headspace submission
Review of the
Charter of Human Rights and
Responsibilities Act 2006
(Victorian Charter)

10 June 2011

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Introduction

headspace welcomes the opportunity to submit a response to the Review of the Charter of Human Rights and Responsibilities Act 2006 (Victorian Charter) to the Scrutiny of Acts and Regulations Committee (SRAC). headspace believes that a Charter of Human Rights is fundamental to protect the most vulnerable and disadvantaged in our society. The Charter provides an overarching principle for a fair and just society where everyone is treated as equal. The Charter also provides governments and services clear guidelines and expectations and a consistent approach across different sectors. Significant investment has been made by Victorian departments, public authorities, and services to embrace the Charter in their everyday work and feedback has been positive regarding the impact on policy and service implementation. To remove the Charter would be counter-productive and a step backwards for the Victorian community.

headspace strongly advocates for the continuation of the Charter and also the inclusion of the Convention on the Rights of the Child. Whilst the Charter includes the rights of children and young people these rights are not clearly articulated nor does it recognise the power imbalance that exists for this age group. Explicit rights are required to address this imbalance and embed youth participation as standard practice.

In this submission we will address the terms of reference in regard to overall benefits of the Charter and options for reform. In particular we will:

(1) advocate for the continuation of the Charter, and
(2) focus on the needs of children and young people within the framework of human rights and the Convention on the Rights of the Child

This submission has been developed and supported by various stakeholders involved in the headspace initiative including Central West Gippsland Division of General Practice and Youth Support and Advocacy Service (YSAS).
**About headspace**

**headspace**, the National Youth Mental Health Foundation, is funded by the Australian Government. Established in 2006, **headspace** has provided services to more than 37,000 young people at 30 centres in metropolitan, regional and remote areas across Australia.

The national work is driven through four core areas: community engagement and awareness raising, provision of training and education, driving service sector reform and building knowledge in evidence based treatment.

**headspace** centres are for young people aged from 12 to 25 years. Our centres provide high quality early intervention care and services for a range of mental health challenges young adults commonly experience, with the aim of heading off any long-term adverse effects.

**headspace** services span physical health, drug and alcohol assistance and vocational advice and we aim to empower young people to seek assistance. Any young person who needs support, advice or just someone to talk to about a mental health issue, can walk into a **headspace** centre and be treated with respect and compassion, within a confidential and safe environment. A family member can also refer a young person to **headspace**.

**headspace** believes all young people are important and deserve the best care possible. Our workers listen to and try to understand the needs of young people who visit our centres so they can help them achieve better health and wellbeing. We also work with other mental health and community agencies to improve the lives of young people.

**headspace** gives young people a voice and continually tries to influence government and opinion leaders on their behalf, for better mental health services.

We acknowledge the unique place and historical context of Aboriginal and Torres Strait Islander communities within Australia and the need for specific consideration in relation to all functions of the **headspace** model.

The Independent Evaluation of **headspace**\(^1\) was favourable in its view of the **headspace** model, its acceptability among young people, and the quality of care provided across the four core streams.

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The overall benefits of the Charter

headspace strongly advocates for the continuation of the Victorian Charter of Human Rights and Responsibilities and is concerned that there have been calls to remove the Charter and replace them with service standards. The Charter provides a coherent and consistent set of standards that apply across all public authorities and services whilst service standards are sector specific.

When the Charter was proposed the following arguments were put forward against having a Charter:

- Victorians already enjoy a culture and system where rights are protected and respected without having a Charter (democratic processes and institutions offer better protection of rights).
- It will impose costs on government departments and authorities - administrative costs, training, compliance costs, and litigation costs.
- It will result in excessive and costly litigation and only lawyers will benefit from having a Charter. Some predicted that it would lead to an individualistic, litigation focused culture.
- It will transfer legislative powers to "unelected judges."
- It will have a negative rather than a positive impact on human rights. For example rights that are not articulated in the Charter will be abused or overlooked
- It will result in an unwarranted focus on minority groups and also the promotion of rights of criminals to the detriment of victims of crimes.

