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● About our organisation

Good Shepherd Australia New Zealand

This submission has been prepared by Good Shepherd Australia New Zealand, a community services organisation that aims to disrupt the intergenerational cycle of disadvantage with a focus on women and girls. We achieve this through services that address social and economic exclusion. A central part of our mission is to challenge the systems that entrench poverty, disadvantage and gender inequality. We do this through research, advocacy and social policy development.

Our specific expertise is in:

- **Safety and resilience** – supporting women to be resilient provides a buffer between an individual and adversity, allowing them to achieve improved outcomes in spite of difficulties.
- **Financial security** – supporting women to ensure they have access to sufficient economic resources to meet their material needs so that they can live with dignity.
- **Educational pathways** – assisting women and girls to overcome the obstacles in their life that hinder them from achieving their educational/vocational capacity.
- **Research, Social Policy and Advocacy** – needs research into emerging issues, identifying effective change interventions for program design, policy analysis and advocacy.
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Introduction

Good Shepherd Australia New Zealand (Good Shepherd) welcomes the Victorian Government’s review of the Victorian Charter of Human Rights and Responsibilities (the Charter), which honors the undertaking to examine its effectiveness after eight years. We thank the Attorney-General Martin Pakula and Michael Brett Young for this opportunity to reflect on the Charter’s success and contribute ideas for its further development.

Good Shepherd has embraced the Charter since its inception in 2006, submitting to the policy development process and implementing it within our own organisation. We are committed to the ongoing development of a human rights culture within Victoria and see the Charter as a key instrument in achieving this. The human rights of all Victorians, and in particular women and girls, are central to our work. Through providing an effective human rights framework, the state is able to prevent many of the problems that people otherwise bring to services such as ours.

We note that the intention of the review is ‘to ensure the Charter remains flexible, and effective in supporting community values and aspirations in Victoria’.¹ In light of this, our submission reinforces the value of the Charter, as well as suggesting amendments to respond to ongoing and emerging concerns in the Victorian community.

**Recommendations**

**Recommendation 1**
That the Victorian government continues to make available, through the Victorian Equal Opportunity and Human Rights Commission, human rights training and support for community organisations (as public authorities) in order to ensure continuous improvement in protecting human rights.

**Recommendation 2**
We applaud the work being done to address violence against women and note the continued need for amendments to the Charter to address the gendered nature of many human rights breaches. These mechanisms could include, for example:

- the statement of compatibility with human rights that must accompany Bills brought before the Victorian Parliament be extended to include a gender analysis of that Bill.
- the Scrutiny of Acts and Regulations Committee be required to apply a gender analysis when meeting its obligations to scrutinise Bills presented to the Victorian Parliament for compliance with the Charter.
- public authorities be required to develop gender benchmark indicators and collect sex-disaggregated data to enable analysis of gender-sensitive legislation, policies, programs and services with the aim of institutionalising gender-responsive budgets.
- the Charter’s preamble be amended to explicitly reflect the core principle of gender equality and those principles enshrined in the Convention on the Elimination of All Forms of Discrimination Against Women.

**Recommendation 3**
That the Victorian Equal Opportunity and Human Rights Commission undertake community education campaigns, research, and other systemic initiatives in relation to key identified human rights issues such as forced marriage.

**Recommendation 4**
That protection of economic, social and cultural rights should be included in the Charter as they promote access to essential services such as adequate education, housing and health; alternatively, if this is not possible, that the inclusion of these rights in the Charter be the specific subject of a further review process to be conducted within the next eight years.

**Recommendation 5**
All key bodies taking complaints as part of Victoria’s human rights architecture be enabled to:

- pursue ‘own motion’ investigations; and
- share information between them in the interests of human rights investigations and resolutions.
Part one: Evidence of influence

Term of Reference: 1. d. The development of a human rights culture in Victoria, particularly within the Victorian public sector

Term of Reference: 1. e. The application of the Charter to non-state entities when they provide State-funded services

Good Shepherd fully supports the inclusion of government-funded community organisations such as ours under the Charter, as public authorities. Our comments relate to public authorities in general rather than the public sector specifically.

We endorse the goal of the Charter to promote a culture of human rights throughout Victoria. As stated by the Human Rights Commission, ‘good human rights practice incorporates leadership that demonstrates a commitment to human rights, training for staff that helps them understand how these obligations apply to their everyday work, as well as having the procedures in place to develop rights-consistent policies and decision making’.² Such leadership encourages other entities that may not be bound by the Charter to undertake similar processes internally.

