

# 1973 – 1986

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**1973**

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**1982**

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*Contempt of Court.* → *Victorian Law Reform Commission.*

*Intoxication and Criminal Responsibility.* → *Victorian Law Reform Commission.*

## **1985.6. The Education of Gifted and Talented Children**

*Submitted* 12 December 1985 to the Senate Standing Committee on Education and the Arts, Parliament of Australia.

Published: *Victorian Humanist*, Feb. 1986: 4 – 7.

We wish to make submissions on the following points of reference: (a), (f), (g), (h), (i), (j) and (k) of the above enquiry.

### **(a) Consider whether special provisions need to be made for gifted and talented children**

Our Society believes that appropriate provisions should be made for the gifted and talented. We would like to see a wide range of talents fostered rather than confine such efforts to the traditional academic subjects and conservative art forms.

Accordingly, we are in favour of a broader concept of giftedness, such as: “Giftedness is the potential for becoming a critically acclaimed performer or exemplary producer in spheres of activity that enhance the moral, physical, emotional, social, intellectual or aesthetic life of humanity” (Tannenbaum), or: “in areas that have consistently made an outstanding contribution to human civilisation” (Goldberg et al).

Such definitions of talent preclude the use of an I.Q. test as the sole criterion. Nor can the parental or teacher assessment be free, from subjectivity, value judgements or bias. It is therefore essential to investigate effective methods of assessment of apparent or potential talents.

In addition, research into effective means of fostering and enhancing talents should be undertaken on an ongoing basis to meet the changing needs and expectations of society. The implementation of programs to that effect would require additional teaching and class management skills.

Thus we see the main provisions required as:

1. Establishing effective methods of assessing talents and giftedness in a wide area of endeavours.

2. Ongoing research into effective means of fostering talents and giftedness.
3. Additional teachers and teaching skills.

**(f) Consider the desirability or otherwise of integrating special provision for gifted and talented children into mainstream education.**

We believe very strongly that the gifted and talented should be accommodated in the mainstream education and not in segregated schools or classrooms. Such segregation would be detrimental to both groups, the average and the talented, in terms of their self image and their concept of societal values.

Experts agree that there are marked differences in learning styles among the gifted and talented. These students also vary in their temperamental suitability for various programs which foster talent (e.g. enrichment or acceleration), their task commitment and motivation. Given these variables, it would be very difficult to obtain a homogeneous group by any method of assessment.

On the subject of "Accommodating Programs to Individual Differences", Prof. Miriam L. Goldberg states that a teaching program, to be judged appropriate, must be sufficiently flexible to allow for differences in interests, motivations and learning styles among the talented.<sup>1</sup>

In discussing learning styles, Dr E. J. Braggett refers to research which shows that students are capable of identifying their own learning styles with accuracy and, as a result, teachers may develop a personalised learning environment best suited to each student in the class, providing for individual differences and optimising the learning of each person.<sup>2</sup>

Among the methods by which the outstanding students can have their abilities enhanced, cross-age or peer tutoring has special appeal. Its use, where practicable, would encourage co-operation and sharing instead of competition, and develop a sense of responsibility and social involvement. Thus we see the need to run integrated, mixed ability classes on a very flexible system that allows each pupil to achieve at their own level of competence. In achieving this, the critical factor is the teacher's sensitivity to the students' needs.

**(g) Consider whether the pursuit of excellence in mainstream education is consistent with providing for the educational needs of all children**

The pursuit of excellence is strongly influenced by the way an individual perceives the worth of the activity he or she pursues, or by the way the community values the activity. Schools should not aim to impart a particular body of knowledge but to provide the necessary resources and encouragement to enable all students to exploit their talents to the full.

Within a flexible teaching system and with appropriate additional resources and encouragement, the pursuit of excellence in mainstream education is consistent with the provision of educational needs for all children ("Frameworks", the new Victorian curriculum, appears to offer such flexibility).

**(h) Determine whether additional resources are needed and whether these may be justified**

Additional teachers, to manage smaller classes than at present, is one of the essential resources. Another is the need for research into ways of educating pupils to meet the problems of rapid advancement in technology and other areas. Reliance on programs and methods that were adequate in past years may not ensure success in the future.

We believe the provision of such additional resources is well justified. Their cost could be met by redirecting funding from church and private schools.

**(i) Investigate the need for special provision for gifted and talented children from special populations, for example, Aborigines and, migrants**

The Commonwealth School Commission's discussion document "Education of Gifted and Talented Children from Populations with Special Needs" (Canberra, July 1985) identifies six such groups: the disabled, the isolated (geographically), those of non-English speaking background, girls, Aborigines and, those of low socio-economic status. These groups present complex problems both in the identification of the gifted and talented and in, the supply of effective teaching programs.

Our reading on this subject convinces us that for girls, a selective, stereotyping educational experience is still entrenched in many schools. In this the teachers play a major role. In such [a] climate all girls have much lower expectations and chances of achieving their full potential. We believe efforts should be directed towards changing these attitudes.

The physically disabled pupils are being encouraged, by examples of achievers such as Helen Keller, Alan Marshall, Toulouse Lautrec, Franklin Roosevelt etc. Such and similar methods of encouragement should be given to all groups which suffer from collective low self-esteem, particularly those of low socio-economic status. Manifest achievement of some would encourage others to greater efforts and break the cycle of poverty and low expectations.

