

Occasional Paper

# Advancing women's rights

– exploring the relationship between the Charter of Human Rights and Responsibilities and the Convention on the Elimination of All Forms of Discrimination Against Women



Victorian Equal Opportunity  
& Human Rights Commission



## Victorian Equal Opportunity & Human Rights Commission

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## Introduction

### What is CEDAW?

The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) is an international human rights treaty that covers gender equality. CEDAW was adopted by the United Nations General Assembly 30 years ago in December 1979.

Consisting of a preamble and 30 articles, CEDAW defines what constitutes discrimination against women and establishes a framework for national action to end such discrimination.

The Convention defines discrimination against women as “any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.”

Parties to the Convention are required to take “all appropriate measures, including legislation, to ensure the full development and advancement of women, for the purpose of guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms on a basis of equality with men.”

Countries that ratify CEDAW are legally bound to put its provisions into practice and to submit regular national reports on measures they have taken to comply with the Convention. To date, 186 countries have ratified CEDAW.

Australia ratified the Convention in 1983, with two reservations: the provision of paid maternity leave and women’s participation in direct armed combat. These reservations mean that Australia has no obligations under CEDAW to put these provisions into practice.

One of the key roles of the Victorian Equal Opportunity and Human Rights Commission (the Commission) in relation to the Charter of Human Rights and Responsibilities (the Charter) is examining how the Charter – and the protection of human rights in Victoria more broadly – can be strengthened.

The Charter itself provides for ongoing reform, with section 44 requiring the Attorney-General to conduct a review of the first four years of the Charter’s operation and to table a report of the review in parliament by 1 October 2011.

While the scope of the four-year review is broad, one of the specific issues it is required to examine is whether additional rights should be protected under the Charter, including (but not limited to) those rights contained in the International Covenant on Economic, Social and Cultural Rights, the Convention on the Rights of the Child and the Convention on the Elimination of All Forms of Discrimination against Women, and the right to self-determination.

To be in a position to make a meaningful and informed contribution to the four-year review, the Commission is examining a number of themes that will be relevant to the future operation of the Charter.

In its 2008 report, the Commission examined the human rights of children and young people and the relationship between the Charter and the Convention on the Rights of the Child. In 2009, the Commission explored the human rights of women, including whether extending the Charter to include additional rights drawn from the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) would offer greater protection for women’s rights in Victoria.



As with the examination of children’s rights in 2008, the timelines and resources available for each Charter report mean that the Commission is unable to undertake a comprehensive community consultation on women’s rights. Instead, the Commission hosted a Women’s Rights Symposium and an Indigenous Women’s Forum to seek input from individuals, community organisations and government agencies with relevant expertise and experience. This “snapshot” of community views – combined with the Commission’s research into women’s rights – has helped to identify the human rights issues facing women in Victoria, shortcomings in the protection of these rights and areas where further action may be needed.

The Commission acknowledges the need to consult and engage the Victorian community far more comprehensively in relation to these issues..

### **The Charter, CEDAW and women’s rights**

The Charter predominantly protects civil and political rights; it does not contain many economic or social rights. By contrast, CEDAW recognises that women’s civil and political rights are inherently linked to their economic and social development. It recognises that gender roles are socially constructed, and highlights the importance of sex role stereotyping in creating an environment for discrimination and inequality. Importantly, CEDAW creates a framework for governments to prioritise equality of *results* for women over equality of *opportunity* – an approach that acknowledges that “temporary special measures” may sometimes be needed to redress existing inequalities and achieve substantive equality.

CEDAW requires countries that have accepted the Convention to take all appropriate measures to eliminate discrimination against women in a number of areas:

- sex role stereotyping
- trafficking and exploitation
- politics and public life
- nationality
- education
- employment
- health
- economic life, sport and culture
- women living in remote and rural areas
- equality before the law
- marriage and family relations
- violence against women.

In protecting this broad spectrum of rights, CEDAW affirms the principle of indivisibility of human rights, which recognises that all human rights – civil, cultural, political, economic and social – have equal status, are inherent to the dignity of all people and cannot be given precedence over each other.

Incorporating CEDAW into the Charter may require an extension of the rights currently protected under the Charter. It may also require the goal of substantive equality between women and men to be incorporated into the Charter’s statement of purpose.

In developing its report for Victoria’s Charter in 2005, the Human Rights Consultation Committee recommended that women’s rights not be included in the Charter initially. The Committee argued that it was appropriate to take an “incremental approach to rights protection” and that it was preferable to start with a Charter that applies to all people generally rather than incorporate rights from more detailed and specific human rights instruments such as CEDAW.

In seeking views about how the Charter might be strengthened in relation to women’s rights, the Commission also sought views about whether – and how – CEDAW could be incorporated into the Charter.

## Common themes

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A number of common themes and concerns emerged from the Women's Rights Symposium and the Indigenous Women's Forum conducted by the Commission.

### Systemic discrimination

Many issues discussed by participants reflected broader systemic discrimination. Generally, participants felt that the Charter fails to provide the legislative framework necessary to properly address systemic discrimination or to promote substantive equality.

While Australia's anti-discrimination legislation can be highly effective in addressing individual complaints, it is also not designed to deal with entrenched systemic discrimination or to promote substantive equality.

If the Charter is to protect women's human rights, it must recognise that the concerns raised by women often reflect systemic breaches of human rights (not only breaches by individual authorities or service providers) and include mechanisms to tackle these systemic issues.

### Indivisibility of human rights

The Charter should affirm the principle of indivisibility of human rights. In the context of the four-year review, this also means that giving consideration to adding rights derived from CEDAW cannot be meaningfully separated from the question of whether economic, social and cultural rights should also be enshrined in the Charter.

The Charter contains a number of civil, political and cultural rights, and can be summarised as promoting and protecting the principles of freedom, respect, equality and dignity. However, breaching women's economic and social rights often has adverse implications for their health, safety, economic wellbeing, equality of opportunity and capacity to participate fully in society. In addition, where women are unable to enforce these rights, they will struggle to find the resources or means to exercise their civil, political and cultural rights.

