

Amend Victoria's Charter: Recognize Equality of Unborn Persons

Dear Mr. Michael Brett Young and the Attorney General, Hon Martin Pakula MP,

This is a timely review of the Charter as the urgency of the situation requires action from the Commission and the Government forthwith. Well recognized at this time (the early 21st century) is the rapid increase in understanding of all areas of human endeavour; unparalleled in human history. This is certainly true for the last four years and so is directly relevant to the 8 year review of the Charter which "protects the rights and freedoms of **all** Victorians" (quote from Herald Sun 16/5/2015 call for submissions announcement '*Review of Victoria's Charter of Human Rights and Responsibilities*'). Specifically, it is medical science's continued research and further understanding of the development of unborn persons during their nine months of growth/life in the womb. The Commission and the Government must lawfully acknowledge and legislate Equality for Unborn Persons.

The undeniable fact from current research is that persons developing in the womb are living/growing human beings who can feel excruciating pain if subjected to abortion. The US House of Representatives has just passed a Federal Bill recognizing this fact, *HR 36 Pain-Capable Unborn Child Protection Act* (www.congress.gov/bill/114th-congress/house-bill/36/text). It bans abortion of all unborn persons who are 20 weeks or older because they are human beings that need protection from inhumane treatment. Eleven State Legislatures of the United States protect Unborn Persons who are 20 weeks or older¹. Victoria's Charter states in section 10: A person must not be— (a) subjected to torture; or (b) treated or punished in a cruel, inhuman or degrading way; or (c) subjected to medical or scientific experimentation or treatment without his or her full, free and informed consent.

In light of the aforementioned new findings/research², The Charter's section 48 Savings Provision: "abortion and child destruction", as currently shown/enacted now contradicts and violates many Charter sections, including 8, 9, 10, 17 and 38 viz. Recognition and Equality before the Law, The Right to Life, Protection from Torture and Cruel, Inhuman or Degrading Treatment, Protection of Families and Children, Obligations on Public Authorities. The Charter must be amended to reflect this reality, to protect our own children and our posterity/humanity. Australians/Victorians are a signatory to both the *UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* and the *UN Convention on the Rights of the Child*. We are responsible and obligated to take action. By way of important comparison, there would be an outcry if Victorians were informed that a 'Savings Provision' (e.g. "this law does not apply to abortion of animal embryos or animal destruction.") had been included in the current Law: *Prevention of Cruelty to Animals Act 1986*. And we know the Commission and the Government are very concerned for the welfare of children including pregnant mothers & their unborn children, (even those who are not yet Australian residents or citizens); the recent report on children in detention attests to this. [*The Forgotten Children, the Report of the National Inquiry into Children in Immigration Detention 2014*](#).

The literal cries of future generations of vulnerable, precious, innocent Victorians/Australians call us all to act decisively to protect them. We reflect at this special time during the Anzac Centenary and are proud of our Anzac forebears who bravely acted and sacrificed so much to protect our country/our children, including the unborn/our families/our people/our way of life. We must now be courageous and bold and do what is right for all those in our duty of care. We all received the gift of life and must ensure that same gift for our offspring. There can be no higher calling; that way the Anzacs can be proud of us.

Further review of the Charter must be undertaken in light of my submission, in accordance with both section 38 (1) Obligations on/Conduct of Public Authorities: **“it is unlawful for a public authority to act in a way that is incompatible with a human right or, in making a decision, to fail to give proper consideration to a relevant human right”** and section 45(2) Review of the Charter after 8 years. Recognize and legislate Equality of Unborn Persons. End the practices of unlawful age discrimination and cruel torture of our youngest Australians. End the death penalty imposed by abortion and value all life. The majority of Australians have utter contempt for the death penalty/capital punishment - consider the outcry over the recent execution of two Australians in Indonesia. The majority of Australian’s (shown by research³), do not support abortion/the death penalty for our youngest Victorians/Australians.

I request a considered response to my submission. Thank you.