To our knowledge none of these concerns have borne fruit. In particular we have not witnessed a "litigation focused culture" or increased costs to government and public authorities. Rather we have seen an improvement in service delivery and policy making.

The benefits of having a Charter include:

- It articulates our values and vision for our society, freedom, dignity, respect, equality, fairness. Some commentators states that the Charter embodies Australia's belief in "a fair go."
- It is a clear statement of human rights and responsibilities of all Victorians and the government's commitment to promoting and protecting those rights.
- It protects the most vulnerable and disadvantaged in our society that are more likely to be in contact with government services, less likely to be aware of their rights or be in a position to enforce their rights.
- It a comprehensive and consistent statement and framework for compliance across all government departments and services.
- It has improved the process for developing laws and policies.
- It has improved service delivery and service outcomes (especially for disadvantaged groups).

From our conversation with our Victorian based headspace centres and other health and welfare organisations we work with many have stated that the Charter has brought significant benefits to the people that they serve and provide services to. However, they express concern that there is no formal monitoring of public authorities' compliance with the Charter of Human Rights. This needs to be rectified. We propose that organisations should be obligated to demonstrate that they encourage and foster broad respect and support for human rights and responsibilities across the Victorian community in general and that they promote a culture within the organisation that respects the rights of humans. The government needs to consider how compliance with the Charter of Human Rights is monitored.

Considering the economic benefits of the Charter

It is too early to demonstrate the full impact of the Charter as it is still early days. It is especially difficult to demonstrate any economic benefits however publications by Access Economics state a clear economic justification for equitable social policy such as a Charter of Human Rights (e.g. reports on domestic violence, disability and addressing indigenous disadvantage). headspace urges SARC to consider the costs that have been avoided as a result of better decision making and improved service delivery e.g. less people evicted from their homes.

How the Charter has improved our work

As an organisation that aims to deliver mental health reforms the implementation of the Charter is fundamental to our work. It provides us with a framework to increase awareness of the rights of children and young people and the rights of people with a mental health issue. Access to timely and appropriate services is a fundamental right and is supported by the existence of a Charter of Human Rights. The Victorian Charter has led to mental health legislation being reviewed and key human rights addressed. This will lead to better outcomes for people with a mental illness.

The review of Exposure Draft Mental Health Bill 2010 has been an informative dialogue about the rights of people with a mental illness and also a conversation and consideration of the rights of children and young people who enter mental health services. As a result the “best interest of the child” principle is being deliberated as an addition to the Bill and further consideration of the needs of children and young people is being discussed under the framework of CROC. Without the existence of the Victorian
Charter of Human Rights this outdated legislation would not have been reviewed and outcomes for people living with a mental illness would have continued to be compromised.

Options for reform - inclusion of the CROC

Although the Victorian Charter of Human Rights essentially protects the rights all Victorians headspace believes that the rights of children and young people need further clarification and protection. There is assumption under the Charter that the rights of children and young people will be protected but this is often not the case as there is an inherent power imbalance between adults and children/young people. Therefore, headspace advocates for the inclusion of the Convention on the Rights of the Child (CROC) into the Victorian Charter of Human Rights.

The United Nations compels its member nations to properly address children’s and young people’s concerns through the CROC and within Article 12 the convention upholds participation as the right of every child. Young people are often overlooked in the planning of services and to date participation has been largely limited to adults. There is a growing recognition nationally and internationally that youth participation in service delivery and policy development is both good practice and a fundamental human right. Children and young people can no longer be perceived as “passive recipients” of care or services and their participation in decision making is part of a significant process of change in the way that we engage with and deliver services and policy to this age group.

Controversy remains about children and young people’s rights. Government departments, services, and public authorities are often uncomfortable with youth participation or involving young people in the decisions that affect them. There is often an assumption that adults know best and will provide the best solution that will benefit young people. There is also a lack of knowledge and skills about youth engagement and participation.