The denial of economic and social rights continues to have a significant impact on women in Victoria and these rights should be articulated and protected by the Charter. This would also align the Charter more closely with CEDAW.

### Intersectional discrimination

Intersectional discrimination is a daily experience for many Australian women. In particular, Indigenous women experience disproportionate discrimination as a result of their race.

CEDAW recognises that different types of discrimination or disadvantage compound each other and are inseparable; the Charter does not.

The Charter should acknowledge intersectional discrimination and the multiple barriers faced by women and girls because of factors such as their race, age, ethnicity, culture, religion, language or disability.

### Gender analysis

The Charter has not brought a widespread gender analysis to the development of policies and laws in Victoria. The absence of this "gender lens" makes the Charter less effective than it could be in promoting and protecting women's rights.

A number of options were proposed to address this issue, including making a gender analysis a requirement of the statement of compatibility with human rights that must accompany Bills brought before the Victorian Parliament; requiring the Scrutiny of Acts and Regulations Committee to apply a gender analysis when meeting its obligation to scrutinise Bills presented to the Victorian Parliament for compliance with the Charter; and requiring public authorities to report against gender benchmarks as part of their compliance with the Charter.



## **Gender stereotyping and formal equality**

Unlike CEDAW, the Charter does not formally address gender (or sex role) stereotyping. This stereotyping continues to be a major obstacle to women's rights and to women achieving substantive equality in Victoria. The Charter should include a similar provision to Article 5 of CEDAW that requires appropriate measures to be taken to change patterns of conduct, laws, policies and practices that are based on gender stereotyping.

## **Awareness and education**

To assert their rights, Victorian women need much greater access to relevant, appropriate and useful education and training about human rights and the Charter.

There is a widespread lack of awareness about the nature, impact and use of the Charter, especially within community-based organisations, private service providers and groups that are particularly vulnerable, such as Indigenous women, women with a disability and women who are newly arrived migrants or refugees.

Campaigns and other activities are required to educate public and private sector organisations about the need to consider the human rights of women (even where these organisations are not obliged to comply with the Charter).

A much higher profile public discourse about human rights and the Charter is called for to ensure that individuals whose rights are breached understand how they can help themselves. Health professionals and others in positions of authority need to be educated to ensure that they deliver services respectful of human rights.

## **Data, analysis, precedents and tools**

It is difficult to determine the extent of breaches of the Charter in relation to women without more extensive data and more thorough qualitative analysis. There is a pressing need to gather more information about the depth and nature of human rights breaches against women. This information should be analysed and disseminated, and the data used to pursue these breaches through the Charter and to identify and pursue systemic issues.

There is as well a need for much greater documentation about how the Charter is being used in practice within the non-government sector. This documentation should include a register of cases conducted by the non-government sector and a (de-identified) detailed account of each case. It should also include a qualitative analysis of cases; an assessment of their systemic implications; and the development of precedents and tools to assist community groups advocate on behalf of their clients and members in relation to similar matters.

## **Enforcing human rights more broadly**

The Charter has had an influence in making some public authorities – notably Victorian Government departments – more aware of the human rights implications of their actions and more responsive in relation to incorporating human rights considerations into their policies and practices.

However, other service providers do not show this awareness and willingness to change. In particular, private health service providers are not obliged to consider the Charter or the human rights aspects of their conduct, with potentially serious implications for the rights of vulnerable groups of women, such as women with a disability, newly arrived refugees, women who do not speak English and women who live in rural areas where there is little choice in health services.

Measures should be taken to ensure that all service providers at least consider the human rights implications of their policies and processes. These measures could include:

- extending the definition of public authorities in the Charter
- making human rights (and women's rights) considerations a requirement of accreditation or other formal processes for service providers
- requiring human rights education to be mandatory as part of continuing professional education
- an "opt in" mechanism for private companies and organisations to hold themselves accountable under the Charter.

### **Women in rural areas**

Generally, women in rural areas (outside the large regional centres) experience much greater difficulty in exercising their human rights. With limited choice in service providers (especially in the provision of health care), women in these areas also more likely to experience problems in accessing services that respect their rights.

There is a need for a greater focus on protecting the human rights of women in rural Victoria, including providing more education and information about the Charter, encouraging women to take on leadership roles in community organisations and activities, and promoting the greater participation of women in decisions about service provision in rural communities.

### **Stronger relationship with CEDAW**

While there was no consensus on whether CEDAW should be incorporated formally into the Charter, there was agreement that consideration should be given to ensuring that the Charter either directly includes some of the social and cultural rights contained within CEDAW (such as sex role stereotyping) or reflects the intentions of CEDAW in some other form.

## Women's Rights Symposium

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In November 2009, the Commission hosted a Women's Rights Symposium to discuss how the Charter might be strengthened to better promote and protect the rights of women in Victoria.

Over 80 women representing women's organisations came together to identify the human rights issues facing women in Victoria, examine whether the Charter was protecting these rights and explore ways in which women's rights can be better protected.

Symposium participants came from diverse groups and backgrounds, including community organisations, government agencies, community legal centres, health services and Indigenous organisations. During the day, participants heard from Victoria's Minister for Women's Affairs, Maxine Morand; the Australian Sex Discrimination Commissioner, Elizabeth Broderick; and Dr Annie Pettit from Save the Children Australia. Dr Helen Szoke, the Victorian Equal Opportunity and Human Rights Commissioner, also addressed the symposium on the current operation and scope of the Charter.

Women attending the symposium took part in five focus group discussions, led by facilitators and assisted by Commission staff. Each focus group addressed five general questions:

1. What are the key human rights issues facing women in Victoria?
2. Is the Charter currently being used to protect these rights? If so, how?
3. Has the Charter brought a gender analysis to the development of policies and laws to protect these rights? If not, why not?
4. What are the current gaps in the promotion and protection of these rights?
5. How can the promotion and protection of these rights be enhanced?

