



**National Human Rights Development:
Submission to the Consultation**

Women's Health in the South East

June 2009

1. Background: Women's Health In the South East

Women's Health in the South East (WHISE) is a regional women's health service, for the southern metropolitan region of Melbourne. We are a community-based organisation run by women, for women, and are concerned with all aspects of women's health and wellbeing.

Our primary aim is to improve the health and wellbeing of women who are disadvantaged through gender, mental illness or disability, physical illness or disability, cultural and religious background, language, income level, location, and other complex personal, family or community conditions. We foster confidence and ability in women, so that they have the skills, information and ability to use mainstream health and community services appropriately and effectively.

WHISE provides its own programs, information and referral services for women, liaises with other health services, and works to promote women's health. Working from a feminist perspective, WHISE acknowledges the diversity of women and is open and accessible to all women in our region.

Our work is underpinned by a social model of health. We are committed to reducing inequities in health which arise from the social, economic and environmental determinants of health. We encourage women to make informed decisions about their own health and wellbeing, and that of those important to them – we see that information and confidence-building in women will have a ripple effect into the wider family, friends and community networks, thereby creating a much greater chance of improvement for everyone.

Women's Health In the South East welcomes the opportunity to respond to this important consultation. Our vision is for a society in which the accepted approach to health and wellbeing is empowering and respectful of women and girls (and of everyone). We seek a society which is equitable in opportunity, rights and responsibilities for all, and one where everyone enjoys the protection of Human Rights.

We believe a well-written and thoughtful Human Rights Charter at Federal level is an important step towards reaching that goal.

In this Submission, we present our own views, and endorse the recommendations already provided to the consultation in the submission from Women's Health Victoria.

2. Are Human Rights Sufficiently Protected in Australia?

2.1 What are Human Rights?

Human Rights are the rights belong to every human being irrespective of any differences in nationality, location, religion, gender, and physical and mental ability.

Human Rights aims to allow everyone the opportunity to have a rewarding life within individual capacities, and with the basic needs met.

The United Nation's Universal Declaration of Human Rights [1948] states:

- All human beings are born free and equal in dignity and rights.
- Everyone is entitled to rights without discrimination.
- Human Rights cannot be taken away, traded or disposed of, and
- Human Rights are the foundation for freedom, justice, peace, and respect.

2.2 Australia's Obligation under International Law

Australia has an obligation to protect the human rights of its citizens under international law¹.

Australia has ratified and accepted these rights in international covenants such as:

- the Universal Declaration of Human Rights [UDHR]
- the International Covenant on Civil and Political Rights [ICCPR]
- the International Covenant on Economic, Social and Cultural Rights. [ICESCR]
- the Convention on the Elimination of All Forms of Discrimination against Women [CEDAW]
- the Convention on the Rights of the Children [CROC]

However, to date, Australia has yet to fulfil its obligation to incorporate these rights into domestic law.

Australia remains the only democratic country in the world that does not have a bill of rights,² or any other written document which enshrines fundamental Human Rights.

2.3 Breach of Human Rights

It may be argued that Australia is not accountable, under International law, in relation to Human Rights declarations or covenants.

However, since Australia has ratified many Human Rights treaties,³ it certainly has a moral obligation to act according to international Human Rights standards.

Unfortunately, there have been several instances where Australian individuals have approached treaty bodies or the International Court of Justice for redress, because there are no Australian domestic legislations in which to seek redress for their issues.

In many instances the United Nation's Human Rights Commission has found that Australia has breached the fundamental rights of its citizens.^{4 5}

2.4 Local Human Rights Legislation

Given the lack of appropriate legislation at Federal level, several States have already opted to establish their own legislation to promote and protect Human Rights.

The ACT and Victoria have a Human Rights Act and a Human Rights Charter respectively and Western Australia and Tasmania have begun a consultation process for the same.

Recommendation:

- That Australia now move to formally enshrine Human Rights in a single document.

3. The Legislative Model

Women's Health In the South East strongly supports the establishment of a Human Rights Charter at Federal Level.

We endorse the views of Women's Health Victoria, that such a charter would;

- Improve the quality and accountability of government.
- Consolidate and strengthen human rights protection for all Australians.
- Encourage social Inclusion.
- Improve Australia's reputation abroad.
- Constitute one effective legal and political response to human rights violation.^{6 7}

We also endorse the view of Women's Health Victoria, that a "Dialogue" model of Human Rights would be the most appropriate legislative model to adopt for the Human Rights Charter.

