A Submission on Behalf of

The Australian Catholic Bishops Conference

to

The National Human Rights Consultation 2009

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On behalf of the Catholic Bishops of Australia, thank you for the opportunity to make a submission to the Human Rights Consultation. Human Rights are at the core of humanity and of fundamental importance to our society. Your Consultation is thus of great importance.

The Australian Catholic Bishops Conference (ACBC) is the permanent institution of the Catholic Bishops of Australia through which they act jointly on matters of national significance. The subject of your Consultation is of great importance to the Catholic Church in general and Catholic Bishops in particular.

As members of the Consultation will be aware, Catholics are a significant proportion of the population of Australia. Catholic Church members and agencies provide many services to the Australian Community. Most of the services provided by Catholic Church agencies are based on concern for the rights and welfare of our fellow Australians.

Given the number and diversity of Catholics in Australia, it is expected that various individual Catholics and Catholic organisations will be making separate submissions to the Consultation, addressing issues of particular concern to the individual or organisation.

Some Reflections on Human Rights

Discussion framed in terms of "human rights" is used nowadays to identify, protect and promote the dignity of the human person and the universal demand for justice. Classifications of human rights have become the category upon which moral rights and legal rights are based and against which they are evaluated. In the words of the Preamble to the *United Nations Universal Declaration of Human Rights* (UNDHR) "recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world". Pope John Paul II described the adoption of the UNDHR by the United Nations as "a true milestone on the path of humanity's moral progress."[1] More recently, Pope Benedict XVI said of the UNDHR:

> "This document was the outcome of a convergence of different religious and cultural traditions, all of them motivated by the common desire to place the human person at the heart of institutions, laws and the workings of society, and to consider the human person essential for the world of culture, religion and science ...(t)he universality, indivisibility and interdependence of human rights all serve as guarantees safeguarding human dignity."

The UNDHR should remain the centrepiece of any consideration of human rights. To a certain extent, it does. However, it is noticeable that, under various secularist and ideological pressures, modern bills of rights or charters of rights tend to weaken the force of what is contained in the Universal Declaration. It is with this in mind that the ACBC wishes to make several observations.

As with human dignity and the principles of justice, human rights are discerned by human reason. Human rights specify the content of practical reason, usually known as "natural law", which is that set of fundamental principles, discernible by

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[1] John Paul II; Address to the 34th General Assembly of the UN; 2 October 1979.

everyone through the use of reason, "on the basis of which all people can reciprocally understand and love one another"[2]. Human rights do not depend upon power; not only do human rights contradict and answer the totalitarian ideology of modern dictatorships, they also precede and transcend democratic institutions. They are more fundamental; in truth, they provide the necessary parameter to ensure that institutions qualify as democratic.

Further, while it is not unreasonable to speak of some human rights as "fundamental", it is important to recognise that the true fundamental category consists of the human values and principles of justice that they seek to articulate and express: these are the values and principles that are fundamental to human flourishing and to the well-being of any community. Too often, those who speak in terms of rights accept or conclude that there exists an insoluble dilemma in that some human rights are in conflict with others: that is, there are fundamental rights which are irreconcilable so that any such conflict can only be resolved by power. Of course, there is no such dilemma. Human rights express, albeit in summary form, different aspects of the dignity of the human person; those different aspects can never be in conflict in so far as their harmony is the necessary condition of human flourishing. The idea that some may be irreconcilable with others is absurd. To be sure, there are limitations in the *grammar* of rights; but this limitation is only an obstacle where people fail to understand that talk in terms of human rights is useful only in so far as it points to and seeks to articulate matters more basic.

Next, it is essential to keep in mind the whole phrase "human rights"; these are rights which belong to all human beings.[3] In every era, different groups have been excluded from humanity in order to deny them their rights. Slavery provides an obvious example; genocide gets its momentum when participants are able to ignore the humanity of their victims. In our own age, those who participate in

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[2] Benedict XVI; Address to Pontifical Academy of Social Sciences; 4 May 2009.