### Group A: Political participation and legal protection

This workshop examined women's participation in political, public and community life, and the adequacy of legal protection for women in Victoria.

Participants observed that women do not have equal representation in public life or equal influence over decision making and that there are a number of reasons for this, including economic barriers to participation, gender stereotyping, male-dominated cultures in the workplace and in politics, cultural and geographic factors, and violence against women.

The Charter was seen as having had little impact on these barriers or on improving women's political participation, possibly because women's rights are not addressed as human rights or because of a failure to understand Australia's obligations under CEDAW to protect women's rights.

The group noted that while women are under-represented in politics, there are opportunities for women to demonstrate leadership and be actively engaged in public life beyond being involved in political parties. For many women, being actively involved in small local organisations is an important form of civic engagement that also enables them to develop the confidence and skills they need to increase their participation in other areas.

#### What participants said

- A major barrier to the full participation of women in public life is the insufficient protection of economic and social rights. This has a disproportionate effect on women because of the gendered way women experience education, work, economic security and other economic and social rights.
- Barriers to participation are more significant in instances of intersectional discrimination (where women experience additional discrimination because of their race, where they live or some other characteristic).

- Location can also be a barrier to participation. It is particularly difficult for women in small or isolated rural towns and communities to interact in a meaningful way with government and to increase their political participation.
- The different experiences of women need to be recognised in the design and development of programs that aim to encourage women's greater participation in political and public life.
- Mandatory quotas should also be considered to increase women's participation on the boards of private companies.
- Most community groups in which women are likely to become involved are either unaware of the Charter or have a very limited understanding of its implications. These groups also lack information about women's rights and ways in which to promote, mentor and support women as leaders, participants and decision makers.
- Women's right to equal protection of the law is jeopardised when laws and policies are designed with a male subject in mind and pay insufficient attention to the ways in which they apply to and affect women. A clear example of this is the systemic discrimination experienced by women in prisons. Women have different medical needs, family responsibilities and backgrounds from men and these are not adequately addressed in corrections law and policy.
- Women continue to experience difficulties in accessing justice and legal services that could assist them to exercise their right to equal legal protection.
- The contracting out of many government services makes it difficult to prevent private contractors from ignoring human rights and women's rights. Supporting women to stand up for their rights in these situations needs to be addressed, with mechanisms put in place to ensure that all firms tendering to deliver government services are aware they must comply with the Charter and that compliance is monitored.
- There is insufficient recognition in the law of the requirements of substantive equality and the need to address systemic discrimination, with anti-discrimination laws focusing on individual complaints about specific instances of discrimination. While this mechanism is important, it is unable to address systemic discrimination.
- There is a gap in information about systemic discrimination against women. This could be addressed by requiring Victorian Government departments, private contractors delivering government services and other organisations to monitor, audit and report on systemic discrimination against women.
- More effort needs to be directed towards educating women about their rights under the Charter, educating organisations about the need to consider women's rights, and educating the broader community about the role of the Ombudsman in relation to the Charter.
- The Charter has not brought a gender analysis to the development of policies or laws in Victoria to any significant extent. It also does not appear as if the Charter is being used to protect the human rights of women in relation to political participation and legal protection. While there have been some minor improvements, none of these have taken a gender focus.
- Participants in the group debated the need to protect economic, social and cultural rights in the Charter; however, it was agreed that it made little sense to integrate CEDAW with the Charter without recognising these rights.
- Participants were cautious about the need to incorporate a freestanding cause of action in the Charter as a means of giving better protection to women. Some participants expressed concern about excessive litigation and costs; others felt that imposing additional reporting requirements on public authorities would elicit a better response.

## Victoria leads on women's rights, but still a long way to go

Victoria's Minister for Women's Affairs, Maxine Morand, told the symposium that Victoria was a recognised leader in human rights, equal opportunity and responding to family violence – but that there was still a long way to go to “ensure that women participate equally in all aspects of life in Victoria.”

Ms Morand said that despite having equal opportunity legislation in Australia for more than 20 years, women are still not represented equally in business and politics, and are still discriminated against in the workplace.

“Women still encounter discrimination and gender stereotyping; women have not achieved equal pay; and women are under-represented in business leadership,” she said.

Women still earn 17 per cent less than men and of the top 200 companies listed on the Australian Stock Exchange, only 8 per cent of board members, 11 per cent of executive management positions and 2 per cent of chairs are women. Around 50 per cent of companies have no women on their boards.

Ms Morand said these figures were “a poor reflection on business culture”, with women making up over 62 per cent of bachelor graduates, 51 per cent of postgraduates and nearly 30 per cent of graduates from the Australian Institute of Company Directors. The fact that women are not being appointed to these positions on merit means there is a strong case for making it mandatory for private companies to meet a quota of women on their boards.

Ms Morand pointed out that the Victorian Government has made major inroads into increasing the representation of women on government boards and committees, meeting its 40 per cent target in 2003 and now pursuing a 50 per cent target.

She also told the symposium that *A Right to Respect: Victoria's Plan to Prevent Violence Against Women* – launched on 24 November 2009 – placed Victoria “in the global forefront of prevention of violence against women, as the world's first systematic, sustained framework for addressing the underlying causes of such violence.” *A Right to Respect* includes a comprehensive range of strategies to promote non-violence, reject gender stereotyping and encourage respectful relationships throughout the Victorian community.

## Group B: Health

This workshop examined human rights in relation to women's health, including reproductive and sexual health rights.

Participants noted that opportunities to achieve and maintain good health are essential to women being able to exercise other rights – live full and meaningful lives, participate in the workforce and contribute to society. Issues of particular concern to women were identified and discussed, including the importance of autonomy (the ability to make informed decisions about their health), confidentiality and privacy, respect when receiving health services, freedom from discrimination, and access to non-judgemental services (especially in relation to reproductive and sexual health).

Participants felt that while the Charter did not directly address women's health rights, it had been a positive force for change in some areas. However, the Charter could benefit from explicitly protecting health rights and recognising the connection between women's health and their economic, social and cultural rights.

