Submission to the Scrutiny of Acts and Regulations Committee's review of the *Charter of Human Rights and Responsibilities Act 2006*

---

Contact details:

Kim Koop, Chief Executive Officer  
Psychiatric Disability Services of Victoria (VICSERV)  
Level 2, 22 Horne Street, Elsternwick Victoria 3185, Australia  
T 03 9519 7000  F 03 9519 7022  
[www.vicserv.org.au](http://www.vicserv.org.au)E.k.koop@vicserv.org.au

Prepared by Anthea Tsismetsi, Policy and Research Officer  
Psychiatric Disability Services of Victoria (VICSERV)  
Level 2, 22 Horne Street, Elsternwick Victoria 3185, Australia  
T 03 9519 7000  F 03 9519 7022  
[www.vicserv.org.au](http://www.vicserv.org.au)Ea.tsismetsi@vicserv.org.au
Psychiatric Disability Services of Victoria’s (VICSERV) role

VICSERV is a membership-based organisation and the peak body representing community managed mental health services in Victoria. These services include housing support, home-based outreach, psychosocial and pre-vocational day programs, residential rehabilitation, mutual support and self-help, respite care and Prevention and Recovery Care (PARC) services.

Many VICSERV members also provide Commonwealth funded mental health programs.

VICSERV welcomes the opportunity to provide a submission to Scrutiny of Acts and Regulations Committee’s review of the Charter of Human Rights and Responsibilities Act 2006 (Vic). This brief submission highlights the importance of the Charter for the community-managed mental health sector as well as for the people who interact with the service system. It is limited to addressing the questions posed by the Committee which are most relevant to the sector.

1. Should the Charter include additional human rights, including but not limited to, rights under the –
   a. International Covenant on Economic, Social and Cultural Rights;
   b. Convention on the Rights of the Child; and
   c. Convention on the Elimination of All Forms of Discrimination against Women?

Rights to adequate housing, health, education, opportunities for employment and social participation are fundamental to promoting the recovery of people with a mental illness. VICSERV is of the view that the Charter should be amended to include essential civil, political, economic, social and cultural rights.

The inclusion in the Charter of the rights contained in the International Covenant on Economic, Social and Cultural Rights (ICESCR) will create the necessary conditions for all people to participate in and contribute to the community with dignity and respect. VICSERV would ideally like to see all rights contained in the ICESCR to be incorporated into the Charter. Particularly significant is the right to health, which is the recognition of the ‘right of everyone to the enjoyment of the highest attainable
standard of physical and mental health. Enshrining this right in legislation would give greater credence to system reform as well as the voices of consumers. The allocation of more resources to ensure adequate services to uphold this right would be required.

In addition, the Charter should include human rights contained in the Convention on Rights of Persons with Disabilities in order to be most effective for people with a psycho-social disability.

2. Should there be mandatory regular auditing of public authorities to assess compliance with human rights?

The Community-Managed Mental Health Sector has long been subject to standards, reporting and auditing mechanisms that aim to improve services. Audits in the sector are usually based on service standards such the Psychiatric Disability Support Services Standards as well as accreditation standards. New standards such as the National Standards for Mental Health Services are grounded in the recovery-based approach to service delivery which recognises the importance of human rights. However the ability to audit compliance with human rights would be ground-breaking and be welcomed by consumers, carers and Community-Managed Mental Health services alike. It would also reinforce the human rights lens from which services approach decision making, policies and procedures. VICSERV is of the view that the Charter should include mandatory regular auditing of public authorities to assess levels of compliance with human rights. Auditing is also useful for the purposes of continuous quality improvement and showcasing best practice.

3. What have been the effects of the Charter on the provision of services, and the performance of other functions, by public authorities?

Within the Community-Managed Mental Health Sector, the Charter has significantly impacted how quality improvement is considered and translated into action. Whilst this sector is grounded in values arising from social justice, the Charter has

---

\(^{1}\text{Art 12, ICESCR}\)

Submission to the Scrutiny of Acts and Regulations Committee’s review of the Charter of Human Rights and Responsibilities Act 2006
strengthened the human rights basis of service provision and evaluation. As indicated by the VEOHRC report:

A human rights-based approach to service delivery is about working with clients and communities on an equal basis. It aims to encourage and build on people’s strengths and resilience, rather than taking a top-down approach that treats citizens as passive recipients of government services.²

Making decisions and developing practices through a human rights lens has added a new dimension to service delivery. The following case study appearing in the Victorian Council of Social Service’s publication *Using the Charter in Policy and Practice* elucidates this point:

One organisation experienced problems with a client who has been violent and threatening towards staff. Staff had raised concerns that allowing this to continue was a breach of the *Occupational Health and Safety Act 1984* (Vic). The initial response of the organisation was to exclude the client from services provided at the premises. A Direct Care Worker objected to this on the basis that while staff had the right to be safe in their workplace, exclusion from the service may also be a breach of the client’s rights. As a result the Care Worker successfully negotiated with management to allow the client restricted access to some services and instituted a method for monitoring when a client may become a safety risk for staff.³

Proportional limitation of human rights as demonstrated in the case study, allowed for each person’s human rights to be respected and upheld. A move away from a ‘black and white’ response to such situations has assisted organisations to be dynamic and flexible in service delivery and meeting individual needs.

The Charter has proven to be a good tool in drawing attention to human rights breaches as well as in increasing scrutiny of performance of functions by public authorities. Scrutiny has assisted in improving practices, driving innovation and proving better services. The inclusion of further rights in the Charter such as the right to right to health will potentially increase benefits already experienced.

4. What if any, have been the overall benefits and costs of the Charter?


Submission to the Scrutiny of Acts and Regulations Committee’s review of the *Charter of Human Rights and Responsibilities Act 2006*
The overall effects of the Charter have been positive with the legislation making public authorities more accountable in relation to human rights. The Charter has made a significant difference in how legislation and policy is drafted and applied, with in-built safeguard tools such as Human Rights Certificates and proportionate limitations clauses. It has also allowed for greater transparency of process and decision making, with public authorities being required to consider human rights outcomes.

HomeGround Services, a provider of community managed mental health services, indicated in the VEOHRC report that their supported housing initiative, Common Ground ‘recognises that access to appropriate housing and ongoing support services are human rights.’ This demonstrates one of the main benefits of the Charter has been the overall awareness raising affect it has had in the community about human rights and how such an approach can encourage creative solutions and practical, people-focused outcomes.

The Charter has also been the impetus for some major legislative reviews including the drafting of the new Mental Health Act and the Victorian Law Reform Committee’s review into guardianship and administration laws. The willingness and benefits of public authorities to engage in a human rights dialogue cannot be underestimated.

5. What options are there for reform or improvement of the regime for protecting and upholding rights and responsibilities in Victoria?

Options for reform or improvement include inclusion of economic, social and cultural rights in the Charter, recognition of the inalienability of some rights such as the right to protection from torture and cruel, inhuman or degrading treatment. Other areas in which improvements could be the effects of human rights practices on funding arrangements, widening of remedies given if breach were to occur to include compensation to the aggrieved individual.

---


Submission to the Scrutiny of Acts and Regulations Committee’s review of the Charter of Human Rights and Responsibilities Act 2006