Helen Szoke stated that we need to find a “balance between empowerment and guidance and move beyond consultation to participation” with young people.² Children and young people need to be given an opportunity to actively own and enjoy rights. The active and informed participation of young people is likely to result in services that are more effective and relevant to their needs. This will result in better outcomes for young Victorians.

² Victorian Equal Opportunity and Human Rights Commission speech to ‘Human Rights and Young People, Office of Child and Safety Commissioner Strategic Planning Day’ 26.08.2010
Young people experience considerable barriers to accessing care and assistance. They often feel overlooked and unheard, undervalued and not taken seriously as members of their communities. We still take a paternalistic approach to young people and believe that they need to be taken care of rather than view them as active citizens with valid opinions and beliefs about the world that they live in. Young people are often characterised as apathetic but many express a desire to have a say in the decisions that impact their lives/world. Young people state that participation is about fostering a sense of acceptance, respect, connection, empowerment and belonging. Involving young people in decisions ensures appropriate design and delivery of services and improves their experience of services and community life. They have the right to take part in all decision making that affects them. This includes the right to be involved in designing and reviewing policies and services that directly affect them as well as the community that they live in.

With this in mind headspace recommends that the Charter be amended to include the Convention on the Rights of the Child (CROC). The CROC is underlined by the key principles of non-discrimination (Article 2), best interests of the child (Article 3), respect for the views of the child (Article 12), right to be heard, and recognition of the evolving capacities of the child (Article 5). It incorporates basic human rights such as; the right to privacy, bodily integrity (the right not to have your body interfered with) and autonomy (the right to make decisions about your life), including the right to control your health and body and the right to informed consent to treatment. The CROC promotes the rights of children to make an informed decision; attempts to ensure that appropriate information is provided to enable this decision to be made; and requires that state parties respect these views and the reasons for their formation. CROC provides a right to participation, requiring that relative to their age and level of maturity, the views of children and young people be given due consideration in matters that affect them.

Ensuring children and young people’s rights to be heard is dependent on perceiving them as people and holders of fundamental human rights. The CROC provides that a child shall be provided with the opportunity to be heard in any legal proceedings affecting the child, and their views given due weight in accordance with their age and maturity. For example, as a matter of law there is no fixed age at which a child can be said to be able to give legally effective consent to medical treatment and it is important to note that the CROC stresses that no age limit should be placed on the right of the child (or young person) to be heard and actively "discourages States parties from introducing age limits either in law or in practice which would restrict the child’s right o be heard in all matters affecting her or him."³

Challenges of implementing CROC

"In order for adolescents to be able safely and properly to exercise this right, public authorities, parents and other adults working with or for children need to create an environment based on trust, information-sharing, the capacity to listen and sound guidance that is conducive for adolescents' participating equally including in decision making process."  

Many young people have had negative experiences of services and/or adults. Extra attention and care must be taken to build safe spaces for children and young people to meaningfully participate in decisions about their community. This may take time to develop with some young people. Actively listening to their views and feelings are paramount. Young people may need assistance to actively advocate for their human rights due to the inherent power imbalance that exists between adults and children/young people. This may involve producing material discussing human rights in a format and language that they can understand. They also may need to be supported in expressing their human rights through the assistance of a youth worker or other professional that is charged with ensuring that the best interests of the child principle is complied with.

It should be acknowledged that adult involvement/participation presents many challenges. Involving young people presents its own set of unique challenges. The Charter needs to take into the account that many children and young people will need extra support to participate meaningfully in these processes and different methods may be required.