Specialised counselling would be required to deal with Aborigines and migrants to overcome the often profound cultural differences.

**(j) Advise on the preparation of teachers to meet that needs of the gifted and talented children**

We believe that the purpose of education is to impart learning ability and mechanisms, encourage enquiry, critical assessment and the acquisition of knowledge. Thus we do not see the teacher as an instructor and the "giver" of all knowledge, but as a skilled and sensitive educator able to assess the needs and potential of each pupil and implement the appropriate learning program for that child.

With this perception of their role, teachers need to acquire skills in assessing learning styles, in motivating, encouraging and assisting to learn.

**(k) Investigate appropriate educational approaches to the education of gifted and talented children.**

A variety of programs such as enrichment, acceleration, peer-tutoring etc, are being used in many schools. As stated in section (a), an ongoing research into effective educational methods is indicated.

We wish to add that in our efforts to develop talents/giftedness to the full we should not neglect the overall development of the child, e.g. the need to relate to other people, tolerance for others, social responsibility etc.

Schooling is instrumental in shaping one's individual and social identity. In fostering talents and giftedness we must not imply that they are the only valuable human attributes.

**IN SUMMARY:**

We believe that talent and giftedness should be nurtured and encouraged.

We strongly advocate the integration of the gifted and talented children into mainstream education in a way which avoids such labelling.

We believe that in a well equipped, small class attention can be focussed on the educational needs of the individual child — gifted and all other children.

We wish to stress our concern that resources not be diverted from the “other end of the scale” i.e. from those lacking basic skills and from the disadvantaged. It is particularly important to break the nexus between low socio-economic status and low self-image as this results in low achievement.

We point out that costs and efforts involved in this task are an investment in the adequacy of these future citizens.

**References:**

1. M. L.Goldberg. Issues in the Education of Gifted and Talented Children in Australia and the United States, p 43. para 2. C.S.C.
2. Curriculum for Gifted and Talented Children. National Seminar, Brisbane, May 1983: p. 16, para 3. C.S.C.
3. Goldberg: p. 42, para 7.
4. Education of Gifted and Talented Children from Populations with Special Needs. Discussion documents; E. J. Braggett. July 1985. C.S.C.

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**1986.1. Criminal Assault in the Home: social and legal responses to domestic violence.**

*Submitted* 10 January\* 1986 to the Women's Policy Co-ordination Unit, Department of the Premier and Cabinet, Victoria

[\*but a submission date of August 1985 is mentioned in the *Victorian Humanist*, Aug. 1988: 3.]

Published: *Victorian Humanist*, Feb. 1986: 10 – 13.

We regard criminal assault in the home as a particularly abhorrent crime and a grave social problem. The Royal Commission on Human Relationships reported that it is common in Australian

society across lines of class, race and age. Severe and permanent physical damage often results, as well as psychological trauma. Its cost to the community is high.

We therefore welcome public discussion of this problem, which hitherto the community has been reluctant to acknowledge openly.

A subcommittee of HSV members with relevant expertise (social work, health care, psychology, general medical practice and law) participated in the following submission. We were impressed by the quality and depth of the discussion paper. Additional insights were obtained from the report of the Royal Commission on Human Relationships (1978) and Anne Deveson's book *Australians at Risk*.

We comment on proposals and options as listed in the Summary Document.

## **Social and material resources for women in violent relationships**

### **1. Information and Community Awareness**

We support the proposals for extensive advertising campaigns through the mass media, milk cartons, local government venues etc., to inform women of their legal rights and available social supports. Likewise, extensive education programs for professionals and volunteers who have contact with women in violent domestic situations.

But we propose, in addition, as a preventive measure, to include the problem of domestic violence into school curricula in the context of human relationships, a subject we believe should be essential rather than optional. This would seek to (a) discuss realistically the failure and breakdown of relationships, (b) present violence as criminal and unacceptable behaviour, (c) indicate the need for self-dependence and economic and social alternatives for girls, [and] (d) counteract the traditional socialisation of men to be dominant and aggressive, and women to be passive.

Violence and its acceptance is often the result of parental modelling. Schools must act to rectify it.

### **2. Women's Refuges and Emergency Accommodation.**

We support the proposal to augment the existing Refuge Referral Service so that it can meet the demand for urgent assistance. Expansion of emergency accommodation should be given a high priority in view of the fact that at present only one third of women seeking such help can be assisted.

We believe that women with psychiatric or addiction problems should utilise existing services for such needs. The creation of special refuges for these women would seem to be a duplication of these services.

### **3 & 4. Housing and Income**

We believe the proposed reforms to public rental housing access would greatly assist the woman with children to live in safety and organise a new existence. A one-off financial assistance to

establish a new household could be given where responsible money management can be expected. Otherwise the guidance of a social worker would be indicated.

## **5 & 6. Employment, Training and Education**

Access to employment for those with skills, and measures to enhance the employability of women who were not in the workforce before, are important long term remedies.

## **7. Advocacy Centre / Clearing House.**

We particularly approve of this concept and the dual role such a centre would fulfil; the co-ordination and the overview of existing services and collection of information, as well as support and assistance given to women, particularly through legal proceedings.

The victim undoubtedly should have priority to scarce resources. But we urge the establishment of counselling services for the offenders, in spite of low expectations of success. Perhaps in a group setting of assaulters discussing the problem and possible solutions, a counsellor could gain insight into their attitudes and give them guidance. The cost of such procedures would be lower than counselling on an individual basis and, at the very least, would provide a profile of the offender towards a greater understanding of the causes of domestic violence.