[3] In virtue of their being human beings.

abortion usually justify themselves by various strategies to deny the humanity of the unborn. Where a society which affects to be solicitous of human rights sanctions servitude or barbarity, it is evident that its concern for human rights is not a fundamental aspect of its constitution.

Any recommendation that a bill or charter be adopted which excludes part of humanity from its provisions may, in current circumstances, have a greater chance of being adopted. However, it should be understood of any such recommendation that it is not, in truth, a promotion of human rights. Rather, it is something which uses the goodwill associated with human rights to promote some other interest.

While human rights may correspond to religious principles and values, may be illuminated by religious thinking, and may be especially promoted by those with religious affiliations, they do not themselves depend upon revelation or dogma. This third observation may seem obvious; yet it must be made as it is implicitly denied in much modern discussion, especially in respect to the right to life. The fact that a religious institution speaks out against some injustice does not entail that the objection to the injustice is based on religious grounds. Over the last century, several religious denominations have spoken out against slavery, the exploitation of workers by their employers and discrimination on the basis of race. In none of those cases can it be said that the religious denomination was insisting that society adopt any position by reason of revelation or dogma.

Whilst it is true that the state is entitled to regulate the enjoyment of certain rights, that entitlement does not derive from the state being the dispenser of rights. It will fall to the state to regulate the exercise and the enjoyment of human rights. The proper basis for any such regulation needs to be understood. Not infrequently, concepts such as “public interest” or “general welfare” are suggested as overarching criteria which may require limitations upon the exercise or enjoyment of human rights. However, care must be taken with any such

criteria lest they are thought to justify the introduction of some utilitarian collective interest over and above or separate from the values and the well-being of individual members of the community:

> There are simply no 'collective interests' not reducible to concrete aspects of the well-being of individual members of the collectivity .... among the concrete interests of every individual human being is living in harmony and friendship with others. Moreover, an appreciation of the values of interpersonal harmony and friendship helps to bring into focus the moral requirement that the benefits and burdens of communal life (including legal rights and duties) be distributed fairly and with a due regard for the particular needs and abilities of different persons.[4]

Are there any human rights that are truly absolute in the sense that they may never be qualified or regulated by the state? Generally speaking, one has an absolute right to whatever it is that one may never be deprived of by one's fellow citizens. By asking what is it always wrong (for someone) to do or to take, we are able to identify those states or things to which we have an unqualified "absolute" entitlement. This category of absolute rights is recognised in the Universal Declaration. In its taxonomy of rights, the UNDHR deals, first, with civil and political rights and, second, with economic, social and cultural rights. In respect of the former category, the Declaration uses two distinct formulations for its recognition of human rights: some rights are introduced with the formula "Everyone has ....;" others with the formula "No one shall ...". Thus, article 3 provides "Everyone has the right to life, liberty and security of person" and article 6 "Everyone has the right to recognition everywhere as a person before the law", as distinct from article 4 "No-one shall be held in slavery or servitude ..." or article 5 "No one shall be subjected to torture or to cruel inhuman or degrading treatment or punishment". Plainly, the second formulation is intended to identify

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[4] Robert P. George, Individual Rights, Collective Interests, Public Law, and American Politics; *Law and Philosophy 8: 245-261 at 251, 1989.*

those human rights which are absolute in the sense that they may never be qualified or restricted.

Article 29.2 of the UNDHR recognises the role proper of the state in the regulation of (the enjoyment of) certain rights. It provides “In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society”. Care must be taken to interpret the proper application of article 29.2. Plainly, it does not apply to all of the rights identified in and recognised by earlier articles in the UNDHR; it does not apply to those rights introduced by the words “No-one shall ...” or “No-one has ...” such as article 4 or article 5. These rights are absolute. Further, the reference to “just requirements or morality, public order and the general welfare in a democratic society” must be read in the context of a limitation of the enjoyment of rights, not a category which is anterior to rights. As indicated above, public order and general welfare do not precede or transcend human rights. Finally, the reference to “public order” should be read in its familiar (and restricted) common law sense: that category in jurisprudence (“law and order”) which refers to the maintenance of the environment in which people physically relate to each other.

