Submission to the
Inquiry into the *Charter of Human Rights and Responsibilities Act 2006* (Vic)

July 2011
Table of Contents

About the Victorian Disability Advisory Council (VDAC) ...... 1

Introduction...............................................................1

Recommendations ......................................................2

1. Strengthen the Charter in line with international treaties.......................2
2. Raise community awareness .................................................................2
3. Broaden training of staff in government and public authorities .............2
4. Increase enforcement mechanisms ........................................................2
5. Clarify the measures needed by vulnerable persons ............................3

Observations .............................................................3
Submission to the Inquiry into the *Charter of Human Rights and Responsibilities Act 2006* (Vic) (the Charter)

1 July 2011

**About the Victorian Disability Advisory Council (VDAC)**

The key role of the Victorian Disability Advisory Council (VDAC) is to provide independent, impartial advice to the Minister for Community Services on whole of government policies and whole of government strategies in order to assist the government to achieve structural and realistic reform that will lead to the full inclusion and participation in the community of Victorian people with a disability.

All VDAC members have lived experience of disability, as either people with disabilities or as family members of people with disabilities.

In line with its function as an independent advisory body to the Minister, this submission addresses high-level issues and principles with regard to the terms of reference of the four-year review of the Charter.

**Introduction**

The enactment of the Charter is a very welcome recognition that all members of the Victorian community have human rights.

Human rights are essential in a democratic and inclusive society that respects the rule of law, human dignity, equality, and freedom.

Australia has accepted its obligation to promote and protect human rights and fundamental freedoms through ratification of the *International Bill of Rights* and, with particular regard to people with a disability, the *United Nations Convention on the Rights of Persons with Disabilities* (UNCRPD).

The UNCRPD represents a formal commitment to the Australian people to ensure that people with disabilities enjoy full and active inclusion in society, can move freely and live independently and have the support needed to make legal decisions.

The Charter provides an important mechanism to support the obligations and responsibilities accorded to Victoria through the Commonwealth ratification of international treaties.

The VDAC welcomes the review of the Charter and a rigorous inquiry into how it has been operating.

The VDAC also recognises that the purpose of the Charter is to bring about long-term cultural change, and that its four years of operation is not yet sufficient time for the Charter to effect widespread change.
Recommendations

1. Strengthen the Charter in line with international treaties

Recommendation: The VDAC recommends that the Charter be retained and strengthened to fully reflect Victoria’s commitment to promote human rights through the total and specific policies of government and the law, by including in the Charter:

- the four underpinning principles of freedom, respect, equality and dignity
- the economic, social and cultural (ESC) rights as outlined in the *International Covenant on Economic Social and Cultural Rights*
- reference to the UNCRPD as an interpretative document.

2. Raise community awareness

A major barrier to the usefulness of the Charter is a lack of awareness of the Charter in the community generally and a lack of knowledge of specific provisions, such as complaint making through the Ombudsman.

There has been some training in government, but little awareness raising or training targeted to the community.

Recommendation: That the Charter be promoted through a broad community awareness campaign supported by specific training of key community based organisations.

3. Broaden training of staff in government and public authorities

The Charter has changed the language in which policy is written to reflect a human rights perspective. There has also been considerable training of staff in government departments and among public authorities such as local councils.

However, the trickle down to staff on the ground is very limited, leading to a largely 'compliance' based approach of ticking the boxes, rather than encouraging the development of a human rights culture.

Recommendation: That a human rights organisational culture be encouraged by widespread staff training and other appropriate mechanisms.

4. Increase enforcement mechanisms

Victorians should have a right of action so they have recourse against government when it breaches their human rights, similar to other circumstances where the government has not met its duties such as in contract, negligence or occupational health and safety.

The Charter should inform the development of accreditation schemes, service standards and other measures to improve the quality of services, but it should also be enforceable to ensure compliance and provide an opportunity for breaches to be addressed where individual citizens are adversely impacted.
Recommendation: That individuals be entitled to bring actions under the Charter “... by adding an extra section to the Charter titled ‘Enforcement of guaranteed rights under the Charter’ (based on section 24 (1) of the Canadian Charter of Rights and Freedoms) stating

Anyone whose rights or freedoms as guaranteed by this Charter have been infringed or denied may apply to a court of competent jurisdiction to obtain such remedy, as the court considers appropriate and just in the circumstance.”

5. Clarify the measures needed by vulnerable persons

Vulnerable persons, including people with disabilities, women, children, Aboriginal people and people from culturally and linguistically diverse backgrounds may need extra measures to ensure that they can enjoy their rights on an equal basis to others.

Recommendation: Clarify the application of human rights by amending section 6(1):

Only persons have human rights. All persons have the human rights set out in Part 2. While all persons have these rights, it is recognised that some persons in society are particularly vulnerable and extra measures may be needed to ensure they can enjoy their rights on an equal basis with others. This includes but is not limited to, persons with disabilities, children, women, older persons and Aboriginal persons.

Observations

The VDAC makes the following observations on limitations of the Charter for consideration by the Inquiry:

- While new legislation has to be benchmarked against the Charter, an incompatibility with human rights will not prevent legislation coming into law.
- To raise a Charter issue in court, a litigant must have a substantial cause of action under another law.
- The approach of the Courts to the Charter has been very conservative. See for example the recent Court of Appeal decision *R v Momcilovic* relating to the interpretation of legislation currently before the High Court.