Some of the barriers to youth participation include:

- Negative social attitudes to, and stereotyping, of young people
- Skills deficit (e.g. in literacy, verbal skills and public speaking)
- Lack of confidence of both young people and staff
- Lack of power given to young people
- Lack of trust by young people in decision making systems
- Insufficient resources

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Ensuring meaningful participation

Youth participation means young people having a role within an organisation’s structure, and includes terms such as ‘youth partnership’ and ‘youth consultation’. Youth participation may include a variety of consultation and/or decision-making activities where the role of young people is valued. The scope for activities that young people can be involved in is enormous.

Youth participation benefits not only the young people involved but the organisation and the general community. What youth participation strategy is used will be dependent upon the organisations needs, desired outcomes, the type of input required and the characteristics and preferences of the young people involved. To ensure meaningful participation the following basic principles need to be adhered to:

- Substantial agreement in the organisation about the goals of youth participation and commitment to this participation for young people, the organisation and the community.
- Adequate resources, including staffing and funds to provide proper training and support to staff and young people so that these goals can be reached.
- Adequate remuneration for young people for their involvement to minimise barriers to their participation, including transportation, childcare and other practical support.
- Clear roles and responsibilities including clarity about which activities and levels of participation are appropriate for young people’s involvement and the capacity of the organisation to respond to this involvement.

With this in mind headspace recommends that special provision and training should be provided to ensure child and youth participation in services and government departments.

implementing human rights and CROC at headspace

"Taking a partnership approach to consulting with young people means working alongside young people, treating them as equal stakeholders in the process and acknowledging their expertise and knowledge"6

headspace has seven centres in Victoria with a further two opening their doors in July. headspace National Office and centres operate under the principles of the Human Rights Charter and CROC.

headspace is committed to providing young people with opportunities to directly participate with headspace, including involvement in planning and providing feedback on service models as well as the development of youth targeted community awareness activities. headspace National Office has recruited 17 young people to form the headspace Youth National Reference Group (hY NRG). This group is made up of young people from around Australia, who are associated with a headspace centre. These young people assists headspace National Office at a variety of levels; from attendance at Advisory Board meetings to consultation of marketing campaigns.

As well as at a nation level headspace is committed to youth participation at the local level. Examples of youth participation used in headspace centres include:

- Making services a youth friendly environment
- Interviewing staff
- Resource development
- Media work
- Peer support
- Community awareness activities
- Speaking in schools
- Involvement in the evaluation and ongoing quality assurance of services
- Website content development
- Policy and strategy work
- Marketing and promotional projects

Conclusion

headspace advocates for continued support and implementation of the Victorian Charter of Human Rights and Responsibilities. Although the Charter has only been in existence for a short period of time in Victoria we have seen positive outcomes for many disadvantaged and vulnerable people. It has provided Victoria with a consistent framework to further improve legislation, policy, and services ensuring that the Victorian government continues to strive towards providing the best quality services to the public it serves. Further consideration is required to improve the Charter with the inclusion of the Convention on the Rights of the Child. This will result in better outcomes for young Victorians.
Recommendations

1. The Charter is continued and supported by the Victorian government and ongoing work is undertaken to promote the Charter amongst the Victorian community.
2. The Charter is strengthened with the inclusion of an obligation for formal monitoring of government and public authorities' human rights compliance. The Victorian government should consider what mechanisms are required to effectively and meaningfully monitor compliance.
3. The Charter is amended to include and promote the Convention on the Rights of the Child.
4. The Victorian government provide training on CROC and youth participation to government departments, services and public authorities.
5. The Victorian government produce a child-friendly version of the Charter and provide education campaigns informing children and young people of their rights.
6. The Charter stipulates that government departments, services and public authorities provide safe and supportive environments for young people to make informed decisions about the services and policies that impact on them including providing them with a worker to support them in expressing their views.
7. The Charter stipulates that government departments, services and public authorities that develop polices and provide services to children and/or young people provide information on their rights in a format and language that is accessible to that age group.
8. The Victorian government stipulate that government departments, services, and public authorities report on whether they have considered the rights of children and young people with regard to developing policies, making laws etc and identify where they have actively engaged young people.