Under this model, the Charter would be an ordinary act of Federal Parliament (as is the current Victorian Charter of Human Rights and Responsibilities⁸). Most importantly the Dialogue model requires the three arms of Federal government (the Executive, the Parliament and the courts) to act together to protect and promote Human Rights, while at the same time maintaining the sovereignty of the Parliament.

Under this model, at Federal level:

- Parliament must ensure that new Bills are compatible with human rights.
- The courts may hear any cases in which human rights are invoked and can recommend that the government re-examine a law in line with human rights.
- Parliament must then consider whether the law should be upheld but are under no obligation to change the law. The courts do not have the power to force Parliament to repeal the law⁹.
- Public authorities must take human rights into account in their decision-making.

Recommendation:

- That the legislative model chosen for the Federal Human Rights Charter be a "dialogue" model, similar to that of the Victorian Charter of Human Rights and Responsibilities

4. Human Rights for All

Australia is often viewed by other nations as having a somewhat ambivalent attitude on human rights. While Australia's international aid efforts are much appreciated, Australia's treatment of those who do not enjoy full Australian citizenship is often seen as unfair, even harsh.

In our view, human rights transcend national boundaries, and go to the core of our values as human beings – how we treat each other, how we appreciate difference, how we maintain our own identities while acknowledging and appreciating those of others.

It is often difficult to balance human rights with competing national priorities tied to employment, economics and industry, and social expectations and norms.

However, at a simple level, the Federal Charter of Human Rights needs to extend over all human beings within Australia's jurisdiction and responsibility. Those in Australia who are not Australian citizens are particularly vulnerable to exploitation in many forms.

We strongly endorse the view that the Federal Human Rights Charter should extend to all persons in Australia – citizens and non-citizens. Included within the "non-citizens" group are those "detainees" who are currently held in areas recently excised from Australian soil.

Recommendation:

- That the rights of all people in Australia and under Australian jurisdiction be protected in the Federal Charter of Human Rights

5. Conciliation and Arbitration – a Human Rights Commission

The Federal Charter should allow for a process of conciliation and arbitration on human rights issues – a process that is easily accessible and available to individuals and organisations.

This process can be operated through a body such as an Australian Human Rights Commission, with the responsibility to report on human rights progress within Australia, and to conduct training and education to assist in the development of a human rights culture.

Recommendations:

- That a Human Rights Commission be established to hear human rights complaints, to report on Australia's progress on human rights and to provide training and education
- That a Human Rights culture be fostered in Australia through education

6. Which Human Rights should be Promoted and Protected?

International instruments such as the Universal Declaration of Human Rights [UDHR], the International Covenant of Civil and Political Rights [ICCPR] and the International Covenant on Economic, Social, and Political Rights describe the fundamental human rights that should be the basis of the Australian Federal Charter.

The Victorian Charter of Human Rights and Responsibilities has drawn on international instruments, to ensure that basic human rights are included in this charter. The Federal Charter must similarly include basic human rights, drawing on international examples.

Recommendation:

- The Federal Charter of Human Rights should draw on fundamental international instruments, to ensure inclusion of basic human rights

7. Basic Human Rights to be included

A civil and just society needs to address human rights across two broad areas:

- civil and political rights
- economic, social and cultural rights.

Within each broad area, additional categories of rights may be identified.

7.1 *Civil and Political Rights*

Civil and political rights may include:

- **Protection of an individual's physical integrity** (freedom from unlawful execution, torture, and arbitrary arrest)
- **Procedural fairness in law** (the rule of law, rights upon arrest, trial, basic conditions to be met when in prison, rights to a lawyer, impartial process in trial)
- **Protection from discrimination based on gender, religious, racial or cultural and other forms**
- **Individual freedom of belief, speech, association, freedom of press, the right to assembly**
- **Right to political participation** (to organise a political party, vote, voice contempt for current political authority, and so on).¹⁰

7.2 *Economic Social and Cultural Rights*

Women's Health in the South East believes that the inclusion of economic and social rights, in particular, are critical for any Human Rights Charter, as these rights address the basic needs of all humans - food, water, and shelter, and the associated next level of needs in relation to health, education, employment, and security of living.