### What participants said

- A major obstacle to improving women's health and wellbeing is the insufficient protection of economic and social rights, particularly in areas such as access to housing, workplace discrimination and pay inequality, superannuation and other aspects that affect women's incomes and economic security.
- Many human rights-related issues have an impact on women's health, including violence against women, family violence, sexual harassment and sex discrimination. A holistic approach to women's health is needed that takes into account the social determinants of health.
- Equality of access to health services and freedom from discrimination in receiving these services is essential to achieving good health outcomes for women.
- The issue of intersectional discrimination compounds women's difficulties in accessing health services. Some groups of women face particular barriers to obtaining appropriate, respectful health services, including women with a disability, Indigenous women, culturally and linguistically diverse (CALD) women, young women and women in prisons.
- Human rights issues are particularly relevant to the experiences of women with a disability within the health system. These women often have difficulty accessing health care, are more likely to be subject to intrusive treatment (or treatment without their consent), and more likely to be discriminated against in the provision of health care.
- There are insufficient numbers of women from disadvantaged groups involved in the planning, governance and evaluation of health services. Greater participation in decision making about services would improve their accessibility.
- Respect when receiving health services is often lacking or absent for women with particular attributes that can be perceived in a less sympathetic light by many in the community, such as women in prison, women with HIV/AIDS, women with a mental illness, women with an intellectual disability or unmarried women seeking contraception or abortion services.
- Access to services is also affected adversely by health service providers making decisions and judgements based on assumptions about gender (combined with age, disability and other factors). Those making these judgements often have limited or no awareness of human rights principles.
- Culturally appropriate services are often not available to CALD women. In particular, in many instances involving women who do not speak English, general practitioners do not use an independent, professional interpreter, raising issues of equality of access and privacy in respect of health information disclosed in a consultation.
- Confidentiality and privacy remain a concern for many women in accessing health services. This is particularly the case for young women and for women who do not speak English and rely upon family members (often male relatives) to interpret for them.
- Many women still experience difficulties in accessing accurate, timely and unbiased information about sexual and reproductive health, sexual relationships and contraception.

- There are significant locational disadvantages for women in gaining access to health services. In particular, women living in regional areas face difficulties in accessing reproductive and sexual health services and culturally appropriate services. Young women are often especially disadvantaged in this regard. Women in regional areas may also lack the means or ability to change to another health provider if they are unhappy with the service they have received.
- Health professionals' religious beliefs should not be imposed on patients seeking access to pregnancy termination services. The right of women to be referred to another service should override a medical professional's right of conscience.
- Greater monitoring and review of human rights compliance is needed across public and private health service providers. More education about the Charter is also needed across all levels of health service provision.
- Although the Charter says very little about health or women's rights, it does provide incidental protection of these rights. These protections, however, are not expressed clearly.
- Systemic, intersectional discrimination issues are not being adequately addressed by the Charter. The Charter has been an effective tool for individual advocacy in some instances, but its complaints-based nature means that it does not offer assistance in identifying and addressing systemic issues.

### **A lifetime of inequality accumulates poverty**

"Poverty in Australia has a feminised face." That was the strong message delivered to the symposium by Australia's Sex Discrimination Commissioner, Elizabeth Broderick.

Ms Broderick told the symposium that, despite Australia having longstanding legislation regarding equality, women still have not achieved formal equality with men and still suffer the cumulative impacts of a lifetime of inequality.

She noted that 73 per cent of recipients of the age pension in Australia are women, a figure that reflects many years of lower earnings, discrimination and reduced opportunities for women.

Ms Broderick argued that it is not that women make "bad or wrong choices" in community terms but that they often pay a financial penalty for these choices – despite the fact that these choices may be socially and economically beneficial to the broader community. For example, a decision to work part-time to care for children is likely to result in lower retirement savings, leaving women vulnerable to poverty later in life.

"Gender inequality is not just about individual incidents of discrimination, but about the cumulative impact of various events over a woman's lifecycle," she said – events such as decisions about careers, experiences of pay inequality, divorce and balancing paid work and family responsibilities. Many of these events lead to women having less time in the paid workforce and being paid less over a lifetime. "The reality is that women in Australia are more likely to be accumulating poverty during their lives, instead of accumulating wealth," she noted.

Ms Broderick also spoke of other issues affecting Australian women, including women's under-representation in positions of power and influence, continuing high levels of domestic violence and the increase in complaints about sexual harassment. She told the symposium that a much stronger focus was needed on these issues at the national level and that it was "time to get gender back onto the national agenda and elevate gender equality issues to a central place in public debate."

- Many private service providers are not bound to comply with the Charter. Without a positive obligation on these providers, there are limited options available to uphold women’s rights in the delivery of health services. Consideration should be given to ways in which these providers can be encouraged or required to consider human rights issues when treating patients.
- The Charter is sometimes not “fast enough” to act. In situations of urgency, those with the power to make far-reaching decisions often do so without reference to the human rights implications of their decisions.
- The Charter has done little to bring a gender analysis to the development of policies or laws in Victoria. Consideration should be given to requiring the Scrutiny of Acts and Regulations Committee to apply a gender analysis when meeting its obligation to scrutinise Bills presented to the Victorian Parliament for compliance with the Charter.
- The Charter should include a stand-alone substantive equality provision and specific health provisions, such as the right to culturally appropriate, gender-sensitive health care.

## Group C: Economic security

This workshop discussed human rights in the context of women’s economic security.

Participants expressed the view that economic security was 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.

The group noted that failure to protect women’s economic rights results in lifelong discrimination that has negative consequences for women.

Participants felt that the Charter is not actively protecting women’s economic rights or making a substantial contribution to women’s economic security in Victoria. It has made a difference, however, in some areas, such as access to housing.

