

Human
Rights
Law
Centre.



Children and Young People
with Disability Australia



PEOPLE WITH DISABILITY
AUSTRALIA

CHARTERS OF HUMAN RIGHTS BENEFIT PEOPLE WITH A DISABILITY

16 December 2022 / Daney Faddoul

Human Rights Law Centre.

Daney Faddoul
Campaign Manger
Human Rights Law Centre Ltd
Level 17, 461 Bourke Street
Melbourne VIC 3000

T: + 61 3 8636 4400
F: + 61 3 8636 4455
E: daney.faddoul@hrlc.org.au
W: www.hrlc.org.au

Human Rights Law Centre

The Human Rights Law Centre uses strategic legal action, policy solutions and advocacy to support people and communities to eliminate inequality and injustice and build a fairer, more compassionate Australia. We work in coalition with key partners, including community organisations, law firms and barristers, academics and experts, and international and domestic human rights organisations.

The Human Rights Law Centre acknowledges the people of the Kulin and Eora Nations, the traditional owners of the unceded land on which our offices sit, and the ongoing work of Aboriginal and Torres Strait Islander peoples, communities and organisations to unravel the injustices imposed on First Nations people since colonisation. We support the self-determination of Aboriginal and Torres Strait Islander peoples.

People With Disability Australia

People with Disability Australia (PWDA) is the national disability organisation that represents the 4.4 million Australians with disability with all kinds of disability. We are disability rights and advocacy organisation made up of, and led by, people with disability. PWDA was established in 1981, during the International Year of Disabled Persons.

We have a vision of a socially just, accessible and inclusive community in which the contribution, potential and diversity of people with disability are not only recognised and respected but also celebrated. Our work is grounded in a human rights framework that recognises the CRPD and related mechanisms as fundamental tools for advancing the rights of people with disability.

Children and Young People with Disability Australia

CYDA is the national representative organisation for children and young people with disability aged 0 to 25 years. CYDA has an extensive national membership of more than 5,000 young people with disability, families and caregivers of children with disability, and advocacy and community organisations.

CYDA's vision is that children and young people with disability are valued and living empowered lives with equality of opportunity; and our purpose is to ensure governments, communities, and families, are empowering children and young people with disability to fully exercise their rights and aspirations.

Follow Human Rights Law Centre at <http://twitter.com/humanrightsHRLC>

Contents

1.	Executive summary	4
1.1	Outline	4
1.2	Recommendation	4
2.	Charter of Human Rights	5
2.1	What is a Charter of Human Rights	5
2.2	How Do Charters of Human Rights Help?	5
2.3	What difference a Charter can make for people with disability	6
3.	Examples from Victoria, Queensland and the Australian Capital Territory	8
3.1	Charter of Human Rights in action	8
4.	Conclusion	18
5.	More information	19

1. Executive summary

1.1 Outline

This joint submission is made by the Human Rights Law Centre, People With Disability Australia, and Children and Young People with Disability Australia to the Disability Royal Commission. This alliance is calling on the Commission to include in its Final report a recommendation that there be an Australian Charter of Human Rights.

The Commission has heard powerful evidence about the broader systemic barriers confronting people with disability, including with personal stories. In addition, many submissions outline important solutions to issues that people with disability face, which the Commission may consider as recommendations.

We encourage the Commission to frame any solutions it identifies with human rights at the heart of government laws, policies and service, because this will embed lasting change that benefits people with disability. Whilst a Charter of Human Rights would help everyone in the community, its benefits are even greater for marginalised communities because they are the parts of our broader society that have greater need to enforce their rights, and require better government decision making through a human rights framework.

A Charter of Human Rights, or Human Rights Act, have been shown to make great strides for people with a disability in the three jurisdictions where they currently operate – Victoria, Queensland and the Australian Capital Territory. The sooner there is an Australian Charter of Human Rights, the better for everyone in our community – especially people with disability.

1.2 Recommendation

That the Disability Royal Commission recommend in its Final Report that there be an Australian Charter of Human Rights.

2. Charter of Human Rights

2.1 What is a Charter of Human Rights

No matter who we are or where we are, our lives are better when we all treat each other with fairness and respect and when we can all enjoy our rights and freedoms. But powerful politicians and corporations don't always respect people's rights. Charters of Human Rights help to level the playing field by promoting respect for human rights and by giving people power to take action if their rights are breached.