An important and frequently overlooked feature of the UNDHR is the way in which it relates the individual and the family to the state. In many important respects, the UNDHR was a response to a defining feature of the totalitarian ideologies which caused such devastation in the first half of the twentieth century. Characteristic of these ideologies was the premise that the totality of society was subject to the state (hence “totalitarianism”). Thus, the rights of the individual and of families, the right to form associations, were all dispensed by the state, as if within the gift of the state, and could only be enjoyed on terms permitted by the state. Families were controlled by the state; education of children was the

prerogative of the state; participation in vocations and professions could occur only by leave of the state; religious institutions were licensed and governed by the state. All this was rejected by the UNDHR. The state is not the source of rights; its proper role is to protect and promote them. The state performs a subsidiary function ("*subsidium*" means "help" or "assistance"). The state assists the individual, the family and the association. It provides what each needs, but cannot itself supply. For the state to reserve or arrogate to itself some function which should or could be performed by the family or by the private association is to offend justice and tend towards totalitarianism.

The subsidiary function assigned to the state in the UNDHR is evident in several places. For example, article 12 prohibits arbitrary interference with one's privacy, family, home or correspondence"; article 13 recognises the right of freedom of movement, including the right to leave and return to one's country; article 14 recognises the right to seek asylum from persecution; article 16.3 provides "the family is the natural and fundamental group unit of society and is entitled to protection by society and the State"; article 18 recognises the right to freedom of thought, conscience and religion; and article 26, which recognises the right to education, provides, *inter alia*, that "(p)arents have a prior right to choose the kind of education that shall be given to their children."

Several human rights identified and recognised in the UNDHR are insufficiently protected and promoted in public debate on and discussion of human rights, and in certain legislative measures enacted since the adoption of the Universal Declaration by the UN 60 years ago. Prominent among these in contemporary Australia is the fundamental right to life from the moment of conception to natural death. Apart from the issues associated with capital punishment, the right to life rarely needs consideration or vindication in respect of those who are healthy: it needs always to be recognised, protected and promoted in the case of the vulnerable. But it is this very group whose right to life is denied, and denied, moreover, in public policy. Laws and public policies that permit abortion are a

violation of human dignity and the rights of the unborn. The recent Victorian legislation is only the most egregious example of the contempt for the human rights of the unborn. To the extent that those who promote abortion consider the question of human rights, some do so by denying the humanity of the unborn; but this argument is untenable: the event of birth can make no difference to the humanity of the child. Others contend that the unborn child is not a person, and point to the undoubted fact that the law of homicide applied only to the killing of someone separated from their mother. But that law was (and remains) based on a less than perfect understanding of the development of the foetus; the life of the embryo and the foetus is now so well understood that the legal fictions of yesteryear should no long be relevant to the protection of human rights in the formulation of public policy.

In our age, the autonomous role of science in providing an explanation for phenomena is properly recognised. Understandably, in the past, people felt the need to postulate some divine casualty in the absence of a proper scientific explanation. Modern embryology and foetology have made it plain that the life of an individual human being begins at conception. Yet, we are accustomed to having this plain fact dismissed as "religious opinion", such as "the Christian community's notions about human life beginning at fertilisation."[5]

Others would have it that any proposition that the unborn have rights just like the rest of us is a religious or dogmatic proposition which can form no part of public policy. While it is true that Christianity insists, for example, upon the protection of life, property and truth, that does not mean that each of these values has only a religious foundation. In the 19th Century, it was said of those who sought the abolition of slavery that they were seeking to impose their religious convictions on slave owning society. In centuries to come, the callous indifference of our age to the rights of the unborn will be seen as of a piece with the indifference of previous ages to the humanity of slave.

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[5] Fenella Souter, "Maybe Baby", *Age Good Weekend,* 13 June 2009, 19.

