

## VICTORIAN WOMEN'S TRUST

### SUBMISSION TO THE HUMAN RIGHTS CONSULTATION COMMITTEE, AUGUST 2005

The Victorian Women's Trust commends the Victorian Government on exploring the possibility of a Victorian Charter of Human Rights, and welcomes this opportunity to make comment.

**1. The Victorian Women's Trust believes there should be a Charter or Bill of Rights as a key way in articulating and further protecting the rights of all Victorian citizens.**

The Trust however views the timeframe undertaken to receive feedback on this initiative is manifestly inadequate. It offers only a limited means of community engagement on such an important question as the protection of our human rights.

**2. The restricted timeframe of two months to lodge submissions represents an important missed opportunity.**

The question of people's human rights goes to the heart of the quality of human existence – where the dignity and worth of every person is respected, where each person has food and shelter, access to a clean and healthy natural environment, care in sickness, defence at law, dignity in work, and the pleasures and opportunities that education provides (Purple Sage 2000: 22).

A process around Human Rights in Victoria could easily have become one of the most democratic and inclusive exercises in our State's history. Instead, it has been unfavourably squeezed into eight to ten weeks.

The timeframe represents an omission of extensive discussion and dialogue with the community on the subject of human rights. Instead, the current process appears to allow mainly for timely responses by key bodies - a reliance that overlooks many citizens living in Victoria.

**3. Once this stage of consultation and Committee deliberation is completed, the Government should consider a second and longer stage of community discussion and debate around the Committee's framework and recommendations.**

The matter of Human Rights is of such public importance that we all expect to be included in the debate. To echo the words of Thomas Jefferson, to “remain democratic, a society must find ways to put specialised knowledge into the service of public choice, and keep it from becoming the power basis for an elite.”

Engaging people in initiatives to strengthen their communities takes considerable time, as the Victorian Women's Trust found in leading the extensive community dialogue for the Purple Sage project (1997 – 1999). This process affirmed that people expect to be consulted on issues that affect their lives - they respect and understand that a healthy democracy is reflected in the way all people, as citizens, can participate

in community life. They expect to take part in debate on matters of public importance (The Purple Sage Project 2000:33).

The timeframe also represents a missed opportunity to make our democracy more modern and relevant. Our place in a democracy means much more than casting a vote every three to four years. To ensure relevance, it is vital to engage people in widespread consultation to help themselves, but it is also important to exemplify any desired changes within government's own policies and practices.

#### **4. Human Rights are not divisible.**

The Victorian Women's Trust notes with disappointment the Government's wish to restrict a Charter of Rights to civil and political rights only.

It is impossible to umbrella human rights into categories for separation. We believe that human rights should cover all citizens' rights – including civil, political, social, economic and cultural rights. As Liberty Victoria states, "Human rights are indivisible: the right to vote, free speech, and fair trial are no more important than the rights to work, health, housing and education".

We strongly urge the Government to adopt a wider approach to the examination and protection of human rights.

It is a nonsense to suggest an emerging young adult with an impoverished background and lack of education and economic security, can participate in the same ways – politically, socially and economically - as their peers who have already enjoyed stronger differential access to society's resources and opportunities. Thus, the right to an education and work is a precondition to full civic participation.

#### **5. Should the Government choose to follow the proposed focus on 'civil and political rights', we then urge the Government to define it as such – and label any further discussion in this area as being about a 'Charter of Civil and Political Rights', rather than a 'Charter of Human Rights'.**

In narrowing the focus to civil and political rights, Government runs the risk of overlooking various groups within society. It should be noted that the UN has singled out women as in need of special attention.

The introduction to the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) reminds us that the purpose of the treaty is to spell out equality, to establish an international bill of rights for women, and to set an agenda for action by countries to guarantee the enjoyment of these rights. The existence of the Women's Convention is perhaps comment that existing UN output did not adequately exhaust the rights of human kind, however CEDAW is an important document for women everywhere. The recent birth of the Optional Protocol of CEDAW which enables a complaints process is a further step in the right direction, although unfortunately Australia has neglected to adopt this protocol.