Charters of Human Rights ensure the actions of our governments are guided by values of freedom, equality, compassion and dignity. Charters foster respect for human rights and help everyone, from school children to people who decide to call Australia home, to understand the rights and freedoms that we all share. Charters reflect our values and help to articulate the kind of society we all want to live in.

Charters prevent human rights violations by putting human rights at the heart of decision making when governments are developing laws and policies and delivering services. Importantly, they also provide a powerful tool to challenge injustice, enabling people and communities to take action and seek justice if their rights are violated. Yet, Australia has no national Charter of Human Rights that comprehensively protects people's human rights in law. We are the only Western democracy without a national Charter or similar law. There is a community campaign to change this.

There are three Charters of Rights or Human Rights Acts (Charters) operating successfully at the state and territory level; in the Australian Capital Territory (ACT) since 2004, Victoria since 2006, and Queensland since 2020. These Charters have been quietly improving people's lives, in small and big ways. They have helped to ensure that people are treated with greater fairness, dignity and respect, stopping families from being evicted into homelessness, ensuring people with a disability receive appropriate support and so much more.

2.2 How Do Charters of Human Rights Help?

The Victorian Charter and the Queensland and ACT Human Rights Acts all work in a similar way. They protect and promote people's rights when dealing with governments; the Victorian Government, Queensland Government and the ACT Government respectively. They also promote transparency in the way the governments and parliaments deal with human rights issues.

They require public authorities, including government departments, public servants, local councils, police and other agencies, to:

- properly consider human rights when making laws, developing policies, delivering services and making decisions; and
- act compatibly with human rights.

They require that new laws must be assessed in Parliament against human rights standards. In some circumstances, a parliament can expressly choose to override human rights.

In some circumstances, they allow governments to limit or restrict human rights. Governments can only do this if they have a good reason for restricting the right and they do it in a reasonable way that is justified in a free and democratic society. In assessing whether a government has lawfully restricted a right, a court will look at things like the nature of the right, the reason for the restriction and any reasonably available less restrictive ways to achieve the purpose for the restriction. In broad terms, to lawfully restrict a right, a government must have a good reason for the restriction and must use the lowest level of restriction to get the job done.

If a government doesn't act compatibly with human rights or properly consider human rights, the Charter and Human Rights Acts give people the power to take action in the courts. There are different ways of doing this in each state or territory that has a Charter. By taking legal action, people can stop governments from breaching their human rights. However, people can't get money as compensation if a government breaches their human rights. Also, courts can't invalidate laws that breach human rights. Parliaments have the final say on whether laws can breach human rights.

The Charters and Human Rights Acts require courts to interpret laws consistently with human rights.

If someone thinks their rights have been breached or may be breached, they can make a complaint about the issue directly with the relevant government agency. They can also make a human rights complaint to the Victorian Ombudsman in Victoria and the Queensland Human Rights Commission in Queensland.

The Human Rights Commissions in Victoria and Queensland each monitor and report on the operation of the Charters or Human Rights Acts in their relevant state or territory. The Charters and Human Rights Acts in Victoria, Queensland and the ACT don't apply to the Federal Government or other state and territory governments.

2.3 What difference a Charter can make for people with disability

By ensuring human rights are at the heart of our laws, and that people can take action when their rights are violated, a Charter of Human Rights makes a huge difference to the lives of people with disability. As a part of the community marginalised by a combination of neglect with respect to critical services, or cultural attitudes that lead to discrimination, people with disability are prevented from fully enjoying their rights. People with disability need enforceable human rights to help redress the wrongs they face, but more importantly improve government laws and decisions so that they properly consider what people with disability need.

The Charters of Human Rights and Human Rights Acts in the three jurisdictions where they currently operate have a track record of delivering for people with disability. Whilst those three Charters and Acts could be improved, they are a testament to the changes

for the better that people with disability have compared to jurisdictions where they do not have a Charter to rely on.

The following are the views shared by Charter of Human Rights supporters that are either people with a disability or a carer or family member of a person with a disability regarding some critical areas.

