Submission to 2011 review of Victorian Charter of Human Rights

This paper is a submission to the first review of the Victorian Charter of Human Rights being conducted by the Scrutiny of Acts and Regulations Committee (SARC).

**Leadership Plus** is a community-based organisation providing advocacy assistance to people living with disability in Victoria. We specialise in providing advocacy assistance to people living with Acquired Brain Injury (ABI). Over the past two years the advocacy team at **Leadership Plus** has adopted a rights-based approach and applied the Victorian Charter of Human Rights and Responsibilities to its advocacy work. **Leadership Plus** views the Charter as important to its work in addressing unfairness and disadvantage in Victoria. It is our view that people living with disability in Victoria have benefited from the Charter being in place through strengthening the understanding, application and dialogue of human rights.

**Disability Rights Victoria** is a consortium of eight Disability Advocacy agencies across Victoria. Members of the consortium provide advocacy assistance to individuals and are also active in self advocacy and systemic advocacy. As the lead agency of **Disability Rights Victoria, Leadership Plus** works to resource the consortium
in responding to systemic issues identified through individual advocacy work.

Consortium members:

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<th>Agency Name</th>
<th>Service Provision Area</th>
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<td>Leadership Plus</td>
<td>Melbourne Metro with state-wide protocols</td>
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<td>Disability Resource Council</td>
<td>Melbourne Metro and Mornington Peninsula</td>
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<td>Disability Advocacy Information Service</td>
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This submission aims to provide SARC with insight into our personal experiences working with the Charter and its impact and use in disability advocacy work.
Terms of Reference 1 and 2: Inclusion of Additional Human Rights in the Charter;

- The inclusion of all the human rights contained in the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR), including the right of self-determination, would contribute to the conditions necessary for all people to live with dignity and participate fully and equally in our community.

- All civil, political, economic, social and cultural rights in the Victorian Charter should be legally enforceable. In respect of economic and social rights, the state should be obliged to take reasonable steps to ensure the progressive realisation of the right within the maximum of available resources, with the reasonableness of administrative action being subject to judicial review in the ordinary way. As an alternative to providing, from the outset, for judicial remedies for breaches of economic and social rights the Victorian Charter could provide for the Human Rights Commissioner to receive complaints from individuals who allege a breach of their economic or social rights.

We have found the Victorian Charter helpful in framing our work, we define our work in relation to the Charter and work to engage the public authority for due consideration be given to human rights. Sections of the Victorian Charter we use in our work have included:

- **Section 8: Recognition and equality before the law** - The lived experience of Disability is not well understood and much of our advocacy work relies on our ability to engage in dialogue about rights with service providers, public authorities and others. The Victorian Charter provides a more immediate and relevant opportunity to begin this dialogue and understanding. (see case study 2 & 4)
• **Section 10: Protection from torture and cruel, inhuman or degrading treatment or punishment** (see case study 2 & 4)

• **Section 12: Freedom of movement** – Access to aides and equipment remains a significant issue for people with disability. (see case study: 5)

• **Section 13: Privacy and Reputation** (see case study 1)

• **Section 17: Protection of families and children** – Significant social change is needed in the broader community regarding people with disability as parents. There is significant evidence in our advocacy work that people with disability do not enjoy the same human rights as others. (See case study: 4)

• **Section 21: Right to liberty and security of person** (see case study 2 & 3)

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**Terms of Reference 3: Whether there should be mandatory regular auditing of public authorities to assess compliance**

• Reporting and auditing frameworks are important to identify systemic and structural issues and to monitor and evaluate the effectiveness of actions taken to address such issues.

• The Victorian Charter should mandate regular reporting by public authorities on steps they have taken to monitor and evaluate their processes for ensuring that their decisions and actions are compatible with human rights.

• The Victorian Charter should also vest the Victorian Equal Opportunity and Human Rights Commission with an own motion power to inquire into and audit the compliance of a public authority’s policies, programs and practices with human rights.
Terms of Reference 4: Access to Effective Remedies under the Victorian Charter

- The charter should be amended to contain a free-standing cause of action for breaches of protected human rights. The current method of having to attach Charter arguments onto existing cause of action is a severe limitation in the application of the Charter.

Terms of Reference 5(c): What have been the effects of the Charter on the provision of services and the performance of other functions, by public authorities?

- It is this area, the provision of services, that we have found the Victorian Charter useful and effective in our advocacy work. We are pleased to use the Charter as a tool to help develop and build the understanding of human rights and in particular the rights of people with disability.

- The Victorian Charter provides a single, clear framework for public authorities to ensure that respect for human rights is central to the way they operate.

- Our use of the Victorian Charter with public authorities includes: ‘dialogue’ – providing a framework and language to discuss issues around human rights; to appeal a decision; seeking an explanation for a particular decision; due consideration to human rights: to bring attention to a potential breach of the Charter.