## **Legal issues.**

### **1. The Criminal Law, the Police and the Courts**

As the law on criminal assault rightly does not make a distinction on the basis of relationship between assailant and victim, it should be enforced by the police and courts with equal vigour in cases of criminal assault of a spouse. Indeed we view an assault in the "sanctity of the home" as a particularly reprehensible act, given the pressures to keep the family together, the shame of disclosure, and the economic dependence.

It is therefore essential that the police lay charges of assault as is the norm in other cases of violence and not expect the victim to do so. The offender should be arrested. Such a practice would not only act as a deterrent, but would lessen the immediate danger to the victim.

We urge that specific legislation, rather than guidelines or common law practice, be formulated to deal with domestic violence.

We propose the creation of a special police squad to enforce this legislation. As in the case of the Drug or Vice Squads, such a unit would specialise in dealing with the unique aspects of this crime. It should be equipped with specially trained personnel who have the unequivocal right to enter and remain on private premises, to arrest, to lay charges and to prosecute. A well publicised (and easy to recall) telephone number would offer access to this service for victims, neighbours or witnesses of domestic violence.

The creation of such a task force would:

- (a) demonstrate to the community at large that domestic violence is unacceptable,
- (b) act as a deterrent and

(c) provide additional source of research material on this subject.

## **2. Compellability of Witnesses**

We are in favour of changing the law so that women will have to give evidence in all domestic violence proceedings.

Children as witnesses should be interviewed by trained family counsellors or psychologists, and not put in the witness box to testify against a parent.

## **3. Bail.**

We favour option (b) i.e. the introduction of a *mandatory* "cooling off" period of 12 to 24 hours or longer. We do not regard the objection on the grounds of infringement of civil liberties as valid. Assailants, we believe, can not expect to retain all civil freedoms.

## **4. Intervention Orders.**

We strongly support this concept. In minor offences and as an alternative for those who are reluctant to involve the police, such orders would play an important positive role. They should not, however, operate in serious or repeated violence.

## **5. Other Legal Issues.**

(a) Victims of domestic violence should have the same rights to compensation for injuries as other victims of criminal assault.

(b) Rape in Marriage: Though the offence may not always be easy to prove, the law must be changed so that a man who rapes his wife is liable to prosecution. We regard this law reform as urgent.

(c) Homicide: The woman who kills her husband after years of being subjected to assaults should be able to plead self-defence and/or provocation in her defence. We urge the implementation of these rights, so far only recommended by the Victorian Law Reform Commission.

[d] Access: Where violence is likely to continue after separation, supervised access to children should be organised

## **IN SUMMARY:**

1. We state our attitude to this social problem.
2. The preferred options are indicated; their choice justified.
3. We propose the introduction of this subject into school curricula.
4. We see the need for counselling the offenders.
5. We propose the creation of a specialised police squad to deal with criminal assault in the home.

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## **1986.2. The Human Embryo Experimentation Bill 1985.**

*Submitted* 27 January 1986 to the Tate Senate Select Committee, Parliament of Australia

Published: *Victorian Humanist*, March 1986: 8 – 9.

## **HSV Opposes Harradine's Human Embryo Experimentation Bill**

A Senate Select Committee has been convened to study the Human Embryo Experimentation Bill introduced by Senator Brian Harradine. The Bill seeks to prohibit basic procedures used in the in-vitro fertilisation (IVF) treatment and Commonwealth funding of embryo research.

A parallel situation exists in the United Kingdom. Enoch Powell has his Unborn Children (Protection) Bill and the Warnock Committee has been investigating ethical and legal issues of IVP.

Both Bills are based on the premise that life begins at the moment of fertilisation of the egg cell and seek to accord moral status to, and prevent research on, such cells.

The Catholic bishops of Australia also have called for a halt to embryo research.

The Warnock report recommends the use of early embryos for research and points to its many benefits for human welfare. In a comment on this subject Mary Warnock says, “. . . and since moral indignation is one of the most delightful of passions to indulge in, I believe that there is a real danger that the indignant will win the day and all research using human embryos will be brought to an end. Those who believe in the need for this research have a duty to argue their case as widely, but also as intelligently, as possible.”

The HSV's submission to the Senate Select Committee chaired by Senator Tate is based on the following beliefs:

1. *That human life does not begin at conception.* Ova and sperm are alive before they join at fertilisation; more than 50% of such united cells fail to implant; further, one in five undergo spontaneous early miscarriages; [and] several further precarious steps are required for the successful development of a healthy foetus. Several popular methods of contraception are based on the prevention of implantation of embryos.

The early embryo is an aggregate of cells, the majority of which will form tissues other than the embryo proper, i.e. the discarded afterbirth.

2. *That human life begins with the development of sentience,* i.e. the stage where the foetus becomes capable of physical awareness. Prior to that state, conferring legal, moral or social status on the embryo is irrational.

We cannot accept the argument that natural or divine forces must not be interfered with. Such forces have not been kind or beneficial to humanity: plagues, deformities and famines are the ways of nature. It is only through intervention such as vaccination and agricultural development that life for many humans was improved. The IVF procedure joins many medical interventions which enhance the quality of life, in this case for infertile couples.