2.3.1 Health care

I have been suffering from chronic pain the last 5 or 6 years which is steadily getting worse. The doctors don't seem to know what to do except give me pain killers which don't seem to be doing much.

Ingrid, Victoria

2.3.2 Education

My son had not been provided a 1:1 inclusion worker during school holiday. My son got mild intellectual disability and epilepsy.

Tatiana, Victoria

2.3.3 Employment

I was born in 1948 without legs below the knee, no arm below the elbow on my left arm and only a stunted finger and thumb on my right hand...I have experienced the gambit of society, both good and bad. Employment was difficult due to prejudice but I managed to become self employed, and having a productive and useful life. I believe a "Bill of Rights " should be written into our constitution for ALL citizens, " from each according to their abilities, to each according to their needs ". This is a benchmark for a civilised society. The welfare system needs to be adjusted so those on disability support are not severely penalised for contributing to the workforce of the nation. Privatisation of services has not benefited either the client nor government finances. I have noticed social attitudes, especially in the young, have changed for the better although there is still some reluctance in the employment sector.

John, Queensland

3. Examples from Victoria, Queensland and the Australian Capital Territory

3.1 Charter of Human Rights in action

Charters make a difference to people's lives in small and big ways. Charters have:

- Helped governments to identify and address human rights issues affecting people at an early stage of policy development.
- Ensured transparency around how governments and parliaments have considered people's human rights.
- Promoted better understanding of human rights.
- Prevented human rights issues from escalating.
- Provided a way for people to resolve human rights issues by raising them with government and agencies.
- Given people the power to take action and address human rights issues affecting them through complaint mechanisms and in the courts.

Here are examples from Victoria, Queensland and the ACT on how people with disability have benefited from having a Charter uphold their rights. They show what benefits for people with disability nationwide could be possible if there is a national Charter of Human Rights. Names are as they are in the public record.

3.1.1 Man with a disability uses human rights arguments to avoid eviction

Tenants Queensland used the Queensland Human Rights Act to help a man with mental health issues to avoid eviction. The housing provider sought to evict the man due to his frequent complaints about common areas. Tenants Queensland assisted the tenant in drafting a human rights complaint stating that the housing provider should have taken the man's disability into account and afforded him an alternative way of communicating with the provider rather than seeking to terminate the tenancy. After ongoing negotiations with the community housing provider, the provider withdrew their application to terminate.

Source: The First Annual Report on the Operation of Queensland's Human Rights Act 2019-20, p. 112.

3.1.2 Parents with a disability use human rights arguments to keep their family together

The Queensland Benevolent Society, a charity which supports people with a disability, children, families, older Australians and carers, has used the Queensland Human Rights Act to advocate for their clients. In one case, the Benevolent Society successfully used the Human Rights Act to assist a couple with disability to avoid losing custody of their

child. The Benevolent Society advocated for the parents to be treated and evaluated fairly in relation to their ability to raise a child. The family were supported to build practical and parenting skills and their child was not removed from their care.

Source: The First Annual Report on the Operation of Queensland's Human Rights Act 2019-20, p. 114

3.1.3 Family in need of accessible social housing offered support after long delay

After an Aboriginal woman with a disability, and her three children, were forced to vacate their social housing, the woman lodged a complaint regarding the length of time taken to arrange modifications to ensure she could shower and access the kitchen safely. The social housing provider settled the complaint by providing a financial sum and expressing their regret in the delay. The woman and her children were offered services and assistance to apply for safe and accessible accommodation.

Source: The First Annual Report on the Operation of Queensland's Human Rights Act 2019-20, p. 137

3.1.4 Supreme Court sets aside directions limiting the times a daughter can visit her mother

Mariem Omari, a mother with a cognitive disability was under a guardianship order. Her sons were her guardians. Directions made by a tribunal limited the times when her daughter Sabah Omari could visit her. Sabah Omari challenged the directions and won in the ACT Supreme Court. The Court considered that the tribunal had given the woman's brothers 'plenary' or unqualified power which interfered with their mother's rights, including her right to privacy and reputation, freedom of movement and right to liberty and security.

Source: Sabah Omari v Mohamed Omari, Mustafa Omari and Guardianship and Management of Property Tribunal [2009] ACTSC 28.