- Public authorities we interact with include: Department of Human Services including - Child Protection; Disability Client...
Services; Office of Housing. More broadly the criminal justice sector and the family law sector.

Terms of Reference 6: What if any have been the overall benefits and costs of the Charter?

The following case studies are intended to illustrate our use of the charter and the immediate benefits to Victorians.

**Case Study 1: Raising the Charter with public authorities**

Mitch is a 39 year old man living with cerebral palsy and vision impairment. Mitch is living in community housing and requested a security mesh door to his unit. He offered to pay for the addition.

The community housing agency denied this request without providing any reason. Mitch had been experiencing anxiety due to the lack of security. The advocate wrote a letter to the community housing agency and sited his right under the Victorian Charter:

**Section 13: Privacy and Reputation**

The advocate stated that security additions to Mitch’s residence were reasonable. The provision of a security screen would not only provide Mitch with better security within the home but also his enjoyment and privacy of the home. Mitch lives with vision impairment and as such it is difficult for him to identify activity in the lane below his apartment or any approaching danger.

Outcome:

Within two weeks of receiving the letter, the community housing agency had arranged for three quotes to install a security mesh screen.

This case demonstrates how the Victorian Charter of Human Rights can help to address people’s needs. By having this right included in

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*Leadership Plus* Disabilities & Social Change
the charter, it can help statutory bodies in Victoria to meet these obligations, and it also provides people with a tool to review processes that result in the loss of such rights.

**Case Study 2: Access to Support Services for People Living with Dual Disability and “Passing the Buck”**

There are two systemic influences in this case:

i) The challenges people living with dual disability face in gaining access to services; and

ii) The lack of appropriate housing support models available for people with disability.

Kate is a 45 year old woman living with dual disability. She has a diagnosis of Schizoaffective Disorder, Borderline Personality Disorder and an Acquired Brain Injury. Kate sought advocacy assistance in accessing services. Kate failed to meet the eligibility criteria for supported accommodation from Mental Health through the Department of Health. She also failed to meet the eligibility criteria for supported accommodation through the Department of Human Services, Disability Client Services. Stand alone, neither the illness nor disability allowed her to meet the eligibility criteria of either Department.

Kate had a history of living in a number of privately run Special Residential Services (SRS). These facilities are privately run by a Proprietor once issued with a certificate from the Department of Health. They operate with a minimum ratio of 30 residents to one staff member. There was evidence that Kate had been sexually assaulted and robbed by other residents when living in an SRS setting. Due to Kate’s experience in SRS’s she did not feel safe in these living environments. Kate sought advocacy assistance to help her obtain housing that provided more appropriate support and security.

In a letter to all Government Departments involved, the advocate raised the following breaches of the Charter:
Recognition and equality before the law (section 8): Kate was denied access to appropriate supported housing. Kate’s disabilities were being categorised across two Departments, each Department not recognising the total impact on Kate, only focussing on eligibility of their Department. In effect, the Departments were “passing the buck”.

Protection from inhuman or degrading treatment (section 10): Mental health services had a history of housing Kate in SRS facilities for many years despite incidents occurring. Kate’s experience while living in SRS’s of sexual, financial and emotional abuse leaves her feeling traumatised. Kate’s Acquired Brain Injury further compromises her ability to cope leaving her stressed, depressed and lacking any confidence or ability to change her situation.

Right to liberty and security of person sections 21: Kate has been given little opportunity to live in an environment where she feels secure and not at risk of abuse, threats and intimidation. It seems, there was little or no effort to provide her emotional support such as counselling to help her feel secure.

Outcome: The Charter assisted the advocate to establish the seriousness of Kate’s situation. The Charter strengthened what Kate had been trying to alert both Government Departments to for a long time. As a result of better coordination between services, she was appointed a case manager by the Department of Human Services, Disability Client Services; placed on the wait list for supported accommodation; and now receives 15 hours per week of one-to-one support while residing at the current SRS.

This case demonstrates how the Victorian Charter of Human Rights can help to strengthen and protect people’s rights to be able to access
care and supports. By having these rights included in the charter, it can help statutory bodies in Victoria to meet these obligations, and it also provides people with a tool to review processes that result in the loss of such rights.

**Case Study 3: People living with disability may be vulnerable to financial abuse**

Advocates have found the Charter important in explaining to people living with disability what their rights are. In this case, the Charter was an important tool in James understanding of his right to live free from abuse and to enjoy freely community life.

James has an intellectual disability and lives independently. James was under pressure from his sister and members of their church to live with his sister. James had been forced to sign a document which gave his sister access to his $60,000 savings. James felt intimidated by his sister and discriminated against due to his disability by church members.

James sought advocacy assistance to remain living independently without fear or intimidation and to have his money returned. He also wanted to be able to attend his church and other cultural activities within his community without discrimination.