**6. Protecting and enhancing women's rights can only be realised by recognising the specificity of women's experience and lives. We recommend that the special area of women be included in a Charter of Human Rights.**

Women have particular needs and interests that should be reflected in political representation, legislation, public policy, and community life. Women's reproductive rights, their reproductive health, the quality of antenatal care, the huge and unremunerated workload in caring for children, are some of the distinct aspects of women's experiences.

Sexual assault statistics tell of the problem of female rape and the low rate of convictions in our courts. Domestic violence in Australia is endemic and is the leading factor causing negative health outcomes for women. Women are much more likely than men to experience sexual harassment in the paid workplace. Women are much more likely to be used in sexual trafficking. Women are much more likely to incur sexually transmitted debt.

Younger women deal with reproductive health issues while older women face menopause change and risks in different kinds of medical treatment. Australian women on average live longer than men – but after a lifetime of unremunerated caring for others, and low levels of superannuation, they face serious economic insecurity in the twilight years of their lives.

Australian women are more than twice as likely to live in poverty as men. Women still earn less than their male counterparts giving them less disposable income. For a woman who has completed secondary education, the lifetime earnings foregone, after tax, are around \$160,000 for the first child, and \$12-15,000 for each additional child (Victorian Women's Trust, Women In Politics, June 2004, 35-36).

This specificity of women's experiences is not adequately represented in the Committee's Discussion paper, and yet it is central to the recognition and enhancement of women's human rights.

The Discussion Paper fails to note that for some years now, feminist scholarship has pointed to the ways universal rights actually derive in large part from men's experience of the world, in particular their relationships in public life with oppressive governments.

Rarely, if ever have men demanded recognition of the inviolability of one's body as a fundamental civil right. Yet such a right has in recent times been recognised by Australian states with the passage of legislation criminalising rape in marriage. It might be noted that when the draft bill of human rights was being discussed in San Francisco in 1945, leading feminists, including Australia's Jessie Street made a valiant effort to have the right to the sanctity of women's bodies incorporated as a human right, in recognition of women's wartime experience when fear of venereal disease led to forcible medical examinations in many countries – including Australia. Women at that time also argued for recognition of mothers' rights (including the right to breastfeed and nurture their child), yet as the discussion paper acknowledges, by default, mothers remain one of the 'population groups' who still have not had their

particular rights recognised in an appropriate international convention. It has sometimes been argued that had mothers' rights been given formal recognition at this time, it might have been more difficult for state authorities to seize the babies of Aboriginal and non-Aboriginal unmarried mothers during the decades that followed.

The Discussion Paper notes the challenge of reconciling the universalist nature of human rights discourse with the particular needs and circumstances of specific groups of people. Arguably, the specificity of women's sexed embodiment demands recognition in the formulation of human rights, such as the right to the inviolability of the body, but also the right to care for children (and others) in ways that don't deprive carers of other rights, such as the right to economic independence. The provision of parental employment leave should be seen not as an economic right, but as a fundamental civil right.

The idea of the right to care entails a double imperative with 'care' understood as both verb and noun. People should be guaranteed the right to care for others (for example, aged parents, young children, disabled siblings) and at the same time, people's right to be cared for should also be protected. The 'right to care' is just as important a civil and political right as the right to freedom of assembly and movement. Thus legislation pertaining to work or education or political process would be scrutinised to ensure that it also provided for people's right to care. Women would thus not be penalised, and their political rights would not be compromised by their disproportionate commitment to this area of human need.

Although, traditionally, women have assumed responsibility for the major share of care in the world, we would envisage that as men came to share this responsibility, they too would benefit from recognition of such rights, just as women have benefited from rights – such as the right to vote – once the exclusive preserve of men.