Good Shepherd has taken the opportunity and initiative to review its own internal policies against the Charter. This included incorporating human rights into internal agency policies and procedures, and into workforce training at staff meeting and bi-annual agency days. This is not and should not be considered to be a ‘one-off’ exercise. If we are genuine in our want to see cultural change this process must be an ongoing one, and is therefore built into the organisation’s continuous improvement processes.

Recommendation 1

That the Victorian government continues to make available, through the Victorian Equal Opportunity and Human Rights Commission, human rights training and support for community organisations (as public authorities) in order to ensure continuous improvement in protecting human rights.

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• Part two: The need for a gendered lens

Term of Reference: 2. i. Any other desirable amendments

Taking into account the government’s objective of keeping the Charter fresh and responsive, we wish to highlight the need for the application of a gendered lens to address systemic issues that currently give rise to notable breaches of human rights, and to develop systemic responses to such breaches. The bulk of the most serious breaches of human rights that come to our attention significantly and adversely affect women and girls. In particular, we are aware that forced marriage is occurring in our community and is a gross violation of multiple human rights. We also note that family violence, which overwhelmingly is perpetrated against women, frequently results in breaches of human rights.

Specifically, women and girls require greater protection for the following rights under the Charter:

- The right to protection from torture and cruel, inhuman or degrading treatment (section 10);
- The right to freedom from forced work (section 11);
- The right to freedom of movement (section 12);
- The right to protection of families and children (section 17); and
- The right to liberty and security of person (section 21).

Forced marriage is a particular concern that requires highlighting.

Forced marriage is a form of gender-based violence and an abuse of human rights. It is not limited to any particular cultural group, religion or ethnicity, and there are reports of forced marriage from all over the world. While men and boys can be victims of forced marriage, most reported victims are young women and girls and it essentially deprives them ‘of their equal enjoyment and exercise of human rights and freedoms’. In 2012, Good Shepherd, Anti-Slavery Australia and the Jumbunna Indigenous House of Learning at the University of Technology (Sydney) released *Hidden Exploitation: Women in forced labour, marriage and migration report*. From this piece of research it became evident that gaps of knowledge exist in relation to this hidden issue. In a joint project between Good Shepherd and Domestic Violence Victoria, the resultant *The Right to Refuse: Examining forced marriage in Australia* detailed a number of recent case studies of forced marriage in Australia. In a more recent research report conducted by the Australian Institute of Criminology, it was found that ‘marriage and partner migration have been used to facilitate the trafficking of people into Australia’. This research suggests that this form of

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trafficking is an exploitation of the victim/survivor’s personhood, thus exploiting the individual’s labour, body, and self.⁶

This evidence indicates that forced marriage commonly restricts freedom of movement, removes liberty and security, and fails to protect children. It can also constitute degrading treatment and can even be related to servile marriage, a form of forced labour.

Despite the obvious gap in knowledge in relation to this human rights issue, concrete interventions can be undertaken by a range of sectors to tackle forced marriage.

As is common with emerging needs, no single authority has yet been delegated the responsibility to find solutions. Multiple public authorities need to act, including schools, community agencies, health providers and legal services. The process of taking up this responsibility unfolds in response to many factors, including community awareness and government policy settings.

Family violence is a more recognised problem that also creates human rights breaches that require systemic responses at every level of the Victorian community and government. As community standards and awareness increase, the understanding of government’s role in protecting women is changing. To give one example, the design of courtrooms currently fails to ensure the physical safety of family violence victims in waiting areas (potentially breaching the right to security of person – section 21), which the Victorian government signaled in the recent budget it wishes to address. The Victorian government has demonstrated a clear understanding of and leadership in tackling the gendered nature of violence through its Royal Commission into Family Violence. The Charter and its associated mechanisms can further support this by raising awareness of the intersections between gender and lack of rights, and taking steps to address breaches.