### What participants said

- The economic rights of women are human rights and cannot be separated from civil, political, cultural and social rights.
- Women’s economic rights must be addressed and protected to achieve equality, including rights in relation to income security, pay equity and the recognition of unpaid work.
- Other economic rights are also important to women, such as the right to be able to access housing, education and child care, and employment-related rights (such as the right to be a member of a union, the right to job security and fair, flexible work arrangements, and the right to paid maternity and carer’s leave).
- The failure to adequately protect women’s economic rights leads to a lifetime of economic inequality – with women earning considerably less than men over their lifetimes and being more likely than men to rely on the age pension post-retirement.
- Intersectional discrimination compounds greater economic disadvantage and insecurity, with groups such as women with a disability and Indigenous women often finding it more difficult to access well-paid employment, education and housing.

- The right to appropriate, affordable, accessible, safe and secure housing is particularly important because it is a “springboard” from which women can build economic security. Greater support is needed to help women find pathways to affordable housing. For women in social and public housing (the vast majority of whom rely on government benefits or pensions), more support is needed to help them find pathways to education, training and employment.
- The shift to more part-time and casual work has eroded conditions in the workplace. This has had a significant impact on women because they make up the majority of the part-time and casual workforce.
- The continuing under-valuing of unpaid work also affects women’s economic security and equality over their lifetimes. Women suffer discrimination and disadvantage in relation to their caring role, with time taken off work to care for children affecting their earning capacity, superannuation contributions and accumulation of long service leave.
- In many instances, special measures are needed to address this discrimination. For example, there would be less need for women to leave the workforce if there were better, more affordable and high quality services to support women in caring for children or elderly parents.
- Paid maternity leave and paid carer’s leave would improve women’s economic security.

### **Discrimination crosses many boundaries**

Laws and practices – and instruments such as the Charter – need to reflect the diversity of women’s experiences because discrimination against women is not just gender-based; it is also based on other aspects of a woman’s identity.

Dr Annie Pettit, Child Rights Specialist with Save the Children Australia, spoke to symposium participants about “intersectional discrimination” – where different types of discrimination or disadvantage intersect and compound on each other.

Dr Pettit pointed out that many women face multiple barriers to empowerment and advancement, with gender discrimination intersecting with race, age, ethnicity, disability, poverty, sexual orientation and other “identity characteristics”. Gender discrimination can also intersect with other factors, such as where a woman lives. Despite advances in recognising compound and intersectional discrimination, these multiple barriers are often not reflected in the approaches adopted by service providers, which tend to focus on one aspect of discrimination only and “add on” other perspectives.

“Adopting an intersectional approach means that we can focus on people – in this instance, women – who fall down the gaps between areas of discrimination,” Dr Pettit said. This may mean setting up specialist bodies to deal with the intersectional discrimination of women or a more concerted effort to mainstream gender concerns across an organisation’s strategies, policies and programs.

Better methods and more research are also needed to identify intersectional discrimination and its effects on women and girls in Australia.

Dr Pettit urged paying particular attention to the experiences of girls in strengthening the protection of human rights, noting that the experiences of girls are different from the experiences of adult women because of the particular vulnerability of children and young people. “Discrimination against girls is always an intersectional issue,” she said, because girls are subject to discrimination on the basis of their age in combination with gender. This “crossover” between children’s rights and gender rights is currently not adequately identified or addressed in discrimination legislation.

- More flexible work arrangements are critical to women being able to exercise their economic rights. These arrangements also benefit men, giving them more options.
- As we are now living longer, there is a need to re-examine and adjust the workplace environment to welcome a higher number of older women in the workforce. Older women are often very energetic, highly experienced and have no caring responsibilities. Many are looking for new employment opportunities and there needs to be recognition of the contribution they can make.
- Gender stereotyping continues to have an impact on women's economic security. For example, stereotyping can influence women's advancement in the workplace or lead to assumptions about the types of work women can do.
- The Charter is not being used specifically to protect women's economic rights, although it offers some protection in relation to access to rental housing (in areas such as possession orders and evictions).
- The Charter has not brought a gender analysis to the development of policies and laws in Victoria. This means that there is no positive recognition in Victorian human rights legislation that women have different experiences in life from men and that this leads to inequality. As a minimum, there should be some acknowledgement in the Charter about gender inequality.
- Many women remain unaware of the Charter or lack the tools and support to use it in everyday life. More education is needed to encourage women to use the Charter. There is also a need to engage young women in discussions about the Charter and about women's rights more broadly.

## Group D: Social and cultural environment

This workshop examined the effect that prevailing social and cultural attitudes have on human rights for women.

The group noted that gender stereotyping is pervasive in Victoria and is an obstacle to the elimination of discrimination against women, the promotion and protection of women's rights, and the achieving of substantive equality for women. Stereotypes about how women should behave, their capabilities and their roles affect women's rights and opportunities in the workforce, their access to education and health services, and their personal relationships. When these gender stereotypes are added to other factors – such as race, ethnicity or disability – perceptions, attitudes and prejudices can become even more entrenched.

The Charter was seen as having had little impact on gender stereotyping, although it has considerable potential to be used in this way.

Participants observed that CEDAW expressly requires parties to the Convention to take measures “to modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women.”

### What participants said

- Social and cultural expectations of women and the gender roles assigned to them affect all areas of women's life: education, employment, family, participation in public life, violence against women, health and economic security.
- Women are primarily stereotyped as carers and as child bearers. These stereotypes affect women's lives resulting in occupational segregation, cumulative discrimination such as superannuation, and the failure of the wider society to recognise the value of caring for children. Young women are also stereotyped as sexual objects, which affects their safety, while perceptions and stereotypes about older women often prevent them from participating more fully in society.

