Mr Edward O'Donohue MLC,
Chairperson, Scrutiny of Acts and Regulations Committee
Parliament of Victoria,
Melbourne 08 June 2011
Vic 3002

Subject: Submission to the inquiry into the Charter of Human Rights and Responsibilities

Dear Sir

I am delighted to be given the opportunity to make submission on behalf of Disability Justice Advocacy Inc. A significant amount of the advocacy support we provide for people with disabilities involves the use of the Charter.

Background

Disability Justice Advocacy Inc. (DJA) provides advocacy support to people who have high support needs as a result of a physical or multiple disabilities. It was founded in 1990.

DJA is governed by a Board of Management comprised of elected persons from its general membership, all of whom have high support needs as a result of a physical or multiple disabilities. It is primarily funded by Commonwealth Department of Family, Housing, Community Services and Indigenous Affairs. (FaHCSIA) under the National Disability Advocacy Program (NDAP)

DJA’s focus is about working with the person with a disability and supporting them with their needs, rights and interests to address and resolve issues they identify as important to them. We are independent of all other services and free of conflicts of interest.

We provide services in accordance with the federal Disability Services Act 1986 and clients have rights enshrined both in this legislation and in the accompanying 12 Disability Service Standards. These standards apply to our advocacy and referral service and are listed as follows:

Standard 1: Service access

Each person with a disability who is seeking a service has access to a service on the basis of relative need and available resources.

Standard 2: Individual needs
Each person with a disability receives a service that is designed to meet, in the least restrictive way, his or her individual needs and personal goals.

**Standard 3: Decision making and choice**

Each person with a disability has the opportunity to participate as fully as possible in making decisions about the events and activities of his or her daily life in relation to the service he or she receives.

**Standard 4: Privacy, dignity and confidentiality**

Each service recipient's right to privacy, dignity and confidentiality in all aspects of his or her life is recognised and respected.

**Standard 5: Participation and integration**

Each person with a disability is supported and encouraged to participate and be involved in the community.

**Standard 6: Valued status**

Each person with a disability has the opportunity to develop and maintain skills and to participate in activities that enable him or her to achieve valued roles in the community.

**Standard 7: Complaints and disputes**

Each service recipient is encouraged to raise, and have resolved without fear of retribution, any complaints or disputes he or she may have regarding the service provider or the service.

**Standard 8: Service management**

Each service provider adopts quality management systems and practices that optimise outcomes for service recipients.

**Standard 9: Employment conditions**

Each person with a disability enjoys working conditions comparable to those of the general workforce.

**Standard 10: Service recipient training and support**

The employment opportunities of each person with a disability are optimised by effective and relevant training and support.

**Standard 11: Staff recruitment, employment and training**

Each person employed to deliver services to a person with a disability has relevant skills and competencies.
Standard 12: Protection of human rights and freedom from abuse

The service provider acts to prevent abuse and neglect and to uphold the legal and human rights of service recipients.

Eligibility Criteria for Advocacy Support

People with disabilities can receive advocacy support from Disability Justice Advocacy if they meet the following criteria

1. Aged between 16 and 65
2. Live in one of the following Victorian Municipalities: Banyule, Bayside, Boroondara, Brimbank, Cardinia, Casey, Darebin, Frankston, Glen Eira, Greater Dandenong, Hobsons Bay, Hume, Kingston, Knox, Manningham, Maribyrnong, Maroondah, Melbourne, Monash, Moonee Valley, Moreland, Nillumbik, Port Phillip, Stonnington, Whitehorse, Whittlesea, Wyndam, Yarra
3. Have a physical disability that is permanent or likely to be permanent (This can be associated with other types of disabilities e.g. Cerebral Palsy, Multiple Sclerosis etc)
4. Have a need for ongoing support services eg, personal care, HACC or community access
5. Have reduced capacity for:
   - Writing, typing, hearing, vision or speaking OR
   - Learning OR
   - Mobility without assistance or the need for frequent rests

As we are funded to provide a service within Victoria only, the Charter of Human Rights and Responsibilities Act is used frequently in our advocacy work with highly successful outcomes.

During the last financial year we supported 80 clients who between them had 178 issues. The vast majority of our clients are not aware of their rights under the Charter of Human Rights and Responsibilities Act nor do they have the capacity to utilise the Charter to achieve an outcome for themselves. We therefore provide a free service that enables them to have their rights protected.

The overall benefits of the Charter

The 20 civil and political rights enshrined into Victoria's Charter of Human Rights and Responsibilities Act helps the DJA advocacy team achieve outcomes in relation to the protection of the rights of our clients when dealing
on their behalf with Victoria’s state government departments as well as Victoria Police, local government and other statutory authorities including VCAT, the VEOHRC, the Office of Housing and State Trustees to name a few.

The main benefit is that all of the above can be held accountable for:

- Existing policies they make and new ones as they are put in place
- For decisions they make in relation to these policies; and
- For the services they provide to our client base

As a result of our use of the Charter some policies have been changed and decisions about service provision have been reversed.

Sample Case Studies

Case Study 1

A client with physical disabilities, with limited mobility, who was also legally blind, was a tenant of the Office of Housing in the same property for over 20 years. The tenant was expected to report maintenance items as they occurred but due to the vision impairment was not able to see when work needed to be done, so could not report it. As a result the property was in urgent need of repair.