We therefore believe that a gendered lens is fundamental to promoting and protecting the basic human rights of women and girls. While not denying the significant progress being made since the introduction of the Charter, the absence of a gendered lens ‘makes the Charter less effective than it could be in promoting and protecting women’s rights’.⁷

Internationally, the Congregation of the Good Shepherd has representation at the UN on the Committee for the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW). CEDAW supports the specific protection of women against violence, an issue that Australia is currently grappling with - in 2010, the United Nations Committee on the Elimination of Discrimination Against Women commented on the ‘unacceptably high levels of violence against women that persist in Australia’.⁸

UN Women argue that the continued ‘chronic underinvestment in programmes that tackle the structural causes and consequences of gender inequality in areas including unpaid care work,

⁶ Lyneham, S., and Richards, K., (2014), Human trafficking involving marriage and partner migration to Australia, AIC Reports, Research and Public Policy Series 124, Canberra: Australian Institute of Criminology.
violence against women, health, education, and peace and security’,9 perpetuate women’s inequality. A further measure could be ensuring that all government activities, including policy development, planning and budgeting are ‘gender-responsive’.10 As Good Shepherd articulated in its submission for the Human Rights Charter Review in 2011, ‘a gender-sensitive budget is about translating legal, policy and program commitment toward gender equality into budgetary commitments to address gender inequalities systematically in legislation and organisational policies, programs and budgets at all stages of the programming cycle’.11

**Recommendation 2**

We applaud the work being done to address violence against women and note the continued need for amendments to the Charter to address the gendered nature of many human rights breaches. These mechanisms could include, for example:

- the statement of compatibility with human rights that must accompany Bills brought before the Victorian Parliament be extended to include a gender analysis of that Bill
- the Scrutiny of Acts and Regulations Committee be required to apply a gender analysis when meeting its obligations to scrutinise Bills presented to the Victorian Parliament for compliance with the Charter.
- public authorities be required to develop gender benchmark indicators and collect sex-disaggregated data to enable analysis of gender-sensitive legislation, policies, programs and services with the aim of institutionalising gender-responsive budgets.
- the Charter’s preamble be amended to explicitly reflect the core principle of gender equality and those principles enshrined in the Convention on the Elimination of All Forms of Discrimination Against Women.

**Recommendation 3**

That the Victorian Equal Opportunity and Human Rights Commission undertake community education campaigns, research, and other systemic initiatives in relation to key identified human rights issues such as forced marriage.

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Part three: Economic, social and cultural rights

Term of Reference: 2. i. Any other desirable amendments

Over the course of the development, introduction, and four-year review of the Charter, the issue of including economic, social and cultural rights has frequently been raised. We believe this is still relevant, and should be kept on the agenda into the future.

Under the Victorian Equal Opportunity Act it is unlawful to discriminate against a person or group in the provision of services and education. The denial of economic, social and cultural rights continues to have a significant impact particularly on Victorian women, who face systemic discrimination. The protection of these rights is lacking in the Charter particularly in comparison to the comprehensive protection of civil and political rights.

Empowering women is a multi-dimensional process of achieving basic capabilities, legal rights and participation in key social, economic, political and cultural domains. As stated by Elizabeth Broderick, ‘poverty in Australia has a feminised face’. There is no denying that the current state of women’s economic insecurity is connected to the issue of gender inequality, and the gendered nature of care. Economic security is a pre-condition for the exercise of human rights. Without access to the basic elements of economic security, such as housing, employment, education and an adequate income, women lack the resources and means to exercise their civil and political rights.

According to the Australian Bureau of Statistics, women make up 82 per cent of Australian single parents. By taking time out of the paid workforce to care for children, women are limited in their capacity to participate in paid employment, thus economically disadvantaging them. The gendered pay gap remains a significant issue, with women earning 18.2 per cent less than men. Further to this, women retire with less superannuation, suggesting that the economic inequity women face often spans their entire life.

Recommendation 4

That protection of economic, social and cultural rights should be included in the Charter as they promote access to essential services such as adequate education, housing and health; alternatively, if this is not possible, that the inclusion of these rights in the Charter be the specific subject of a further review process to be conducted within the next eight years.

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12 Equal Opportunity Act 2010 (Vic).
Part four: Functions of other bodies


Good Shepherd strongly supports the Ombudsman’s capacity for ‘own motions’. These are essential to investigate human rights threats and breaches that have not been presented as individual complaints to one of the complaints bodies, but are coming to the government’s notice as potential systemic problems through anecdotal or other information. The example of forced marriage presented above would be one such issue.

Own motions also strengthen the capacity of public authorities such as Good Shepherd to identify and seek redress for systemic threats to human rights, rather than only advocating individual cases.

It is also critical that, as far as possible, the Ombudsman be given the capacity to disclose and share information with the Equal Opportunity and Human Rights Commission and other complaints bodies, for the purpose of human rights investigations.

Recommendation 5

All key bodies taking complaints as part of Victoria’s human rights architecture be enabled to:

- pursue ‘own motion’ investigations; and
- share information between them in the interests of human rights investigations and resolutions.