3.1.5 Freedom of movement for people with a disability

The parents of a man with a disability complained that their son had been deliberately frightened and provoked by his carers. While the ACT Disability & Community Services Commissioner found no reliable evidence to demonstrate that this was the case, the Commissioner made several recommendations in relation to staff training, improved reporting of critical incidents and improved communication and information sharing between the agencies involved in the client's care. The Commissioner also questioned the nature of the man's accommodation, as it appeared that he was unable to leave his accommodation of his own volition, and the doors of his residence were locked. The Commissioner recommended that a human rights analysis of the man's care and

treatment be undertaken, including assessment of the authority under which his freedom of movement was restricted. The recommendations were accepted.

Source: ACT Human Rights Commission Annual Report 2014-15, p. 41

3.1.6 Better safeguards around a person's capacity to consent to medical treatment

The ACT Civil and Administrative Tribunal decided a person with a cognitive disability, who the Tribunal had previously found to lack capacity under guardianship law, could not automatically be assumed to lack capacity to consent to psychiatric treatment orders. The ACT Human Rights Commission had made submissions to the Tribunal on the interpretation of ACT law in light of the ACT Human Rights Act and international law including the Convention on the Rights of Persons with Disabilities. The submissions emphasised the presumption in international law that a person has capacity for all decisions and a person seeking to overturn that presumption bears the onus of doing so. Further, each decision affecting an individual's rights required its own assessment of capacity. The Tribunal noted the Commission's submissions on human rights law reinforced common law principles. The Tribunal's decision confirmed that someone's capacity must be determined on a decision by decision basis, assessed on a spectrum and must not be automatically negated because of a prior finding of loss of capacity for a different area of a person's life. The ACT later substantially amended its mental health legislation. To ensure consistency with human rights law, the new provisions place greater weight on a person's ability to consent and wishes regarding the treatment.

Sources: ACT Human Rights Commission Annual Report 2015-16, p. 24; *The Matter of ER (Mental Health and Guardianship and Management of Property)* [2015] ACAT 73

3.1.7 Imprisonment for unpaid fines of man with a cognitive disability prevented

Zakaria Taha had an intellectual disability. He was issued with numerous fines for different minor offences including riding a bike without a helmet and taking public transport without a ticket. After he failed to pay the fines, his case came before the Victorian Magistrates' Court. The Magistrates' Court had the power to cancel some or all of the fines if it was satisfied that there were special circumstances, like an intellectual disability, or that prison would be excessive, disproportionate or unduly harsh. However, the Magistrate was not aware that Mr Taha had an intellectual disability and did not make inquiries as to whether or not he did. The Magistrate ordered that Mr Taha pay off the fines by monthly instalments and that if he defaulted on the payments, he would be imprisoned for 100 days. Mr Taha defaulted on the instalment payments and challenged the Magistrates' Court decision. The Victorian Court of Appeal ruled that the Magistrates' Court decision was invalid because the court had an obligation, before making an imprisonment order, to enquire about whether the person had any special circumstances, like an intellectual disability, that would justify making a less severe order. The Court of Appeal's decision was heavily influenced by the Charter and in particular the rights to equality, liberty and fair hearing. The Court of Appeal reached the same conclusion in

relation to the similar case of Tarni Brookes, who was a survivor of family violence and had a mental illness, and who received numerous driving fines, mainly for driving on a toll road without CityLink registration.

Source: Victoria Police Toll Enforcement v Taha; State of Victoria v Brookes [2013] VSCA 37. See case summary: <https://www.hrlc.org.au/human-rights-case-summaries/magistrates-must-inquire-beforeimprisoning-people-with-special-circumstances-for-unpaid-fines>.