The right to life is not only violated at the beginning of life; it is also violated in many ways at the end of life. The right to life of the physically disabled must become a feature of any just society. The right to life is violated obviously by laws which permit the euthanasia and the assisted suicide of those whose disability is their suffering from a terminal illness. The right to life is also violated by laws which allow others to decide that food and water should be withheld from the disabled with the deliberate intention of bringing about their deaths.

In addition to the failure to protect and promote those essential elements of the "right to life" enshrined in Article 3 of the UNDHR, there is a renewed effort to redefine and limit the right to freedom of thought, conscience and religion (which is comprehensively defined in Article 18) so that it must give way before the imperatives of the power of the state.[6]

This attitude to the power of the state to limit the rights of conscience is not without precedent. It was Nazi policy to strike down laws prohibiting abortion in countries occupied by the Germany Army. At Nuremberg, it was revealed that some doctors had refused to perform abortions on conscientious grounds. The exhibits collected in *USA v. Ulrich Greifelt et all* contain the following response from one Nazi official:

> "... After all, these scruples are in most cases nothing but ridiculous prejudices ... It also seems a shame that in a territory like that in the lake district, that is to say in the whole district around the Lake of Constance, not a single interruption of pregnancy can be made because there are nurses belonging to religious societies in all hospitals who sternly refuse to collaborate. One is tempted to ask: Where does State authority come in

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[6] Article 18 provides: Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.

> these cases, or else, is the State, perhaps, not anxious to assert its authority in this particular instance?"[7]

Notwithstanding the adoption of the Universal Declaration since that statement was made, the temptations of power persist. It is becoming increasingly evident that the modern secular state, in purporting to regulate certain human rights, has a tendency to exceed its rightful power of regulation, and to subvert and, then, invert the proper relationship of the individual to the state.

The recent Victorian experience has demonstrated the willingness of states to interfere with the right to freedom of thought and conscience so as to deny some citizens the right to conduct their lives according to their consciences and the faithful practice of their religion. In enacting the *Abortion Law Reform Act* 2008, the Victorian Parliament not only deprived the unborn of any protection by the law, it also required doctors and nurses who have a conscientious objection to abortion (a) in some cases themselves to perform abortions (s.8(3)) and (b) in all cases to refer the woman to another doctor or nurse who is known not to "have a conscientious objection to abortion (s.8(1)(b)). Thus, many medical practitioners may by law be required to act in a manner which is contrary to their conscientious beliefs at the risk of severe sanctions.

Some participants in the public debate on the limitation of the right of conscientious objection seek to remove the practice and observance of freedom of thought, conscience and religion from the public domain, betraying a belief that human rights are the concessions from the state rather that the specifications of justice. In a recent article published in the *British Medical Journal* entitled "Conscientious Objection on Medicine", Professor Julian Savulescu put it as follows:

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[7] See Prosecution Exhibit 468, Records of the U.S. Nuernberg War Crimes Trials: *United States of America v. Ulrich Greifelt, et al*) quoted in *First Things,* June-July 2009, 194:72.

> "A doctor's conscience has little place in the delivery of modern medical care. What should be provided to patients is defined by the law and consideration of the just distribution of finite medical resources, which requires a reasonable conception of the patient's good and the patient's informed desires. If people are not prepared to offer legally permitted, efficient, and beneficial care to a patient because it conflicts with their values, they should not be doctors."[8]

This seems to overlook the fact that a law which compels a medical practitioner to act contrary to his or her conscience is, on its face, a law which transgresses a fundamental human right. Further, to exclude the exercise of conscience from medical care is to designate an area of human endeavour where the Universal Declaration is excluded and deemed to have no relevance.

The origin of human rights in the objective values of the human person permits an evaluation to be made as to the extent to which modern bills or charters of rights represent an authentic development of the Universal Declaration or a perversion of it.