- Established social and cultural practices have a particularly significant impact on some groups of women, including older women, women with a disability, Indigenous women and CALD women whose experiences do not necessarily conform to expected gender norms.
- Gender stereotyping is a systemic issue. The failure to address stereotyping and to protect women's social and cultural rights affects women across their lifecycles, with consequences for their economic wellbeing and health. Stereotyping can compound other discrimination and be compounded by other forms of discrimination across women's lifetimes. Not all women are stereotyped in the same way and, furthermore, one stereotype may affect different women differently, depending upon other factors such as age, sexual orientation or race.
- Gender stereotyping has an adverse impact on the exercise of human rights for women. Stereotyping leads to assumptions about what women want or need or can do. This results in discrimination and in the design and delivery of services that do not meet women's real needs.
- Stereotyping of both men and women can have a negative impact on women – for example, the flipside of stereotyping women as primary caregivers is stereotypes of men as primary breadwinners. This can disadvantage men and boys as well as women.
- Gender stereotyping is not just a legal issue: there is a broader need to change social and cultural attitudes towards sex and gender and reorganise the way that we structure many aspects of our society so that it is not based on gender stereotypes. For example, if workplaces were required to adopt practices that support men who want to take time off work to care for children, this would allow both sexes to share care giving more equitably and reduce the impact that having children has on women's employment prospects and economic security.
- Many service providers still do not use independent interpreters when providing information or advice to women who do not speak English. They use family members or people in the same cultural group (often male). This is a denial of equal access to services, as well as a potential breach of a woman's right to privacy.
- Many service providers are not bound to comply with the Charter. Consideration needs to be given to ways in which these providers can be encouraged or required to consider gender stereotyping, such as codes of conduct or funding agreements.
- While the Charter could be used in regards to stereotyping (in the context of the right to equality), it has not really been applied in this context. More education is needed about the potential of using section 8 of the Charter to advocate against stereotyping or to raise stereotyping in the context of non-compliance with the Charter.
- The Charter has not brought a gender analysis to the development of policies and laws in Victoria. The absence of this "gender lens" means that the Charter is less effective than it could be in promoting and protecting women's rights.
- More education is needed to eliminate harmful gender role stereotyping. This education should begin at school and be provided for boys and girls.
- Education is needed to encourage service providers to use the Charter much more broadly (in individual and family casework and in service planning).
- The Charter should include a specific provision on stereotyping.
- The Charter should include economic, social and cultural rights, but the protection of these rights must acknowledge the different ways that women experience them.
- Equality for women should be viewed from the perspective of securing the full development and advancement of women. This notion – and the concept of eliminating discrimination across a woman's lifetime – should underpin the Charter.

## Group E: Violence against women

This workshop examined violence against women and the current and potential role of the Charter in protecting women from violence.

The group observed that while violence against women is often viewed in the family or domestic context, it can take many other forms, including street and institutional violence, trafficking and exploitation, and violence in the workplace and in schools. Violence against women can be verbal as well as physical, and includes bullying, stalking and harassment using the Internet.

A key challenge for human rights advocates is developing a broader community understanding of the full range of violence against women and the roles played in such violence by the ongoing inequality in power between men and women, and the continuing adherence to gender stereotyping.

Participants noted that the state had a responsibility to take action to protect women from violence and that the Charter was one avenue for providing this protection. However, the Charter is not being actively used to protect women from violence. This is largely due to the Charter's failure to adopt and apply a gender analysis to the exercise of women's human rights and to its inability to address the systemic discrimination that is the underlying cause of violence against women.

## What participants said

- A major obstacle to eliminating violence against women is the inadequate protection given to women's economic and social rights – particularly the right to appropriate, safe and secure housing.
- Women who experience difficulty in accessing the justice system are particularly vulnerable to violence and its consequences as they do not have access to legal and police support and resources. This includes women with a disability, women from CALD backgrounds and frail and elderly women.
- Women with an intellectual disability or mental health issues experience particular difficulty in exercising their rights as they are often powerless to make their own decisions in responding to institutional violence (such as forced medical treatment or sterilisation).
- Women living in institutional settings – such as nursing homes, rooming houses, special residential services and prisons – also experience difficulties in enforcing their rights in relation to violence or other forms of abuse. These women often have access to their rights suppressed or discouraged, while some may be subject to medical treatment without their consent or other forms of coercive behaviour.
- The relatively small number and range of support services and the shortage of housing options in rural areas means that women in these areas are often unable to access appropriate support and accommodation after being the victims of violence.
- There is a growing need to address violence against girls in schools and social settings. This violence appears to be at high levels and is reinforced by gender stereotyping. Cyber bullying and harassment is a new and emerging form of violence against girls.
- While there have been improvements, support services remain inadequate for women with children who are attempting to leave violent situations.

- The Charter does offer some protection in relation to violence against women. Provisions in relation to freedom of movement, equality before the law and the right to dignity can be applied to support women experiencing violence. The Charter can also be used to improve access to services for women in these circumstances. However, these provisions are not being widely used to actively protect women from violence.
- The Charter's focus on individual human rights is not always helpful to women experiencing violence, many of whom do not want to make a formal complaint for fear of exacerbating the violence or revealing their whereabouts.
- There is an inherent tension within the Charter between individual women's rights and some rights for defendants, with the Charter having the potential to be used as an advocacy tool by both the individual experiencing the violence and the perpetrator of the violence (for example, in asserting their rights to a fair hearing or to privacy). Guidance on balancing these rights may need further consideration in any review of the Charter.
- The Charter has led to a greater use of the language and concepts associated with human rights, but only in a broad context. There is a need to use the language of human rights within a gender equality framework, as well as incorporate the language of gender equality within the human rights framework. In other words, there is a need to apply a human rights "lens" and a gender "lens" together.
- The Charter operates from an assumption of equal power between men and women in heterosexual relationships. This means that it effectively discourages the application of a gender analysis to the exercise of human rights. Such an analysis is essentially about the inequality of power between men and women – an inequality that is the underlying cause of violence against women.
- A gender analysis is also an analysis of systemic or structural issues. These issues are not addressed by the Charter. While the Charter may be useful in some individual instances, it does not recognise the systemic or structural nature of violence against women.
- The Charter could include a provision that puts the onus on public authorities to actively address systemic discrimination against women and unequal power relations between men and women. This onus should be proactive (an obligation to take positive measures), preventative (providing community education and addressing the systemic underlying causes of violence against women) and promotional (actively promoting gender equality and culture of human rights).
- Consideration should be given to mechanisms that would require or encourage private organisations to apply human rights and gender perspectives to their operations or services. For example, the Charter could include an "opt in" mechanism for private companies and organisations to hold themselves accountable under the Charter.
- Greater education about the Charter is needed to promote its use by services supporting women experiencing violence. Greater education is also needed to make the broader community more aware of gender power inequality and wrongful gender stereotyping.
- The Charter should refer to CEDAW or incorporate CEDAW. It makes little sense for Australia to be a party to CEDAW but for the Charter not to refer to CEDAW.
- There should be an explicit provision in the Charter that women in Victoria have a right to freedom from all forms of violence.