3.1.8 Man compensated for discriminatory ban from council buildings

Paul Slattery had multiple disabling conditions, including bipolar disorder, posttraumatic stress disorder and an acquired brain injury. He made thousands of written and verbal complaints to Manningham City Council that were critical of Councillors and Council employees. Some of Mr Slattery's correspondence alleged corruption and much of it contained inappropriate language. The Council responded by banning Mr Slattery from attending any building whatsoever that was owned, occupied or managed by the Council and restricted his ability to communicate with the Council. Mr Slattery brought proceedings in the Victorian Civil and Administrative Tribunal claiming that the Council, as a public authority under the Charter, had breached its obligation to act compatibly with, and give proper consideration to his human rights. He also raised breaches of antidiscrimination laws. The Tribunal noted that Mr Slattery's behaviour was to a significant extent a symptom of his disability. It decided that the Council's ban unjustifiably limited his rights to participate in public life, to freedom of expression and to enjoy his human rights without discrimination. The ban was not justified because there were less restrictive means available to achieve the purpose of the ban, which was to protect employee health and safety. The Tribunal ordered that the Council revoke the ban, pay the Mr Slattery compensation and that the CEO, directors and councillors undergo training on the Charter.

Sources: 2013 Report on the Operation of the Charter of Human Rights and Responsibilities, p. 54; Slattery v Manningham City Council [2013] VCAT 1869. See case summary: <https://www.hrlc.org.au/human-rights-case-summaries/vcat-finds-breach-of-the-charter-in-recent-discrimination-case>.

3.1.9 Woman supported during investigation of injury incurred while in care of disability service provider

Parents of a woman supported by a disability service provider noticed that their daughter, Shelly, had bruising around her chin. Shelly's parents contacted the Disability Services Commissioner which assessed that the complaint related to Shelly's right under the Charter to protection from cruel, inhuman and degrading treatment. The Commissioner found that the service failed to consider Shelley's human rights in making decisions that impacted on her quality of life. The Commissioner supported the service to develop an investigation plan and supported Shelly to give her account of what happened. The

service provider is now clear about considering human rights of individuals they support and their obligations in reporting incidents.

Source: 2014 Report on the Operation of the Charter of Human Rights and Responsibilities, p. 38

3.1.10 Insurance policy excluding claims for mental illness incompatible with right to equality

Will Ingram purchased travel insurance in 2011 for an overseas study trip planned for 2012. In early 2012, he was diagnosed with a depressive illness and cancelled the trip on medical advice. The insurer denied Mr Ingram's claim for cancellation costs on the basis that a clause in the policy excluded claims caused by a mental illness. The Victorian Civil and Administrative Tribunal considered Mr Ingram's claim and found that the insurer discriminated against him on the basis of a disability, breaching the Equal Opportunity Act. The Tribunal considered that an interpretation of a 'disability' in the Equal Opportunity Act compatible with the right to equality in the Charter includes 'a disability that may exist in the future'. This case is an example of the Charter encouraging a human rights interpretation of legislation.

Sources: 2015 Report on the Operation of the Charter of Human Rights and Responsibilities, p. 13; *Ingram v QBE Insurance (Human Rights)* [2015] VCAT 1936. See case summary: <https://www.hrlc.org.au/human-rights-case-summaries/blanket-mental-health-exclusion-clause-in-travel-insurance-policy-amounted-to-unlawful-discrimination>.

3.1.11 Tribunal refuses parents' application for daughter with an intellectual disability to undergo permanent contraception

The parents of a 25-year-old woman with an intellectual disability applied to a tribunal for approval for their daughter to undergo permanent contraception. The Tribunal identified that the Charter right to equality and the right to protection from medical treatment without full, free and informed consent were engaged. The Tribunal decided that the proposed treatment was not the least restrictive option and was not in the daughter's best interests, therefore the decision to go ahead with the procedure could not be justified under the Charter.

Sources: 2015 Report on the Operation of the Charter of Human Rights and Responsibilities, p. 13; *ZEH (Guardianship)* [2015] VCAT 2051

3.1.12 Right to equality and fair hearing for self represented litigants with learning disability

Betty and Maria Matsoukatidou (mother and daughter, respectively) were charged by Yarra Ranges Council for failing to secure and demolish their home after an arson attack. They each received fines from the Magistrates Court of Victoria. After their appeals to the

County Court were struck out for non-attendance, they applied for orders reinstating them and represented themselves at the hearing. Maria had a learning disability and Betty was her carer. Betty's first language is not English. They struggled to present their case and the judge dismissed their applications without adequately explaining the relevant procedure or applicable legal test. Maria and Betty consequently sought judicial review of the orders in the Supreme Court. The Supreme Court found that they were not able to participate effectively in their hearing, in part due to Maria's learning disability, and that they were not given a fair opportunity to put forward their case. The Supreme Court ruled that the County Court judge was obliged to make reasonable adjustments to compensate for Maria's disability and ensure her effective participation in the proceeding. The Supreme Court ruled that their rights to equality and fair hearing under the Charter had been breached. The Supreme Court's decision enabled Betty and Maria to challenge the decision of the Magistrates' Court to fine them. They did that with legal representation and won.