When advocacy commenced to have this work completed some of the contractors who attended the property required the client to sign the worksheet to verify that the job had been completed in accordance with Office of Housing policy.

The advocate, to protect the client from torture and cruel, inhuman or degrading treatment or punishment, invoked Section 10 of the Charter and was successful in reversing the policy requiring a person with a vision impairment to sign a works order that they could not read or to verify that work had been completed.

Case Study 2

A client with physical disabilities, with limited mobility who also had a hearing impairment, continued to live in the family home after his elderly mother was admitted to a nursing home facility and was placed under a financial administration order by VCAT. She had been his carer.

In a dispute with State Trustees over the sale of the family home, the advocate invoked Section 20, Property rights of the Victorian Charter of Human Rights and Responsibilities Act 2006. An agreement was eventually reached where the client would stay in the family home as a tenant and pay rent.
Case Study 3

A client with a physical and intellectual disability as well as speech impairment was not receiving the services he was entitled to from the Department of Human Services under the Disability Act 2006. No provision was made by the staff in the supported accommodation unit for him to go out and be part of the community. The advocate invoked Section 12 of the Charter "Freedom of movement" and as a result additional staff resources were provided to facilitate his integration into the community.

Case Study 4

A client with a physical disability was incarcerated in a corrections facility run by a private operator under the supervision of Corrections Victoria. The aids and equipment that he required to assist him with his disability were regularly taken away from him as he was moved from one part of the correction facility to another. He would often go for weeks without the use of these aids and this caused him considerable pain. The advocate invoked Section 22 of the Charter "Humane treatment when deprived of liberty", and the aids were returned and he was able to retain them during the rest of his sentence.

Case Study 5

A client with a physical disability from a non-English speaking background was assessed as being eligible by a local council for HACC services including personal care, house work and shopping. The client could not speak English and could not make himself understood. The council would not pay for an interpreter whilst the care was being provided and also appointed a support worker that could not speak his language. The advocate invoked Section 19 of the Charter, "Cultural Rights" and in negotiations with the council, a support worker from the same cultural and language background was provided.

Case Study 5

A client with a physical disability living in a shared supported accommodation unit run by a non-government organisation under the supervision of the Department of Human Services was quite capable of opening his own mail and reading it himself.

However the policy of the house was that the key worker would open the mail before it was given to the client. The rationale for this was that there might be accounts that needed to be paid on his behalf. He objected to this on the grounds that his privacy was being breached but his complaints were ignored.

The advocate invoked Section 13 of the Charter "Privacy and reputation" and the house policy was changed. The client was then able to open his own mail and decide for himself what assistance he needed from his key worker.
Case Study 6

A client with physical disabilities in public housing was a tenant of the Office of Housing. His religion required no work to be done on his property on designated holy days. Advance notice was given that repairs would be carried out and when the client refused to allow the work to be done due to his religious beliefs, the contractor threatened him with a breach of the Residential Tenancies Act.

The advocate invoked Section 4 of the Charter "Freedom of thought, conscience, religion and belief" and the threat was withdrawn and the work rescheduled for another day.

These are just some of the case studies where the use of the Charter has resulted in successful outcomes for some of our clients. There are many more.

Additional rights to be included in the Charter

Whilst the use of the Charter has proven extremely successful in achieving outcomes it is limited by virtue of the fact that not all human rights are included.

Recommendation

The review of the Charter should include a provision for increased protection using additional human rights. Disability Justice Advocacy believes that the Charter the Charter should include:

Economic, social and cultural rights. This is because they will ensure rights to essential services including housing, schooling and health. The rationale for this is that our client base is drawn from the most vulnerable and marginalised segment of the community. The inclusion of these rights will enable us to not only advocate more effectively on their behalf, but also generally improve their quality of life.

All civil and political rights to which Australia is a signatory. This is because of the legal moral and ethical responsibility that the state has to protect the rights of its citizens. The inclusion of these rights will enable us to not only advocate more effectively on their behalf, but also generally improve their quality of life.

Addition of further provisions regarding public authorities’ compliance with the Charter, including regular auditing and further provision for remedies.

It is clear from our work with clients that unless State government authorities and local councils are forced to comply with the Charter in the development of policy and the delivery of services, many do not take their responsibilities seriously until it is brought to their attention.
Recommendation

It is the recommendation of Disability Justice Advocacy that a review of the Charter include a compliance provision where every local council and State government authority must be required to produce an annual compliance report to be lodged with the Victorian Equal Opportunity and Human Rights Commission. There should be no exceptions to this.

In addition, the Equal Opportunity Act should be amended to give the Victorian Equal Opportunity and Human Rights Commission the power to receive, investigate and conciliate individual complaints about breaches of human rights contained in the Charter.

Conclusion

During the last four years, the use of the Charter by Disability Justice Advocacy on behalf of many of its clients has proven a valuable tool in obtaining satisfactory outcomes.

It is timely as part of the four-year review of the Charter to further strengthen it by adding additional rights and the inclusion of a compliance provision.

Yours faithfully

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