3. *The IVF procedure is stressful to the participants,* it is costly and has a high rate of failure at present. It is therefore necessary to fertilise excess ova and select the best for implantation; it would be irresponsible to implant defective embryos as required in this Bill. To improve the

success rate of embryo transfer and to minimise the risk of deformity to the foetus, it is essential to gain further knowledge through embryo research.

4. *That embryo research is also essential to the prevention of genetic and congenital defects, to improvements in the reproductive and contraceptive processes, the safe use of medication, prevention of prematurity and treatment of infertility.*

As the freezing of unfertilised ova becomes now possible, the supply of redundant embryos for research will diminish. We support the laboratory creation of human zygotes for the purpose of research. Such practice has been recommended by the British Medical Council (*Lancet*, 2 Feb. 1985, p. 270). Many women who undergo sterilisation are willing to donate their ova, obtained during the procedure, for use in approved clinical research.

5. *That embryo creation and research should be carried out only in accredited institutions under license and governed by legislation rather than guidelines.* Such legislation however, should be formulated by a broadly based National Ethics Council free from political, medical or sectarian influences. The overriding aim of such legislation should be to establish a code of practice which limits research to obvious and immediate benefits to human existence. Such legislation would require periodic revision in the light of new knowledge.

#### **Conclusion**

We therefore oppose the Human Embryo Experimentation Bill 1985 on the grounds that it lacks rational basis and that its implementation would deprive the community of the many benefits of such research.

Our statement is based on information gained at seminars on IVF in 1982, research on this subject for our submission to the Waller Committee and from recent literature: the Family Law Council report, *Creating Children; Test-Tube Babies*, ed. Walters & Singer; *The Reproduction Revolution* by Singer & Wells; the Warnock Committee reports; the Enoch Powell Unborn Children (Protection) Bill and Senator Harradine's speech to the ANZAAS Congress "The Case for Legal Protection of the Human Embryo".

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#### **1986.4. Criminal Records (Spent Convictions)**

*Submitted 3 March 1986 to the Australian Law Reform Commission.*

Published: *Victorian Humanist*, Sept. 1987 (*sic*): 10.

#### **(HUMANIST SUBMISSIONS GET A GUERNSEY!)**

In June '86 the HSV, through the work of a subcommittee, made a submission to the Commonwealth Law Reform Commission in response to their discussion paper on Criminal Records including "Spent Convictions".

It concerned the concept that, after a certain period has elapsed after a conviction has been recorded, or a sentence completed, the conviction be considered as spent and that details should not be released by record keepers.

The subject was discussed at one of our Sunday Discussions.

In June of this year the CLRC published a report of their conclusions and a Draft Spent Convictions Bill.

It was pleasing to note that our Humanist views received several mentions in the majority and the minority report.

The Draft Bill provides that sentences be declared spent 10 years after the date of conviction or completion of a custodial sentence provided no further conviction occurs. In the case of a Children's Court Conviction the period is 2 years.

The provisions can be waived in exceptional circumstances under Regulations approved by the Governor-General.

The end result was much more conservative than we advanced but it was encouraging to have Humanist views acknowledged.

— Colin Duncan

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#### **1986.5. Support Services for Victims of Crime**

*Submitted 27 May 1986 to the Legal and Constitutional Committee, Parliament of Victoria*

Published: *Victorian Humanist*, June 1986: 6.

*The Legal & Constitutional Committee of the Victorian Parliament invited the HSV to make comments or submissions to the Inquiry into Support Services for Victims of Crime. Below are the comments submitted by the HSV in order of the issues raised in the discussion paper.*

##### **General**

Though not an organisation that specifically provides such services, the HSV regards this issue as an important social problem and would like to offer some comments.

##### **Compensation & Reparation**

There appears to be an adequate administrative structure in the form of the Crimes Compensation Tribunal as described in the Criminal Injuries Compensation Act 1983, Part 2. But frequently there are lengthy delays before compensation payments are made and this causes additional hardship to the victim. We understand that in the UK, where crime compensation payments are made as of right rather than as of grace, they are available within a few weeks.

Any procedural or legislative changes towards a speedy conclusion of cases would be welcome.

The adequacy of awards is a matter of individual circumstances: we do not believe the victim should become richer as a result of the crime. But we do strongly believe that the offenders should

be made accountable to their victims and provide restitution to their full capacity to do so. This may be in the form of periodic payments over time, if a lump sum payment is not possible.

We suggest the liquor industries be taxed to contribute to the Consolidated Fund in proportion to the number of criminal offences committed under the influence of alcohol.

### **Support Services**

As a concept, self-help groups are a positive and a mature attempt at problem-solving. In practice, however, as pointed out in your explanatory notes, some of these groups may reinforce or increase the psychological problems of the victims through lack of expertise though with best intentions. We therefore propose an accreditation scheme whereby these groups are inspected and assessed for approval or otherwise. A list of approved groups could be made available and recommended to the victims.

### **Criminal Justice Process**

We strongly support the establishment of a charter of victims' rights, similar to the South Australian document *The Rights of Victims of Crime*. But rather than a set of guidelines to government departments and agencies, it should have the legal force of a bill of rights.

The victims should certainly have the rights not to disclose their residential address, not to appear at preliminary hearings, to be informed of the progress of investigations, the charge(s) laid, outcome of proceedings, conditions of bail, parole and release from custody.