## CASE STUDY: WOMEN'S RIGHTS

### Women with a disability

Women with a disability – and organisations supporting them – often report that their rights are being ignored. Examples of this include:

- A woman reported that she was notified to child protection services by a universal service provider because the provider assumed the woman's disability disqualified her from being a good parent and would encourage her to abuse her child. While the parent was exonerated in legal proceedings, the trauma of the experience remains with her.
- There are limited accommodation options available once a woman with a disability becomes pregnant. One young woman who required assistance with housing and employment told how she was not treated equitably when she became a mother. She had been well supported in accommodation and employment options until she fell pregnant. When pregnant, she was unable to remain at the residential unit and as a result became homeless and was forced to reside in a caravan park without support, and without her child once it was born. Limited options are also reported for women with a disability who are facing domestic violence.
- The need to accommodate a person with a disability can be as basic as a GP being able to perform an examination of a patient on an adjustable examination bed. Many general practices lack adjustable-height examination beds, affecting the equal access of people with a disability to receive thorough examinations and health screening procedures. Many patients with a disability affecting mobility are forced to rely on others to transfer them onto a fixed bed for examination or to endure undignified examinations in wheelchairs or on the floor. Not only does this affect those with disabilities, but also pregnant women and obese people. Many women miss out on vital health screening checks as a consequence.

Source: *Issues faced by Parents with Disabilities in Victoria*, Parents with Disabilities Network, 2009; and Women's Health West (online).

## CASE STUDY: WOMEN'S RIGHTS

### Women from CALD and refugee backgrounds

Legal representatives, advocates and service providers report that women from CALD and refugee backgrounds experience particular problems asserting and accessing their rights. Examples include:

- A service provider reported their lack of success in attracting recently arrived women refugees to English language classes. Only one woman came to the classes; others could not attend because there was no provision for child care alongside the classes and the women's spouses were not prepared to mind the children while their wives attended the language classes.
- An advocate reported a number of instances where women who do not speak English experience difficulties in accessing contraceptive advice. Because many GPs do not use independent interpreting services, the women's husbands or other male family members frequently interpret for them – making it impossible for the women to speak confidentially with their doctors or to assert a point of view that may be different from those of their male family members.

Source: Case studies discussed at VEOHRC Symposium.

## Indigenous Women's Forum

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The Commission hosted an Indigenous Women's Forum in December 2009 to discuss the possible strengthening of the Charter in relation to the rights of Indigenous women.

Overall, participants reported their sense of frustration at the lack of progress for Indigenous women – and Indigenous people more broadly – despite years of programs and policies. Participants found it frustrating that well-meaning policies, such as the Charter, have not delivered meaningful change for Indigenous women – for example, changes to health services – or resulted in action being taken at a community level to improve the experiences of women.

### The key human rights issues facing Indigenous women

- Indigenous women face many pressing human rights issues, including violence against women; access to health care, education and child care; the ability to participate in decision making and exercise leadership; and the right to freedom of expression (giving, receiving and passing on information).
  - Indigenous women face a number of intersectional challenges: Indigenous women with a disability, women in the prison/corrections system, women confronted with violence, and women as carers experience disproportionate discrimination, even when compared with Indigenous men.
  - Indigenous women with a disability face specific issues that have an adverse impact on their rights. In particular, Indigenous women with a disability find it especially hard to access services.
  - Discrimination against Indigenous women remains widespread, but the processes available to address discrimination and protect human rights are not widely known, understood or used by Indigenous people. The Indigenous community in general is lacking in knowledge about their human rights.
- The “intersection” between being Indigenous and being an Indigenous woman is complex and often difficult to articulate, due to the cultural distinction between Indigenous women's and men's roles, and the deep connections Indigenous women have with their communities. This makes it difficult for Indigenous women to distinguish their rights from the rights of the broader Indigenous community.
  - Racist stereotyping persists. This stereotyping particularly affects women in situations of domestic violence, where such violence is often treated by the police and other authorities as a cultural matter or an internal community dispute.
  - Native title and cultural heritage issues have an impact on women's rights. Alongside issues to do with the Aboriginal community as a whole, there are issues particular to women (such as women's claims to country generally and women's sites specifically) that are not dealt with appropriately. When governments and other bodies make decisions about country, women's concerns are not properly considered. Special places relating only to women are often regarded by government as less significant than men's places and often Indigenous men are asked to explain the significance of a site, instead of government bodies consulting directly with the women concerned.
  - Victoria's new *Aboriginal Heritage Act 2006* has opened the door for traditional owners to manage their cultural heritage and obtain recognition of their connection to country. Hopefully, the Act will open the door to women as well. To bring this about, cultural heritage staff positions within Aboriginal communities must be a mix of both women and men. Having only male workers means that cultural heritage pertaining to women may be disregarded, neglected or lost altogether.