Modern bills of rights or charters of rights do not exactly replicate the stipulations or conditions contained in the Universal Declaration. Article 2 provides "Everyone is entitled to all the rights and freedoms set forth in the Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or sexual original, property, birth or other status." This anti-discrimination provision in the Universal Declaration is the basis for conventions such as the *Convention relating to the Status of Refugees* (1951), the *Convention of the Political Rights of Women* (1953) and the *International Convention on the Elimination of all Forms of Racial Discrimination* (1966) which, in Australia, provide the basis for legislation such as, at the federal

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[8] Savulescu, Conscientious Objection in Medicine, British Medical Journal, 2006; 332:294 297.

level the *Racial Discrimination Act* 1975 and the *Sex Discrimination Act* 1984, and, at the state level, the various equal opportunity enactments. However, state anti-discrimination legislation (which is indirectly derived from the Universal Declaration) has drifted away from the clear categories of the Universal Declaration and has introduced ambiguous categories such as (for example, in Victoria) “sexual orientation” and “gender identity”. Thus, it has become unlawful to discriminate against a person on the grounds of sexual orientation and gender identity.

In the Universal Declaration, the stipulation in article 2 that the rights and freedoms identified in and recognized within it are to be engaged with discrimination is itself subject to the qualification in article 29.2. Thus, it is accepted that there may be circumstances in which it is reasonable to differentiate in public policy on the grounds, say, of age, condition of life, and sex. It is plainly rational to confine aged pensions to the aged, family benefits to those couples who have provided the next generation, service benefits to those who had undertaken the defence of the country, and certain medical facilities to women.

The difficulty in the categories of sexual orientation and gender identity is their radical ambiguity. It is by no means clear that the right not to be discriminated against on the grounds of sexual orientation, for example, is confined to an immunity from coercion with respect to the way one conducts oneself in private. On the contrary, it is becoming increasingly evident that proponents of gay rights – and, it has to be said, courts - understand the stipulation that there should be no discrimination on the grounds of sexual orientation not only to confer an immunity in respect of the private sexual conduct between two or more members of the same sex but also an entitlement to promote same-sex sexual activity as alternative no less worthy than marriage.

It is also instructive to note the Victorian *Charter of Human Rights and Responsibilities*, which is evidently based on the UNDHR. Section 17 of the Charter identifies that families are "the fundamental group unit of society and are entitled to be protected by society and the State." The Charter makes no reference to the prior right of parents to choose the kind of education that shall be given to their children. At the same time, the Charter provides (s.8) that everyone "has the right to equal and effective protection against discrimination". "Discrimination" is defined by reference to the *Equal Opportunity Act* 1995; it includes the attributes of sexual orientation and gender identity. To a certain extent, this latter right of parents is protected by provisions in the state *Equal Opportunity Act*, which exempt church schools from the operation of that Act. It is important to understand the point of the exemption. It is to preserve the rights of parents to determine the nature of the environment in which their children will be educated. However, the ACBC notes with concern proposals to align the *Equal Opportunity Act* with the Charter and to remove these exemptions in order to prevent church schools from excluding from their staff persons whose public lifestyle involves a public rejection of the ethos and moral environment in which parents wish their children to be educated. The point of the exemption has been lost. It is as if the state is the dispenser of human rights and the exemption a privilege which it has deigned to confer. Nothing could be further from the truth.

These examples illustrate the fact that the UNDHR, with its comprehensive statement of human rights, has often been ignored or circumvented by political forces which are in effect prompted to undermine its universal application, redefine its clear definitions, and limit its field of operation.

A Charter of Rights?

In considering the question raised by the terms of reference of the National Human Rights Consultation, it is noted that much discussion has been about whether or not there should be a Charter of Rights. On that particular issue, the ACBC does not take a particular stand at this stage. The need to protect and advance human rights in Australia is noted. However, in any legislative attempt to declare again the scope and field of human rights, attention is drawn to the rights already recognised in international law for over 60 years and the need to reassert their present day validity.

Any legislative attempt to codify human rights must carefully distinguish the definition of rights from the limitations, if any, that may apply to the implementation of rights.