Their right to counselling services, to aid in preparation for court proceedings, to legal aid and to compensation as well the right to the "impact statement" should be assured by legislation. It should be mandatory to inform victims of crime of their rights and of available support services.

We suggest that specialised assistance be given to members of groups identified as those which may have special problems as victims of crime: women, children, migrants, Aborigines, the elderly, the handicapped and the unemployed. The cost and effort involved in this will often pay off by preventing long-term disability and dependence.

The problem of victims' rights as opposed to the offenders' was mentioned in the discussion paper No 25, *Criminal Records*, issued by the Australian Law Reform Commission in December 1985. It was in the context of criminal convictions being spent after a period of time.

Thus we appreciate the difficulty of balancing the rights of the offender and the victim. But we believe that, in committing criminal acts, offenders abrogate at least some of their rights.

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### **1986.6. Options for Dying with Dignity**

*Submitted 30 May 1986 to the Victorian Parliamentary Inquiry into Options for Dying with Dignity*

Published: *Victorian Humanist*, July 1986: 4 – 6.

This submission addresses each of the terms or reference set out by the Social Development Committee in its *First Report on Inquiry into Options for Dying with Dignity*.

*1. Whether it is desirable and practicable for the Government of Victoria to take legislative or other action establishing a right to die*

The Humanist Society of Victoria (HSV) proposes that it is not only desirable and practicable for legislative and other action to be taken to establish a right to die, but that it is essential that such steps be taken. The grounds for this position are:

1.1 There is a need to determine the proper responsibilities of the groups which presently have some involvement in the area. The courts, the medical profession and the church are the main organised interests which lay claim to responsibility for decision making in the area, but their respective roles are ill-defined and vary from case to case.

1.2 Growing community concern is seen to derive from two interrelated issues. In Victoria at present there is no legal protection of the expressed wishes of people who have made a statement regarding their exercising a right to die, in the form of a "living will", nor is there protection of those who may assist them in this exercise. The situation noted in 1.1 above compounds this unease, with the possibility of challenges to "living wills" coming from different quarters and being based on different claims.

1.3 While it is recognised that assisting people to die is an accepted practice in certain circumstances in medical care, the guidelines that apply, most obviously in Not For Resuscitation cases, have not been subject to community view, and it appears that there may be considerable variations from one institution to another, or even from one practitioner to another. As part of public debate, the HSV seeks the release of all such guidelines and sees the review and recognition of current practice as an important contribution to the development of legislation. Current practice should provide a useful basis for reaching a commonly accepted set of standards and practices that could be incorporated in legislation.

1.4 There is ample evidence that society neither does provide nor believes that it should provide all possible treatment to prolong life in all circumstances, that is, there is not an accepted unalienable right to life-sustaining treatment. To the contrary, there is widespread community acceptance of the view that people should be allowed to die with dignity, in a variety of circumstances; the main cause for concern appears to be the legal uncertainty of current practices to this end, not the practices themselves.

1.5 The particularly Humanistic perspective is that the right to die is a secular concern. Accordingly, the community is seen to have the capacity to determine its moral principles regarding a right to die, and to give them legal sanction, without the involvement of religion and theology. The HSV is concerned to ensure that the church is not seen to have a prerogative in this area and that a secular view is widely advanced.

1.6 The whole community should not be subject to the views of minorities who are opposed to a right to die, nor should such views prevent the formulation of legislation that would allow all to

behave according to their belief, within legally defined limits. The voluntary nature of a legally sanctioned right to die would give equal protection to those who wished to exercise that right as to those who do not.

*2a. The fundamental question as to whether, and what circumstances, if any, a person should have a right to die*

The HSV supports the view that people should have the right to die, and that the circumstances in which this right can be exercised should be defined with regard to:

2.1 evidence of mature and informed judgement on the part of the dying person, who has given conscious and usually written direction of his or her intentions;

2.2 given the above conditions are met, the burden of proof that the person does *not* want to die should rest with the authorities, rather than the person or their associates having to establish the wish to die;

2.3 different approaches and guidelines will be needed for different cases, such as:

- those dying from terminal illness, where death is inevitable;
- those whose lives are sustained only by life support systems, which would have to be suspended to enable them to die;
- those who have expressed a wish to die in a form that is legally recognised, who reach advanced old age and suffer multiple mental and physical infirmities but without suffering any terminal illness, requiring a decision on the point at which action will be taken to assist them to die;

2.4 Special recognition will need to be given to cases where the person is unable to express or exercise their own choice due to impaired autonomy. Such impairment should not be taken to override intentions that have been previously expressed and that would meet the conditions set out in 2.1 above; thus if legal protection is given to autonomously expressed wishes, this protection should not be removed in the event of reduced autonomy;

2.5 recognising that many persons may have previously given informed consent to treatment, it will be necessary to establish means by which such consent can be countermanded. Particular attention should be given to circumstances in which the commencement of treatment may not meet with commonly accepted views of informed consent, for example, in the case of low birth weight infants and cases of trauma; a review of guidelines applying to the implementation of treatment in such circumstances may be informative in regard to the conditions under which such treatment is to be continued or terminated;

2.6 that due regard be given to the self respect, integrity and suffering of the individual, in accord with community standards of dignity of the dying.

*2b. What is an acceptable definition of "death"*

Definitions of death for purposes of legislation of the type envisaged in Victoria vary from country to country. The HSV supports the adoption of a definition based on brain death, involving such

substantial damage to the autonomic nervous system that the person cannot survive without intervention.