Yours sincerely,

Jeremy G. Orchard

Figure 1: A human being/unborn person at 20 weeks: www.babycenter.com.au/20-weeks-pregnant



At 21 weeks: “Your baby can now hear your conversations. If you talk, read, or sing to your baby, expect her to hear you. Some studies have found that newborns will suck more vigorously when read to from a book they heard frequently in utero. If you want to try, pick a book now and read it out loud. Make sure you won’t mind reading it over and over once the baby is here. It may be your baby’s favourite bedtime story for a long time after birth.”

References:

1. <http://www.lifenews.com/2015/05/26/west-virginias-pro-life-law-to-ban-on-abortions-after-20-weeks-goes-into-effect/> An excerpt from this report: “Pain-capable unborn children should be protected from the violent act of a dismemberment abortion, ... In our upside-down society, most animals have more rights than unborn members of the human family. We are thankful the West Virginia legislature has recognized their solemn duty in protecting the lives of the most vulnerable.”
2. www.congress.gov/bill/114th-congress/house-bill/36/text Part of the Bill, HR 36 at this webpage says:
 - (1) Pain receptors (nociceptors) are present throughout the unborn child’s entire body and nerves link these receptors to the brain’s thalamus and subcortical plate by no later than 20 weeks after fertilization.
 - (2) By 8 weeks after fertilization, the unborn child reacts to touch. After 20 weeks, the unborn child reacts to stimuli that would be recognized as painful if applied to an adult human, for example, by recoiling.

(3) In the unborn child, application of such painful stimuli is associated with significant increases in stress hormones known as the stress response.

(4) Subjection to such painful stimuli is associated with long-term harmful neurodevelopmental effects, such as altered pain sensitivity and, possibly, emotional, behavioral, and learning disabilities later in life.

(5) For the purposes of surgery on unborn children, fetal anesthesia is routinely administered and is associated with a decrease in stress hormones compared to their level when painful stimuli are applied without such anesthesia. In the United States, surgery of this type is being performed by 20 weeks after fertilization and earlier in specialized units affiliated with children's hospitals.

(6) The position, asserted by some physicians, that the unborn child is incapable of experiencing pain until a point later in pregnancy than 20 weeks after fertilization predominately rests on the assumption that the ability to experience pain depends on the cerebral cortex and requires nerve connections between the thalamus and the cortex. However, recent medical research and analysis, especially since 2007, provides strong evidence for the conclusion that a functioning cortex is not necessary to experience pain.

(7) Substantial evidence indicates that children born missing the bulk of the cerebral cortex, those with hydranencephaly, nevertheless experience pain.

(8) In adult humans and in animals, stimulation or ablation of the cerebral cortex does not alter pain perception, while stimulation or ablation of the thalamus does.

(9) Substantial evidence indicates that structures used for pain processing in early development differ from those of adults, using different neural elements available at specific times during development, such as the subcortical plate, to fulfill the role of pain processing.

(10) The position, asserted by some commentators, that the unborn child remains in a coma-like sleep state that precludes the unborn child experiencing pain is inconsistent with the documented reaction of unborn children to painful stimuli and with the experience of fetal surgeons who have found it necessary to sedate the unborn child with anesthesia to prevent the unborn child from engaging in vigorous movement in reaction to invasive surgery.

(11) Consequently, there is substantial medical evidence that an unborn child is capable of experiencing pain at least by 20 weeks after fertilization, if not earlier.

3. Common Ground? Seeking an Australian Consensus on Abortion and Sex Education. Edited by John Fleming PhD and Nicholas Tonti-Filippini PhD. ISBN 9781921032646. Page 67: **67%** do not support legal late-term abortion. **67%** do not support legal abortion where the developing baby is healthy and there are no abnormal health risks to the mother. On Page70: **77%** do not support late-term abortion on moral grounds, and **85%** do not support abortion on moral grounds where the developing baby is healthy and there are no abnormal health risks to the mother.