National Disability Services Victoria (NDS) welcomes the opportunity to make a submission to the four-year review of the Victorian Charter of Rights and Responsibilities Act 2006 (Charter).

About National Disability Services

National Disability Services (NDS) is the disability industry representative body, with around 700 non-government members Australia-wide. With almost 200 Victorian members, NDS Victoria has extensive and representative coverage of disability service providers across the State. NDS members provide disability supports including day services, supported accommodation, respite, therapy and employment services. NDS is working with members and government to support the delivery of sustainable, quality disability supports within a reoriented service system in line with the objectives of the Disability State Plan.

NDS strongly supports the Charter

NDS strongly supports the operation of the Charter and advocates for it to be strengthened. Approximately one million Victorians have a disability. It is well recognised that this group of people are vulnerable to being denied their human rights. It is therefore important that Victoria has additional rights protections, especially given that there is no national human rights act or charter.

Disability is a human rights issue

The United Nations Convention on the Rights of Disabilities, which Australia ratified on July 17 2008, signified a ‘paradigm shift’ in which people with disability are regarded as citizens with rights and not as objects of sympathy, or medical care or burdens upon society. The Convention rejected the medical model of disability which holds that disability is caused by impairment and is to be cured and treated through medical intervention and social welfare. Instead, the Convention reflects a social model of disability in which disability is seen as a result of the interaction of people who have impairments with attitudinal and environmental barriers such as policies, legislation and practices that hinders them from full and effective

participation in society\(^2\). Disability is accordingly not a social welfare issue, but a human rights issue.

The Victorian Charter does not expressly refer to people with a disability; however it recognises that all Victorians have rights and responsibilities. It has been significant to contributing to a human rights dialogue within community service organisations, the disability service sector and across the state.

Unlike the Convention, the definitions of disability in the anti-discrimination laws at a federal and state level do not reflect the social model of disability.

**Adoption of a human rights based approach**

The Charter supports and has influenced the increasing adoption of a human rights based approach by disability service organisations. In turn, this can and has led to improved service delivery and better outcomes for people with disabilities.

An increasing number of community support organisations have undertaken a range of activities to adopt a human rights based approach including: at a board level; in policy and procedures; workforce and recruitment; rights based education and training of staff; development of clients rights charters; and day-to-day service delivery. Human rights have also been used to measure how well an organisation is doing.

One member of NDS examined how their organisational policies and practices aligned with the Charter and made recommendations to ensure compliance with the Charter. The comparison with the Charter acted as a catalyst for an organisational wide dialogue about human rights. This dialogue led to changes in policies and practices to reflect a human rights based approach. It also resulted in a shift in which the organisation presents itself as a human rights organisation, rather than a charitable organisation.

Another example of a human rights based approach within disability service organisations is the adoption of organisational Charters of Rights. One NDS member developed a Consumer Charter of Rights based on the organisation’s work and the specific needs of its consumers. The Charter, as well as international conventions, informed the development process. The member reports that the Consumer Charter has empowered consumers and increased their participation. It has also been used to improve accessibility and advocate for better service delivery. A human rights based approach has also provided a means for the organisation to assess its progress, as well increased the motivation for staff.

Organisations are also using a human rights approach in the training and supervision of staff around the issues of restrictive practices and what constitutes abuse. This is particularly critical given the long history of abuse in institutional settings. Although there has been a move away from the institutional models, attitudes continue to change slowly. To this end, awareness of human rights can be a powerful factor in developing cultures where abuse is not tolerated.

The Charter is used as an advocacy tool

The Charter has been used as an advocacy tool to improve outcomes for people with disability. A NDS member reports that the Charter has been useful to devising and advocating for an appropriate service response to young people that are in or at risk of entry into nursing homes. The member reports that a young person with an acquired brain injury cited the Charter to prevent their being moved from an acute care facility into a nursing home.

NDS members also report that they use the Charter in submissions to formulate positions and advocate for better results for people with a disability.