*3. The right of an individual to direct that in certain circumstances he or she be allowed to die, or assisted in dying, and the form which such direction should take*

The HSV supports the legislative provision of directions associated with a right to die, whereby a person can direct that they be allowed to die or to be assisted to die.

3.1 The direction to be recognised should be in the form of a "living will".

3.2 Where direction is given regarding assistance to die, that assistance should be in the least painful way.

3.3 The decision to enter a hospice care program and consent to the treatment offered, namely palliative care without "heroic" treatment, should of itself be taken as an expression of the persons direction that they be allowed to die, or be assisted to die.

*4. The right of the individual who has not [given], and is incapable of giving, such a direction to be allowed to die, or assisted in dying*

Where a person has not given or is incapable of giving direction as to a right to die, three considerations arise:

4.1 A distinction might be drawn between circumstances requiring passive and active responses, the latter involving the suspension of life support systems.

4.2 A search should be made not only for evidence of a wish to die, but also of an absence of evidence of a wish to live in all circumstances.

4.3 provisions for a right to die should not override provisions for making minors Wards of the State in order to give emergency treatment, such as blood transfusions, where permission for such treatment may be withheld by parents or legal guardians.

*5. Protection for medical, nursing and other professionals who allow an individual to die, or assist an individual in dying, including the need for guidelines for carers in the case of life-sustaining equipment and procedures and the need for continuing counselling and after care*

Three factors need to be considered in giving protection to those involved in care of the dying and who may be in a position to assist persons to die. The protections should apply not only to professionals but also to lay persons who may be intimately involved in the care of the dying person.

5.1 The wishes of the dying person, expressed in appropriate and recognised form, are to be respected over and above the beliefs of carers.

5.2 Recognition is given to the proviso that those who have a conscientious objection to assisting a person to die not be subject to orders to do so. This proviso does not mean that assistance should not be given, but that only those agreeable to giving assistance should be asked to do so,

5.3 A significant effect of having legislation covering a right to die would be to remove anxiety and uncertainty of those who now work with the dying but who have no protection and who work under guidelines that at present could be challenged legally. Legislation would endorse and strengthen the trust underlying the doctor-patient relationship in a way similar to other legal sanctions, such as informed consent, that already govern this relationship.

6. *Relevant literature, legislation, judicial decisions and other relevant developments in Australia and overseas including, but not limited to:*

- i. *the Quinlan case in the USA,*
- ii. *the Barendregt case in the Netherlands,*
- iii. *the Californian and South Australian Natural Death Acts and the Yale Legislative Services Model Bill: Medical Treatment Decision Act, 1973,*
- iv. *the ongoing work of the Victorian Law Reform Commission,*  
*but not to consider any issue associated with the termination of pregnancy.*

A list of material consulted by HSV in preparing this submission is attached. Reports of public opinion in Australia are listed as the basis of statements of community views made in this submission. Several members of the HSV also have relevant professional experience.

7. *Three other issues which the HSV considers as particularly pertinent to debate about a right to die are:*

7.1 The provision of public funding for secular bereavement counselling and support services, including hospice care, with public hospitals and community health centres being appropriate channels for the development of such services, and that sufficient resources be allocated to hospice care to offer a real choice to all those who may wish to be cared for in such programs.

7.2 The need for greater public education, with an education program being seen as an essential adjunct to any legislation on a right to die, to ensure that people have a full understanding of the meaning of a "living will" or any similar provision that may be introduced.

7.3 While the Victorian Government should examine the experience of other states, both those having legislation in the area and developments in those which have proposals for such legislation, with a view to reaching a common national position, it should not delay taking independent action until a national position emerges; rather, action by the Victorian Government will make a significant contribute to the development of a national position.

#### **IN CONCLUSION:**

The Humanist Society of Victoria urges the Parliament to legislate on a right to die, to the best of its ability and taking into account legal, medical and philosophical issues drawn to its attention in the course of this Inquiry. The HSV is concerned that the Parliament should not protract this endeavour unnecessarily by attempting to anticipate every such issue nor be inhibited in formulating legislation because it cannot encompass every eventuality. Carefully and reasonably

framed legislation will meet the wishes of the ordinary citizen, with opportunities for amendment in line with social change and in the light of experience with the legislation. *The prospect of continuing without legislation in this important area constitutes a far greater problem for dying individuals, those who care for them, and society as a whole.*

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#### **1986.7. Social Education**

*Submitted 17 June 1986 to the senior Curriculum Officer, Social Education, Education Department, Victoria.*

Published: *Victorian Humanist*, Aug. 1986: 4 – 5.

HUMANIST SOCIETY OF VICTORIA

SUBMISSION: SOCIAL EDUCATION FRAMEWORK

The HSV is in strong support of the Social Education Framework P-12.

The objectives of our organisation . . . are very much in line with this Framework.

Our comments refer to the four sections of the Social Education planning: knowledge, skills, values and actions.

#### **Knowledge**

Humanists stress that the scientific method is the basic tool in developing knowledge and an important part of this process is the presentation of differing views and their assessment.

Essential to social education, we believe, is the study of —

(1) *Human Relations*, i.e. interactions within relationships such as friendships, various kinships, group or team membership and citizenship. Aspects of relationships, such as solidarity, autonomy, power structures, domination, exploitation etc., could be discussed at various levels of the student's maturity and sophistication.