The right to care must also be seen in terms of State responsibility, due to the aging population and the great likelihood that the responsibility of much of this unpaid caring for aged relatives will fall on Australian women. We need to recognise the diversity of Australian families, and ensure that provisions made for poverty stricken elderly people without relatives to care for them or to pay for their aged care, are cared for by the State.

The right to work is an inalienable right of all human beings (CEDAW article 11.1.a). As an extension to this, the state provision of childcare (CROC article 18) would be necessary to protect and better enhance the right to work by men and women. Furthermore, the provision of parental leave must also be seen as crucial to this area, in conjunction with the equal opportunities legislation preventing discrimination on the grounds of family responsibilities.

The Committee's Discussion paper states that Australia's obligations under CEDAW are all given effect by the Sex Discrimination Act as part of the Equal Opportunity legislation. Admittedly this works towards promotion of equality and elimination of discrimination on the grounds of sex, marital status or pregnancy, and the elimination of sexual harassment.

However, it must be clearly pointed out that CEDAW goes further than the Equal Opportunity legislation. This point is conceded by the Department of Justice in material accompanying its consultation. By stating “that many of these rights are already protected in Equal Opportunity Legislation”, the Department is inadvertently recognising that some are missing from such legislation.

The provision of such legislation serves to support negative freedoms (the freedom from sexual harassment for example) but does not ensure that positive rights for women are upheld and respected. A further example in a different but no less important field, the Convention on the Right of the Child (CROC) is not actually law in Victoria. The HREOC, whilst having the power to investigate complaints that children's rights have been violated, can only give advice to parliament as it sees fit.

The introduction of specific rights would cover the ambiguity or gaps in Equal Opportunity legislation and would give weight to UN opinion as laid out in CEDAW, its Optional Protocol and CROC about the importance of both groups.

The International Covenant on Civil and Political Rights article 23 includes the right to equality in the arena of entering into, being within and leaving a marriage. As the HREOC 2005 Discussion Paper 'Striking the Balance – Women, Men, work and Family' states: 'Equality for men and women should be recognised in all spheres of life, including the workplace and the home' (pg 5). Following this trend and wording, the Trust believes that the right to equality before the law in every sphere of life should be of crucial importance for inclusion in a Charter of Human Rights.

Using such wording may prevent issues in the so-called “private” domain from being relegated to invisibility, and thus together with the right to work, would protect women's rights in particular. The HREOC 2005 Discussion Paper recognises the 'double shift' done by Australian women, a combination of paid employment with the majority of unpaid work done within the home. The inclusion of such a right would again positively reinforce the notion that unpaid care work within the home is not solely women’s work, whilst encouraging men's participation in childcare and other unpaid work within the home.

If the Government is insistent in adopting the rights listed in the International Covenant of Civil and Political Rights, the Trust would urge care in adopting the wording around the Right to Life. We suggest the particular wording favoured by the ACT Charter 'from birth onwards' be included, to work in conjunction with the current legislation concerning abortion and such areas as IVF, and to not unnecessarily hinder any future change in such areas.

**7. The Victorian Women’s Trust believes the compliancy element of a proposed Charter of Rights is particularly important to ensure the Charter of Rights is (a) taken seriously by respective governments and (b) equally respected by Victorian citizens.**

We support Liberty Victoria’s point that all sections of government play a part in supporting and upholding a Charter of Rights:

*“Our institutions of government—the Courts, the Parliament, the Executive and also*

*human rights institutions like the Equal Opportunity Commission, Privacy Commissioner and Ombudsman—must all play a role in protecting our human rights”* (<http://www.libertyvictoria.org.au/docs/HumanRightsConsultation2005.html>)

**8. The codification and protection of rights needs to be as good as the effective remedies to deal with rights violations.**

We believe that compliancy questions should be a specific part of a second round of community discussion and debate as advocated in this submission. Compliancy questions have their own complexities, requiring careful research, assessment of existing institutions and practices, thought and community discussion. This level of debate and resolution would be better located in a second stage of consultation and deliberation.

**Prepared for The Victorian Women’s Trust, August 2005  
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