Consideration of Specific Questions posed by the National Consultation

As noted, much of the discussion about Human Rights in recent times, and especially in the context of the Consultation, has been about whether or not Australia should have a Charter of Rights. This is an important issue but it is only one of many possible options regarding Human Rights. It is also premature to be considering possible solutions before one considers which Rights should be protected and promoted and which of these Rights needs further protection. It is noted that the Consultation proposes three key questions which seek to identify:

1. Which human rights (including corresponding responsibilities) should be protected and promoted?
2. Are these human rights currently sufficiently protected and promoted?
3. How could Australia better protect and promote human rights?

This sequential consideration of the issues is endorsed.

1 Which human rights (including corresponding responsibilities) should be protected and promoted?

The temptation when considering this question is to immediately compile a list of rights that should be protected and promoted. However, it is important, prior to compiling such a list to consider the nature of human rights and to whom they apply.

The UNDHR and other subsequent UN Conventions list many basic human rights. But no one suggests that such lists are exhaustive. For example, the right to privacy or the right not to live in poverty or the right to adequate health and education services are not included in the list although it could be argued that they could be implied by items in the list.

Another example of the inherent problems of a "one size fits all approach" to Human Rights is the right to freedom of religion and the potential for tension with other apparent rights.

Many of these issues revolve around one's understanding of the practice of religion. Religious practice can include, but is not limited to, one's weekly attendance at a place of worship. For most people with a religious faith, practicing their faith also requires some good work, ie some active engagement with one's neighbour and with one's society. Such activity could include:

- actively caring for disadvantaged members of society;
- caring for the elderly and the sick;
- providing education within the context of one's religious beliefs

A number of issues are apparent in the tension between one's right to practice one's religion and other rights in society. An example of such potential tension is employment by religious organisations. Some positions within such

organisations have an inherent requirement that the individual must be a practicing member of the religion. Such a reasonable requirement is, however, apparent religious discrimination against individuals who are not practicing members of the particular religion. It is also reasonable for a religious organisation to require that all who work in the organisation, whether as employees or volunteers, support the objectives of the organisation and that they avoid actions that would detract from the objectives of the organisation. Again, this is a reasonable requirement, even though potentially discriminatory against some individuals. Balancing such potential conflicts of the exercise of rights can be complex but is essential in a pluralist society such as Australia.

These issues are not hypothetical considerations. Members of the Consultation will also be aware that a Joint Committee of the Victoria Parliament is currently conducting an Inquiry into exceptions and exemptions in the Victorian Equal Opportunity Act. Such exceptions and exemptions seek to balance the potential tensions between rights described above.

Members will also be aware of the NSW case of Wesley Mission Case[9] in which a number of key issues are being considered including:

- definition of Religious Bodies, including Church agencies such as schools;
- definition of Religion so as to extend to the particular beliefs and practices of a "Denomination";
- definition of "religious susceptibilities" so as to recognise that these emanate from the official norms of the particular religion including a denomination.

Another challenge in codifying human rights is determining to whom such rights apply. In determining to whom Human Rights apply, one question that requires resolution is: when do Human Rights begin to apply? The ACT Human Rights Act advises (s6) that "only individuals have human rights". This raises the

[9] OV and anor v QZ and anor (no 2) [2008] NSW ADT 115

question of whether or not an unborn child is an individual, given that they have unique DNA. In the ACT, the interpretation has been that Human Rights apply from birth and not before. But it is an issue that is of great importance to many, who maintain that all humans have a right to life as espoused by the ICCPR.

This issue of when human rights first apply is crucial in what is commonly known as “the abortion issue”. Disagreement on this point will be crucial to obtaining a genuine consensus regarding codification of human rights in Australia. There is no simple answer. If, on the one hand, such codification acknowledged that human life commenced at conception, then abortion would be illegal, a situation that many in our society would not accept. If, on the other hand, such codification stipulated that human life commenced at birth then many in society would see such codification as deficient because it failed to protect the rights of the most vulnerable in our society. It is noted that the Victorian Charter of Human Rights (s48) provides that “nothing in this Charter affects any law applicable to abortion or child destruction”. But, as has been shown in the passage of subsequent abortion laws, this provision appears to have had the unintended effect of removing fundamental (internationally accepted) protections for medical professionals.