## Current gaps in the promotion and protection of human rights

- Indigenous women experience difficulties in accessing appropriate services, including access to:
  - legal representation, particularly advocacy, and in the family law courts
  - women’s refuges that are specifically resourced to care for Indigenous women
  - specialist disability services
  - support for control of country, particularly special places relating to women.
- Complaints systems are inadequate or inappropriate for Indigenous women. Complaints-handling systems, including the Commission’s anti-discrimination complaints process, can be terrifying even to those within the Aboriginal community who are better resourced and empowered. For many women who lack awareness about how to engage with and navigate such systems, these processes are overwhelming. Other issues with complaints systems include:
  - processes are time consuming and Indigenous complainants do not receive adequate support to see matters through to their conclusion
  - Indigenous women feel “under siege” to repeat their story to prove its validity
  - Indigenous complainants often feel unable to challenge a system they have been told is “there to look after you”
  - complainants fear victimisation (for example, where they are making a complaint against a government department that is their employer) or being blacklisted from making complaints or prevented from participating in other activities.
- There is a lack of cultural awareness in many processes and services that are used by Indigenous women and only limited cross-cultural awareness training is being undertaken. While some departments and agencies are better than others, a general lack of understanding about contemporary Indigenous issues across government serves to perpetuate stereotypes and racism.
- There is a shortage of meaningful engagement between government departments and Aboriginal communities in the development of policies and services. There is no discussion with the Aboriginal community about what it wants from policies or services, and what will most benefit the community. Not having a voice in these decisions adds to the frustration felt by Indigenous women.
- There is limited discussion with the Aboriginal community regarding the indicators of progress that should be adopted in measuring progress in realising rights.

## The role of the Charter in protecting the human rights of Indigenous women

- The Indigenous community in Victoria tends not to use the Charter due to lack of knowledge. There is a lack of understanding in the community about what the Charter is and how it can be used.
- Indigenous women feel removed from the Charter: the Aboriginal community believes the Charter relates to government practices rather than broader matters.
- The Charter has made a difference to the way government agencies deliver programs. Within departments that have engaged with the Charter, there is more consultation and a more engaging process between government and community. However, there are still gaps in this performance. In addition, many of these positive impacts do not relate specifically to Indigenous people or to Indigenous issues.

- While some government departments are doing a good job in meeting Charter objectives (the Department of Human Services, for example), this effort does not always extend to the general workforce or staff “on the ground”.
- With monitoring of the Charter currently occurring through self-reporting by government, this may not reflect the real state of human rights protection in Victoria (or within the Indigenous community).
- To date, the Charter has brought very little gender or race analysis to policies and laws to promote and protect human rights.
- The Aboriginal community in Victoria needs to share a common understanding of its rights, rather than a few people with knowledge being aware of those rights. For rights to have any meaning, information about rights must be accessed and shared across the Indigenous community.
- More education about human rights is needed across the Aboriginal community. Education programs should be at a community level to talk directly with women. There should also be a focus on educating a group of people in the community to be human rights advocates. This may involve capacity building of individuals who are already working in the community and who can access ongoing training.

### **Enhancing human rights for Indigenous women**

- Realising rights for Indigenous women requires a recognition that it is about how women value their lives within their landscapes and the importance of reclaiming their land and languages, and honouring their ancestors’ legacies.
- The keys to enhancing human rights for Indigenous women are:
  - progressing self-determination
  - respecting and realising land rights
  - developing a shared understanding about rights
  - providing more education about rights
  - ensuring accessible complaints and problem-solving processes.
- In relation to self-determination, Indigenous women need to have the capacity to make their own decisions regarding their health or community needs. Women need support to build this capacity as Indigenous women’s voices are often marginalised, with women’s issues and interests being regarded/treated as lesser matters than those of Indigenous men.
- Indigenous women’s land rights, countries and stories are still not adequately respected and protected in Victoria.
- Human rights complaints processes need to be more accessible. Initiatives that could improve accessibility include providing more support for women to make a complaint and go through the complaints process; appointing specialist Aboriginal human rights advocates; and delivering outreach programs – such as “road shows” – that educate people about anti-discrimination and human rights processes.
- Some of the issues facing Indigenous women could be addressed through a Social Justice Commission or Commissioner – a specialist independent body or unit with knowledge of human rights, constitutional and administrative law, and Indigenous issues – having a role in mediating and resolving issues affecting Indigenous people.
- Belonging to land is a central issue affecting the human rights of Indigenous Victorians. Without Indigenous sovereignty being formally recognised – for example, in a national human rights Act or the Australian Constitution – many issues remain difficult to address.

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### **Indigenous women with a disability**

A Memorandum of Understanding (MOU) was signed between a university and a TAFE provider to share aid and equipment for students with a disability, of whom 19 are Indigenous students.

Despite the MOU, the services have not been provided. The resources are there, but no sharing has taken place. This means that no hearing loops, interpreters or note takers are available and the computers in the integration unit are not fully operational. Students without disabilities are well resourced with technology.

Source: Case studies discussed at VEOHRC Indigenous Women's Forum.

## Questions for the four-year review

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Based on the views expressed in the Commission's "snapshot" consultation, the following questions may need to be considered in the first four-year review of the Charter:

- Would an expansion of rights in the Charter to include economic, social and cultural rights better protect the human rights of women in Victoria?
- Should CEDAW be incorporated formally into the Charter? If so, in what form?
- Should the Charter include a stand-alone substantive equality provision?
- Should the Charter include reference to gender or sex role stereotyping?
- How can the Charter be amended (or applied) to:
  - address systemic discrimination against women
  - acknowledge and address intersectional discrimination
  - better protect the rights of women in rural areas?
- What measures can be taken to encourage service providers not covered by the Charter to take women's human rights into consideration?
- What measures could be taken to ensure that women's human rights are considered – or that a gender analysis is applied – under current Charter processes?

In proposing these questions, it is critical to note that the answers to them are likely to be significantly affected by the reform of Victoria's Equal Opportunity Act. At the time of reporting, it is not certain which of the recommendations made by the Gardner Review of the Act will be implemented; however, the reform process is anticipated to conclude well before the four-year review of the Charter. Should the Equal Opportunity Act emerge as a modern tool equipped to combat systemic discrimination on the basis of gender (among a range of other attributes), with a capacity to respond to intersectional discrimination as well, the answers to these questions may change considerably – particularly in relation to the manner with which the right to equality in the Charter and the concept of discrimination in the Equal Opportunity Act are formally linked.







**Victorian Equal Opportunity  
& Human Rights Commission**