter.

6. The role of the Courts and helping develop the law

As with other areas of law the Courts have an essential role in developing Charter jurisprudence and interpreting legislation by hearing and determining matters that raise Charter issues, and deciding when government authorities have breached a person’s human rights.

• The Courts play a proper role in interpreting legislation. The Charter should continue to ask the Courts to interpret legislation consistently with human rights to the extent that is it possible to do so on the ordinary meaning of the words.

• The Commission’s intervention role should be maintained at this early stage in the development of Charter case law. The Commission conducted a review of our intervention function which revealed that the courts have found this role to be useful and have benefited from the Commission’s specialist knowledge. This issue should be considered again at the eight-year review in light of the development of the jurisprudence.
• Notification of cases raising Charter issues in the superior courts should also be maintained, as it not only alerts the Government and the Commission to Charter cases and therefore facilitates their involvement, but also helps put people on both sides of cases in touch with the Commission to get information about the Charter and how it operates. However, there should be discretion for courts to waive this requirement in certain circumstances so it does not cause undue delay.

7. The costs and benefits

The community recognises that investment in human rights is an investment in the long-term social and economic wellbeing of Victoria, and that government should be accountable by providing evidence of the immediate and long-term benefits of that investment.

• The Commission supports scrutiny of the Charter and how it has been operating. This analysis should recognise that we are only four years into the operation of the Charter and this legislation is about long-term cultural change.

• Securing more equitable, fair and accessible services for all Victorians has the potential to deliver future cost savings through risk management and directly reducing economic and social disadvantage within our community.

• The Charter also forms part of a broader regulatory system concerned with the quality, transparency and accountability of government. In common with freedom of information laws, the Ombudsman, the Auditor-General and others, the investment associated with the Charter contributes to democratic and community benefits that are not easy to quantify on a traditional cost–benefit model.