(2). *Sex Education* in its physical as well as emotional aspects and with the responsibility for such consequences as unwanted pregnancy and sexually transmissible diseases.

(3) *Basic mechanisms of communication*: language, oral and written, non-verbal signals and symbols, expression of feelings, distinction between fact and opinion, methods of clear thinking and presentation of ideas and initiatives.

(4) *Comparative Religion*, to gain an overview of various faiths/dogmas and of humanist ethics without religion.

(5) *Mechanisms for the resolution of conflict* in (a) one-to-one relationship[s], (b) the family, (c) the group/team, (d) the intra- and international arenas.

(6) *The myths inherent in racist attitudes.*

(7) *Human rights.*

#### **Skills**

For a successful and positive participation in society one requires the skills of harmonious interaction and cooperation. The high degree of competitiveness encouraged in various forms at present does not enhance such skills. We suggest that in sporting activities the value of participation be stressed as higher than that of winning. Calm and rational discussion, i.e. the exchange of information, ideas and opinions are to be encouraged and practiced rather than debates with point scoring and a winner and a loser.

By means of discussion and assignments the following skills could be identified as essential:

Mechanisms to handle stress, anxiety, loss, rejection, conflict and responsibilities.

Skills of partnership such as marriage and those of successful parenting.

The ability to evaluate critically and rationally the claims of the paranormal such as astrology, clairvoyance, psychic surgery etc., and alternative medicines such as iridology, homoeopathy, faith healing, etc.

To offer constructive rather than destructive criticism.

To practice periodic assessment of one's own performance in the various levels of one's existence: as a student, a son/daughter, a brother/sister, a friend, a team member, a citizen (and later as a worker, spouse, parent.)

### **Values**

The teaching of human rights, comparative religion and humanist ethics would serve to develop sensitivity to and tolerance of other people's needs and values.

The Common Law and the Statutes reflect the morals and attitudes of a community. The continual process of law reform testifies to the need for change of attitudes and values in our changing world. Therefore, the study of past and recent law reform would be instructive in the process of assessment of values.

We believe these studies, i.e. human rights, comparative religion, humanist ethics and law reform would support values such as human worth and dignity, justice, free speech and participation in decision making.

### **Action**

Essential to many forms of social action is a well developed skill of communication and an informed consideration of consequences. Whether based on personal, local, national or global concerns, decision and actions require clear articulation of intent and its rationale. The rationale should derive from consideration and balance of benefits and harms such action would cause, i.e. the utilitarian approach.

Initiatives in active learning, ("self-starters"), planning to make decisions about one's own life, moves to influence or change events by conveying views to the authorities or to the public through the media — such practice would train a valuable and responsible citizen.

### **In Addition**

In addition we wish to comment on the .problem that schools have to face. Where schools are developing programs that run counter to home values, special care and sensitivity is needed on the part of schools if the desirable outcomes of Social Education are to be achieved.

But whatever we say and do in our school programs will be of little value if governments do not genuinely work towards providing social justice, eliminating poverty and discrimination and towards reducing conflict.

*We enclose samples of resource material on Humanist information.*

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### **1986.8. Human Rights in Victoria**

*Submitted 29 July 1986 to the Legal & Constitutional Committee, Parliament of Victoria.*

Published: *Victorian Humanist*, (A) Sept. 1986: 2 – 3; and (B) July 1987: 12

(A) *V.H.* Sept. 1986

TO THE LEGAL & CONSTITUTIONAL COMMITTEE,  
PARLIAMENT OF VICTORIA

*This Committee invited the HSV to make a submission en the Discussion Papers: No. 2 "Are Human Eights Adequately Protected in Victoria?" and No. 3 "Freedom of Expression in Victoria". At our monthly discussion group, selected issues regarded as of specific concern were debated and the prevailing views recorded, We thank Donald Thomson for his help in formulating this submission.*

#### **General**

The Society welcomes the opportunity of making suggestions regarding that a Bill of Rights be enacted in Victoria.

As a secular humanist group, we wish to comment specifically upon various questions raised in Discussion Papers Nos. 2 & 3, issued March and April 1986 respectively.

The following recommendations were formulated at a members' discussion group.

#### ***Paper No. 2***

##### ***Section B2 (d) Omission Causing Death***

It is recommended that medical intervention to save or prolong life be not mandatory or required by law if the patient has indicated that such intervention is not wanted in certain circumstances, and that those circumstances exist: and that failure in such case on the part of medical staff to intervene be not deemed an offence.

##### ***Section B2 (f) Abortion***

It is recommended that abortion should be legally available on demand by the patient, after proper counselling, and with medical advice and assistance.

##### ***Section B2 (i) Suicide***

It is recommended that aiding and abetting another person to commit suicide, when that person is of a sound mind and aware of the latter act, be *not* deemed an indictable offence.

It is further recommended that such and abetting not be permissible if carried out by a person or by persons with vested interests in the death of the person committing suicide.

#### Section B2 (j) *"Mercy Killing"*

It is recommended that there be no criminal sanction against any actions taken, or omitted to be taken, which have as their object the cessation of pain and suffering in the case of illness or injury of an incurable and irremediable kind.

The Society believes that human beings are no less in need, in such cases, of compassion as are the other animals, and that maintenance of a mere form of organic "life" in such circumstances is unjustifiable cruelty.

#### Section B2 (l) *Death Penalty*

A majority of members recommended that the death penalty be abolished.