These and similar difficulties are not mere theoretical considerations. Until such difficulties are resolved, any codification of human rights in Australia will be a matter of one group in society imposing its view upon another.

2 Are these human rights currently sufficiently protected and promoted?

Though Australia is a signatory to the UNDHR, the ICCPR and many other International Conventions, they do not have the force of law in Australia. Australia's treatment of asylum seekers, aboriginals and those living on the margins of society are evidence that not all have equality of rights in Australia. For example, the report, *Dropping Off the Edge* by Professor Tony Vinson identified many locations of extreme disadvantage in Australia. Many people living in these locations do not have the same access to achieving rights as those living elsewhere in Australia.

The current Government has moved to address the lack of access to many rights by disadvantaged communities via its *Social Inclusion* policy. This is not the first initiative seeking to address such inequality in our society. Such initiatives have done much to seek equality in Australia, with some success.

There are numerous laws, including case law, in Australia that seek to protect the disadvantaged. There are also numerous Government and Non-Government agencies that also seek to protect the disadvantaged and to reduce such disadvantage. These are, generally, laudable laws and agencies. But the impression that one gets from the list of such initiatives is that they are a reaction to particular circumstances at a particular time without a holistic approach to Human Rights.

Australia has an enviable tradition of seeking equality of Human Rights for all citizens. But as the question asks: "are these human rights currently sufficiently protected and promoted?" In answer, one might ask a rhetorical question: "Are we as a nation convinced that the Human Rights of everyone in Australia are sufficiently protected?"

3 How could Australia better protect and promote human rights?

As noted, much of the discussion about the Consultation has been about whether or not Australia should have a Charter of Human Rights or equivalent legislation. The Australian Catholic Bishops Conference does not have a position as to whether or not there should be a Charter of Rights. But the ACBC respectfully suggests that there are many necessary steps that should precede such a decision. In particular, as noted above, it is necessary to determine issues such as to whom Human Rights do, or should, apply in Australia before determining the means by which Human Rights should be applied.

The current Consultation has been a very important exercise in raising awareness of Human Rights issues in Australia. However, most people in Australia would not be aware of the Consultation. In particular, many who would be interested in such issues are currently distracted by economic considerations. Accordingly, it is suggested that the current Consultation is part of an ongoing iterative process towards reaching a consensus about which Human Rights should be protected and promoted and the means of such protection and promotion. This is not an argument to do nothing but rather a proposal that a series of interim steps be evolved towards ongoing improvement in Human Rights in Australia.

Given current and recent examples in our society, it is obvious that current protections are inadequate and that more must be done. However, it is suggested that seeking better coordination of existing protections and services should be considered prior to more substantial change. If such better coordination is unachievable or inadequate then more substantial change should be considered.

The Catholic Church has a well known commitment to Human Rights and to the protection of the weak and disadvantaged. The current Consultation is an important step towards improving Human Rights in Australia. The ACBC endorses the considerable work done by the Consultation. We wish you well in your important endeavours. If the ACBC or any Catholic Agency is able to further assist the Consultation, we will be happy to do so.

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Australian Catholic Bishops Conference
June 2009[10]

[10] *In the preparation of this submission, assistance throughout has been derived from the writings of J.M. Finnis and, in particular, Natural Law and Natural Rights (Oxford, Clarendon Press, 1980); "A Bill of Rights for Britain? The Moral of Contemporary Jurisprudence, The Maccabaean Lecture in Jurisprudence, Proceedings of the British Academy, London, Volume LXXI, 318; Religion and State: Some Main Issues and Sources, (Oxford Legal Studies Research Paper Non. 48/2006); http://papers.ssrn.com/abstract=943420*