Sources: Human Rights Law Centre, *Matsoukatidou v Yarra Ranges Council* [2017] VSC 61. See case summary: <https://www.hrlc.org.au/human-rights-case-summaries/2017/4/24/victorian-supremecourt-rules-that-courts-have-fair-hearing-and-equality-obligations-to-assist-self-represented-litigants>

3.1.13 Safeguards and accountability around decision to admit a man with cognitive disability to a locked residential facility

A 70 year-old man had Parkinson's disease, a cognitive disability and mental illness. Because he lacked capacity, the Public Advocate was appointed as his guardian. The Public Advocate consented to his admission to live in a locked residential facility which he could not leave without supervision. The man resisted this, arguing that the Public Advocate did not have the power to detain him. The Public Advocate applied to the Victorian Civil and Administrative Tribunal for a ruling over its powers and its decision to admit the man to a locked facility. The Tribunal examined the situation in detail and whether it was reasonable to limit the man's human rights in the circumstances. The Tribunal also considered whether the Public Advocate had properly considered his human rights when making her decision. The Tribunal ultimately decided that accommodating the man in a locked facility was within the Public Advocate's power and did not breach the Charter. The case demonstrates how the Charter promotes the accountability of guardians and administrators. The Charter required the Tribunal to be satisfied that the Public Advocate had given proper consideration to the man's human rights, including his right to liberty, and whether the limits on his rights were reasonable. The Tribunal advised the Public Advocate to continue to seek less restrictive accommodation options for the man in the future.

Source: Human Rights Law Centre and NLA (Guardianship) [2015] VCAT 1104

3.1.14 Better justice system responses to victim/ survivors of crime who have a disability

For many years, community legal centres, victim/survivor advocates and the Victorian Equal Opportunity and Human Rights Commission have called on the Victorian Government, Victoria Police and the Office of Prosecutions to improve the way the criminal justice system responds to crime against people with disability, including by supporting people to report crimes and give evidence in court. The Charter has helped to spur action. For example, the Victorian Government started a new program to help vulnerable victim/ survivors, including people with a mental illness or an intellectual disability, to give evidence in certain cases with support from a communication specialist known as an intermediary. Programs like this promote human rights to equality, fair hearing and safety.

Source: Human Rights Law Centre, Protecting human rights for Victorians with disabilities using Victoria's Human Rights Charter: Your advocacy guide, 2018.

3.1.15 Man with a disability protected from eviction

A Victorian Department attempted to evict a man who used a wheelchair from his home. In addition to his physical disability, the man had a mental illness and spoke limited English. The Department sought to evict him based on information gathered from police as to a drug-related allegation against the man. However, police had not charged the man with any offence. Fitzroy Legal Service assisted the man to argue that his rights under the Charter were not being properly considered and in particular that the Department was acting contrary to the presumption of innocence and without procedural fairness. The arguments led to a successful settlement of the matter; the man was relocated to alternative accommodation.

Source: Fitzroy Legal Service, Submission for Review of the Victorian Charter, 2011

3.1.16 Preventing the eviction of a person with an intellectual disability

Action for More Independence and Dignity in Accommodation (AMIDA), along with Tenants Union Victoria (TUV), used the Charter protect the rights of a person with an intellectual disability who had been given a notice to vacate his rooming house based upon his behaviour. The man's behaviour was a consequence of his disability. AMIDA and TUV used the Charter to open up discussions with the landlord about its human rights obligations. Consequently, the landlord considered the Charter and agreed to an alternative course of action. The final agreement meant that the man could stay in the rooming house for six months while looking for alternative accommodation, so long as no house rules were breached. At the end of the six months, the man had not breached any house rules and the landlord allowed for him to remain in the premises.