Economic, social and cultural rights may include;

- **Right to work** - fair wages, equal wages for equal work, safe working conditions and rest from work
- **Right to have a family life** – the widest possible protection and assistance for the family
- **Right to an adequate standard of living** including food, clothing and housing.
- **Right to Health** – the right to have the highest attainable standard of physical and mental health
- **Right to education** ¹¹
- **Right to social security**
- **Right of self-determination**
- **Equal rights for men and women**¹²

The inclusion of economic, social and cultural rights has been upheld in international jurisdictions, as well as in the Victorian Human Rights Charter.

In one instance, the Indian Judiciary upheld that “tanneries had violated citizens' right to life by discharging untreated effluents into agricultural areas and local drinking water supplies, thereby severely polluting the drinking water.”^{13 14}

The International Commission of Jurists hold that economic, social and cultural rights can be justified: “If we look to the collective experiences of many nations and the practice of numerous International and regional bodies adjudicating over economic, social and cultural rights, the issue of the justifiability of economic, social and cultural rights is, in fact, a non-issue and demonstrates the leading role that adjudicative procedures may play towards the further realisation of economic, social and cultural rights.”¹⁵

As the Victorian Attorney General Rob Hulls noted in 2005:

“While those of us confident of shelter and a descent meal tonight may see civil and political rights as the priority, the right to freedom of expression is of very little interest to a Victorian with no housing and little chance of food”

Recommendation:

- That the Federal Charter reflect the indivisibility and interdependence of civil and political rights with economic, social and cultural rights, by including both sets of rights in the legislation

8. Human Rights in relation to Women

As a regional women’s health organization we strongly advocate for the right to health and wellbeing, the right to social security and the right to an adequate standard of living for our clients.

We know that these rights are very important for our clients as a basis on which to build a safer life in a more secure environment. These rights enable and encourage our clients to develop their full potential and protect their right to a dignified life as a human being.

According to the World Health Organization, the right to health encompasses freedom from poverty, gender equality, and the right to a better early life, social inclusion, and better conditions of work.¹⁶

The right to an adequate standard of living and the right to social insurance and social security address issues such as violence against women and children, inequality of economic participation, and the gendered role of women as a primary care giver (without adequate support or assistance). The inclusion of economic and social rights will enable marginalized groups such as disadvantaged women a greater chance to access and enjoy full human rights, not only because of the legal protection provided by these rights, but because the inclusion of these rights helps to create the human rights culture noted above.

The Federal Charter of Human Rights may then become a useful instrument with which to challenge discrimination, acknowledge the often inappropriate gendered approach to roles and responsibilities in our society and to address violence against women.¹⁷

Recommendation:

- That the Federal Charter include the right to health, the right to an adequate standard of living, and the right to social insurance and social security, as invaluable measures which will help to eradicate discrimination, poverty and violence against women

9. Human Rights in relation to Freedom of Thought, Conscience and Religion

The inclusion of rights in relation to freedom of thought, speech, conscience and religion is standard in most human rights charters, and brings the risk of the attempted use of the legislation to protect the activities of those who seek to engender hatred, violence, vilification against others.

Such rights require a delicate balance in their implementation – the right of the individual to freedom of speech, for example, balanced against the right of another individual not to be vilified on the basis of race, gender, religion or culture.

There have been several international instances where human rights legislation has been invoked to protect the freedom of speech of an individual or group, even where that speech is clearly racist, punitive, or capable of inciting hatred or violence.

Nevertheless such rights need to be included in the Australian Federal Charter, because of the greater risk arising from omission of such rights – the emphasis of the Charter needs to be on the legitimate and reasonable rights of all human beings, with subsequent and dependent legislation addressing any issues of vilification, or inciting to hatred or violence (as currently occurs in the Victorian context).

Recommendation:

- That the Federal Charter include the right to freedom of thought, conscience, speech and religion

10. Conclusion

Women's Health in the South East appreciates very much this opportunity to participate in this important and historic Human Rights consultation.

We believe that the establishment of the Human Rights Charter at Federal level is the obvious and necessary next step in the development of Australia as a mature, civil and just society, which takes seriously its obligation to protect and promote the human rights of all who are within Australia's jurisdiction.