The advocate used the Charter Act to inform James and his support network of his freedom to enjoy basic human rights such as:

**Right to liberty and security of person (section 21):**

James was sometimes visited by his sister in a drunken state, where she attempted to force her way into his house. He felt fearful of her as she wanted him to lie about her actions and wanted him to sign.
documents. James obtained an intervention order to prevent his sister’s intimidating behaviour.

**Freedom from forced work (section 11):**
James’ sister and members of their church wanted James to live under the care of his sister because his disability. James felt that in return for her ‘care’ his sister expected him to work under her direction.

**Property rights (section 20):**
James’ sister forced him to add her as a signatory to his bank accounts. She accessed the savings to purchase a house for herself.

**Taking part in public life (section 18):**
Once an intervention order was in place, protecting James from his sister he attempted to go to his church, a central part of his life, only to be told him he could not attend because his sister was there.

Informing James of his rights under the Charter empowered him to remain living independently. James pursued an Intervention Order to protect himself from his sister. James appointed State Trustees to be his financial administrator through the Victorian Civil and Administrative Tribunal to protect him from further financial abuse. State Trustees have also supported James in investigating his sister’s financial abuse and are currently seeking to have her repay his money to him.

This case demonstrates how the Victorian Charter of Human Rights can help to identify people’s rights, be used to educate and empower some of the states most vulnerable individuals.
Case Study 4: Parenting – Discrimination of people living with disability

This case illustrates the unfairness many people living with disability face as parents. Sharon was born with Cerebral Palsy. She is a single parent caring for a one year old child. Sharon came to our agency seeking assistance in dealing with Child Protection. She was trying to demonstrate to Child Protection that with appropriate support from carers and the use of aids she was able to care for her daughter.

What followed was a year long battle where Sharon had to prove she was physically and emotionally capable of caring for her daughter. Child Protection believed Sharon was unable to appropriately care for her daughter due to Sharon’s physical support needs. Child Protection regarded the child to be at risk of emotional and physical harm and sought to reinstate orders for a further 12 months based on Sharon having a disability.

In making this decision Child Protection failed to consider Sharon’s rights under the following sections of the Charter Act:

Section 8 Recognition and equality before the law;
Sharon was identified by her Cerebral Palsy. In effect, Sharon was unable to enjoy her rights as a mother without discrimination.

Section 17 Protection of families and children;
The principle of family unity was not upheld. Child protection pursued this matter solely based on Sharon’s physical needs. Through this ordeal, Sharon’s confidence to be a mother was damaged.

Outcome
The advocate used the principles of the Charter Act to inform her advocacy work. Sharon’s Individual Support Package was reviewed to incorporate the child so that carers could assist Sharon as necessary.

Sharon attended mediation at the Children’s Court and was able to demonstrate how the disability supports in place gave her full capacity to care for her daughter. Child protection began to understand how these supports ensured Sharon’s daughter was safe in the care of her mother. Child protection is no longer involved and Sharon is now able to be a mother to her daughter.

This case demonstrates how the Victorian Charter of Human Rights can help to strengthen and protect people’s rights to be able to access care and supports. By having these rights included in the charter, it can help statutory bodies in Victoria to meet these obligations, and it also provides people with a tool to review processes that result in the loss of such rights.

**Case study 5: Housing Support Models crucial for People with Disability**

Peter was referred by the Clinical Psychologist at the hospital with the agreed advocacy issue being alternative accommodation for Peter.

It appears, following ten years in a locked hospital ward Peter had not been offered these human rights by the Department of Human Services. The following sections of the Charter were used to assist and direct the advocacy work:

**Freedom of movement (Section 12):** While Peter is in receipt of approximately $7,500 in an Individual Support Package. There are significant barriers to him accessing the community as he needs a suitable wheelchair. Peter is ineligible for funding through Aids and Equipment because he has been accommodated in the Aged Care
Facility of the hospital. Without an appropriate wheelchair Peter cannot access the community.

**Right to liberty and security of person (Section 21):** Peter remains in a locked hospital ward because no alternative housing support models can be identified that meet his complex support needs.

**Outcomes:**

With input from Peter and medical team the advocate prepared and lodged an application to the Department of Human Services, Disability Support Register. Following more discussion with the Department’s Intake & Response, a vacancy in disability specific accommodation in the Geelong region was identified. This would be a wonderful opportunity for family re-unification and an opportunity for Peter to experience a quality of life that has otherwise eluded him.

At the time of writing the vacancy selection panel are to convene a meeting with Peter’s medical support team and the advocate to consider his appropriateness for this vacancy. Funding request for a wheelchair (as an exception) has also been applied for in Peter’s Disability Support Register Application.

This case demonstrates how the Victorian Charter of Human Rights can help to strengthen and protect people’s rights to be able to access care and supports. By having these rights included in the charter, it can help statutory bodies in Victoria to meet these obligations, and it also provides people with a tool to review processes that result in the loss of such rights.
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