Benefits of a human rights based approach

In summary, NDS members report the following benefits of adopting a human rights approach:

- Promoting a culture of human rights and encouraging a human rights dialogue
- Empowering people with a disability
- Increasing participation of people with a disability
- Improving service delivery
- As an advocacy tool
- Increasing motivation of staff
- Improving recruitment and attraction of staff

An example of the way in which human rights can improve service delivery is evident in the area of self-directed approaches. Self-directed approaches aim to give people with a disability more control over their own support and lives, and are consistent with the Charter. Disability service providers that lead in self directed approaches have a stated commitment to human rights, and have altered their practices to reflect a human rights focus.

The importance of acting consistently with the rights in the Charter to achieving high standards in service delivery is also reflected in the Victorian Disability Sector Awards. Criteria in the Award categories include acting compatibly with the Charter and enabling people with disabilities to express their rights under the Charter3. As such, it also provides an illustration of the way in which the Charter is being used to foster a human rights culture across the sector.

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3 See Disability Support Worker Award, Volunteer Award, Emerging Leader Award and Leadership Award in Victorian Disability Sector Awards Nomination Form 2011, available at [www.dhs.vic.gov.au](http://www.dhs.vic.gov.au) <last accessed 30 June 2011>
Legislation, policy and standards are increasingly being underpinned by human rights

Increasingly, disability legislation, policy and standards are being underpinned by human rights and the Charter is important to ensuring that this focus continues. In Victoria, the Disability Act 2006, which provides a legislative framework for the provision of a range of services for people with a disability, aims to promote and protect their rights of people with a disability who access services and advance the inclusion and participation of people with a disability in the community.

Likewise, the new Department of Human Service Standards reflect a human rights approach, and include standards of: empowerment, access and engagement, well being, and participation. The Victorian Guardianship and Administration Act 1986 is currently under review, and having regard to the Charter is a part of its terms of reference.

Increasing the protection of rights under the Charter

NDS supports increasing the protection of rights in Victoria by extending the Charter to include economic, cultural and social rights. The Charter does not offer any protection of these rights. It is necessary that it does so as people with disabilities face many barriers to participation and inclusion in society, particularly in the areas of health, employment, education, housing and accessibility. Protection of rights in these areas would assist people with disabilities to break down these barriers.

It would also be consistent with Australia’s obligations under the United Nations Convention on the Rights of Persons with Disabilities. The Convention contains greater protections for people with disabilities because it not only includes both civil and political rights and economic, social and cultural rights of persons with disabilities, but also sets out what measures must be taken to promote, protect and ensure them.

Definition of public authority requires further clarification

Further clarification of and assistance in relation to the definition of a functional public authority under s 4(2)(c) of the Charter is required. There is some uncertainty as to if and to what extent of their operations disability service providers fall within this definition. The Charter provides a list of factors in s 4 of the Charter to determine whether or not a function is of public nature. However, under s 4(3) of the Charter the list is not exhaustive and it is not definitive if one or more of the factors exist. Although disability service providers receive public funds, under s 4(5) of the Charter this does not necessarily mean that it is exercising the function on behalf of the State or public authority. Given that public authorities have obligations under the Charter, it is important that organisations are able to determine whether or not they fall within this definition in all or particular areas of their activities.

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Conclusion

The Charter is in the early stages and has potential to further develop and strengthen a human rights culture across Victoria, and particularly within the disability services sector. This is important to creating a fairer society, especially for people with disability who are particularly vulnerable and continue to face inequality and barriers to participation. The inclusion of economic, social, and cultural rights in the Charter is needed to provide greater protection for Victorians, including people with a disability. Any weakening of the Charter could impact on the momentum which is gradually building within disability services around the recognition of the importance and human rights and the usefulness of a human rights framework for directing the provision of disability services.

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About National Disability Services

National Disability Services is the peak industry body for non-government disability services. Its purpose is to promote and advance services for people with disability. Its Australia-wide membership includes around 700 non-government organisations, which support people with all forms of disability. In Victoria, NDS has almost 200 members. Its members collectively provide the full range of disability services—from accommodation support, respite and therapy to community access and employment. NDS provides information and networking opportunities to its members and policy advice to State, Territory and Federal governments.

In seeking to achieve its purpose, NDS provides a wide range of advice and information to the disability services sector through e-mail networks, conferences and seminars. NDS consultative structures include a system of issues-based National Committees and State Sub-Committees, forums and interest groups that operate by correspondence/email, teleconferences and face-to-face meetings. Submissions to Government are developed in consultation with NDS members.