The establishment of a formal Human Rights Charter at Federal level needs to encompass:

- The dialogue model (similar to the Victorian legislation) which requires all arms of government to work together to promote and protect human rights
- A process to allow for human rights issues to be heard, to monitor Australia's progress on human rights, and to provide training and education (a Human Rights Commission)
- Basic human rights, broadly described as civil and political rights, and economic, social and cultural rights
- Those specific rights which will assist in the eradication of discrimination, poverty and violence, especially against women and children
- Freedom of thought, speech, conscience and religion, without complementary legislation to deal with those who use the "right to freedom of speech" to incite hatred, violence and vilification.

References:

¹ Elizabeth Evatt: *Bill of rights and international standards*,
<http://search2.austlii.edu.au/au/journals/AJHR/2003/5.html>

² Zifcak, S & King, A. 2008 *Wrongs Rights and Remedies: An Australian Charter*
http://www.australiancollaboration.com.au/booksreports/Wrongs_Rights_Remedies.pdf

³ Australian Government, Department of Foreign Service and Trade - Treaty Database
<http://www.info.dfat.gov.au/Info/Treaties/Treaties.nsf/WebView4?OpenForm&Seq=3>

⁴ NSW Council on Civil Liberties: *Does Australia Violate Human Rights?*
http://www.nswccl.org.au/issues/hr_violations.php

⁵ Australian Government, Attorney-General's Department: *Human Rights Communication*
<http://www.ag.gov.au/www/agd/agd.nsf/Page/RWPA16C04CA2741102FCA2571F7007A90E4>

⁶ Zifcak, S & King, A. 2008 *Wrongs rights and Remedies: An Australian Charter*
http://www.australiancollaboration.com.au/booksreports/Wrongs_Rights_Remedies.pdf

⁷ Women's Health Victoria: *Submission to the Human Rights Consultation*
<http://www.whv.org.au/>

⁸ Victorian Equal Opportunity Commission: *Victorian Charter of Human Rights and Responsibilities*
<http://www.humanrightscommission.vic.gov.au/human%20rights/the%20victorian%20charter%20of%20human%20rights%20and%20responsibilities/FAQs/>

⁹ Zifcak, S & King, A. 2008. *Wrongs, Rights and Remedies: An Australian Charter?*
<http://www.australiancollaboration.com.au/booksreports/index.html>.

¹⁰ http://en.wikipedia.org/wiki/International_Covenant_on_Civil_and_Political_Rights

¹¹ *Uniting Australia*
<http://www.unitingjustice.org.au/component/content/article/6-upholding-human-rights/179-escrights-hract.html>

¹² United Nation's Cyber School
<http://cyberschoolbus.un.org/treaties/economic.asp>

¹³ Refer to:
<http://data.iucn.org/dbtw-wpd/html/EPLP-051-water-human-right/Appendix%20II.html>

The High Court held in *L.K. Koolwal v State of Rajasthan and Others* that "maintenance of health, preservation of the sanitation and environment falls within the purview of Article 21". It recalled Art. 51 of the Constitution – which poses a duty on every citizen "to protect and improve the natural environment..." – and concluded that "it creates the right in favor of the citizen to move the Court to see that the State performs its duties faithfully"... Thus, Art. 51 gives the right to the citizen to move to the Court for the enforcement of the duty cast on the State instrumentalities, agencies, etc

¹⁴ Refer to:
<http://data.iucn.org/dbtw-wpd/html/EPLP-051-water-human-right/Appendix%20II.html>

The Supreme Court held in *Virendra Gaur and others v State of Haryana* (1995) that "Environmental, ecological, air, water pollution etc should be regarded as amounting to violation of Article 21."

Similarly, in the *Vellore Citizens Welfare Reform v. Union of India*, the Supreme Court held that tanneries had violated citizens' right to life by discharging untreated effluents into agricultural areas and local drinking water supplies, thereby severely polluting the drinking water

¹⁵ International Commission of Jurists
<http://www.icj.org/IMG/pdf/3.pdf> ,

¹⁶ World Health Organization: *Closing the Gap in a Generation*
http://whqlibdoc.who.int/publications/2008/9789241563703_eng.pdf

¹⁷ Women's Health Victoria: *Submission to the Human Rights Consultation*
<http://www.whv.org.au/>