#### Section C1 *Peaceful Assembly*

It is recommended that a basic right of peaceful assembly be established by statute. It is realised that such right will have to be set about by various conditions of a possibly restrictive or conditional kind; but it is felt that it is better to have a positive statement of the right legislation rather than that all legislation (as it appears at present) should be re-phrased so as to derogate the common law assumption.

### ***Paper No. 3***

#### Section C2 *Blasphemy*

It [is] recommended that the law relating to blasphemy be rescinded. The Society believes it is contrary to the constitutional separation of church and state in Australia, and a survival of mediaeval attempts to impose conformity in matters of religion by force. We regard the law of blasphemy as a penalty on free speech and opinion.

#### Section C3 *Sedition*

It is recommended that the law relating to sedition be closely reviewed and, if found to be outdated or over-restrictive in modern society, revised or rescinded accordingly.

It is conceded that "real" sedition could exist and should be subject to penalty; but it is felt that, as it stands, it is too liable to abuse by government or other authorities, and too restrictive of public discussion, e.g. via the media.

#### Section 4(d) *Fortune Telling*

It is recommended that, in view of the proliferation of charlatans and the regrettably common gullibility of the population, the present legislative prohibitions and restrictions on fortune telling be maintained and even strengthened.

In the Society's debate on this question, reference was made to the curious position of ministers of religion, mostly salaried, forecasting the fortunes, here and allegedly hereafter, of those of their congregations who obeyed their injunctions or otherwise. It is felt that perhaps sauce for the commercial goose should be no less applicable for the reverend gander.

#### Section D2 *Obscenity*

It is recommended that the definition of obscenity, such as it is, should specifically be extended to cover depictions of violence by any means; the Society feels that violence has far worse effects on its viewers than sex.

In the latter respect it is felt that police are not generally competent to judge what is, or is not, obscene and that their powers in such matters should not include definitive opinion.

#### Section D2 (b) ii *Soliciting*

It is felt that soliciting by or between adults of 18 years or over should not be deemed an offence, unless it is constituted [*sic*] also an actual nuisance, e.g. by pestering, by not accepting a refusal.

#### Section D4 (b) *Contraceptives*

It is recommended that the advertising, display and sale of such contraceptives as are likely to prevent the transmission of sexually transmissible diseases and unwanted pregnancies be unrestricted by law.

Further, as it is not the function of legislation to control a community's morals, the sale of any other contraceptive device, which is not proved to be physically dangerous, should not be inhibited by law.

### **A Bill of Rights for Victoria**

The Humanist Society is eagerly in favour of the extension and security of human rights. But it is recommended that any proposed Bill of Rights be drafted, published at large in printed form, and not thereafter be enacted for a period of five years so as to permit both further public discussion and some indication of the probable acceptance when proclaimed

(B) *V.H.* Sept. 1987

#### **Defining/Protecting Human Rights**

A Report to Parliament

In July 1986 our Society made a submission to the Legal and Constitutional Committee of the Victorian Parliament, which was examining the need for a Bill of Rights for Victorians,

The Committee has now reported:

#### **SUMMARY**

The Legal and Constitutional Committee has studied a number of options to better protect human rights, including a Bill of Rights for Victoria. It received a large number of submissions, and heard numerous witnesses over a period of twelve months.

The Committee proposes that the most appropriate course for Victoria is to strengthen the role of Parliament as the ultimate guardian of human rights and freedoms. Responsibility for protecting human rights should be vested in Parliament rather than in a Bill of Rights.

The Committee's proposal has two parts. The first is for the enactment of a Victorian Declaration of Rights and Freedoms to be located in the Victorian Constitution. Unlike a Bill of Rights, this Declaration would not be enforceable through the courts. It would not present an opportunity for endless litigation, or constitute a challenge to the authority of the democratically elected Parliament. On the contrary, the Declaration would act as a beacon to Parliament in terms of the rights and freedoms which it should seek to protect, and would remind Parliament of its responsibilities in this regard.

The second part of the Committee's proposal involves conferring "watchdog" *[text missing]* a Parliamentary Committee. Most importantly, this Committee would *[text missing]* scrutinize all bills introduced into the Parliament by reference to the Declaration, and to report to Parliament as to whether those bills had unacceptable implications in terms of human rights. This "scrutiny of bills" function would ensure that Parliament would be properly alerted to human rights issues arising in the legislation which came before it. Under the proposal contained in this Report, the Parliamentary Committee would also have certain functions in relation to existing Acts, subordinate legislation, aspects of the common law and areas of executive action.

The Committee is confident that Victorians will welcome a Declaration of Rights and Freedoms to support Parliament in its role as guardian of human rights.

In part the recommendations included:

**Recommendation 1** (p.55)

The Committee therefore recommends that the government, in order to better protect the civil and political rights of disadvantaged Victorians, should :

- (i) take steps to ensure that non-English speakers are not disadvantaged when dealing with the police, the courts and government departments;
- (ii) publicize as widely as possible, in several languages, any statement of rights or other human rights initiative which it may adopt;
- (iii) urgently review the resources of the Legal Aid Commission and the Aboriginal Legal Aid Service with a view to determining the adequacy or otherwise of legal advice and representation to disadvantaged Victorians, especially Aborigines, non-English speakers and those in country areas.

The Report was endorsed by the all-party Committee by 11 votes to 1.

Humanists will be happy with the outcome.