Source: Action for More Independence and Dignity in Accommodation, Submission for Review of the Victorian Charter of Human Rights and Responsibilities Act 2006

3.1.17 Improving security and privacy at the home of a man with disability

A man with cerebral palsy and vision impairment was very concerned about security in the housing commission premises where he lived. He requested the addition of a mesh screen to his door, offering to pay for it. This was rejected by the community housing authority without reason. The man's advocate helped him to challenge the decision raising his rights under the Charter. The advocate argued that the screen would assist with security and also give him more privacy in his home. In response the community housing authority decided to arrange for the screen within two weeks.

Source: Leadership Plus, Submission for Review of the Victorian Charter, 2011

3.1.18 Woman gains access to disability services

A woman with dual disability was not eligible to access services because neither disability, when considered separately, met the requirements of the relevant government departments. The woman sought to be moved into more appropriate living conditions as she had been robbed and sexually assaulted in the special residential services in which she lived. The advocate for her case wrote to the relevant government departments raising various human rights issues under the Charter including her right to equality, to protection from inhuman and degrading treatment and to security of person. The advocate used the Charter to highlight the woman's concerns with the departments. As a result, she was appointed a case worker, received 15 hours per week of one-to-one support and was approved to be moved into appropriate housing.

Source: Leadership Plus, Submission for Review of the Victorian Charter, 2011

3.1.19 Protecting a man with a cognitive disability from financial abuse

A man with a disability was pressured by his sister and members of his church community group to move in with his sister and allow her access to his \$60,000 savings. The man's advocate used the Charter to help the man and his church community to understand what his rights were. As a result, he was able to continue living independently, he had an intervention order taken out against his sister, she was further investigated for financial abuse and he recovered his savings. He then appointed state trustees to be his financial administrator.

Source: Leadership Plus, Submission for Review of the Victorian Charter, 2011

3.1.20 Single mother with a disability avoids having her daughter being removed from care

A single mother with cerebral palsy was at risk of having her daughter being removed from care by child protection authorities. She needed to demonstrate that with the appropriate assistance she would be competent, both emotionally and physically, to care for her daughter. Her advocate used the Charter to communicate the woman's rights at

mediation in the Children's Court, including her right to equality and to the protection of families and children. The woman was able to demonstrate her capacity to care for her child and child protection authorities are no longer involved.

Source: Leadership Plus, Submission to the Review of the Victorian Charter, 2011

3.1.21 Student with a disability avoids being expelled

A child with a learning disability was threatened with expulsion by his school due to some behavioural issues. The child's advocate raised the child's human rights with the school and the Department of Education. As a result of the communication, the child was provided with the support he needed, which reduced his behavioural issues and consequently, he was allowed to stay on at the school.

Source: Youth Affairs, Council of Victoria, Submission to the Review of the Victorian Charter, 2011

3.1.22 Man with a physical disability allowed to continue living in family home

A man with physical disability and limited mobility continued to live in his family home after his mother had been admitted to an elderly care unit and placed under a financial administration order by a tribunal. To prevent the home being sold by the administrator, the advocate raised the right to property under the Charter and an agreement was reached whereby the man could continue living in the house as a tenant paying rent.

Source: Disability Justice Advocacy, Submission for Review of the Victorian Charter of Human Rights and Responsibilities Act 2006

3.1.23 Charter helps man with a disability receive services to help community integration

A man with a physical and mental disability living in a supported accommodation unit was not provided with appropriate services to which he was entitled. In particular, he was unable to leave the unit to integrate with the community. His advocate invoked the Charter on his behalf, claiming that failure to provide this service breached his freedom of movement. Consequently, services were provided to enable his integration into the community.

Source: Disability Justice Advocacy, Submission for Review of the Victorian Charter of Human Rights and Responsibilities Act 2006

3.1.24 Man with a disability allowed to privately access to his own mail

A man with a physical disability living in a shared supported accommodation unit objected to his mail being opened by the workers at the unit. The man was capable of opening his own mail. The rationale behind the unit's policy was to ensure that any accounts needing

payment could be taken care of. The man's advocate invoked his right to privacy under the Charter. Consequently, the unit's policy was changed and the man was allowed to privately access his own mail.

Source: Disability Justice Advocacy, Submission for Review of the Victorian Charter of Human Rights and Responsibilities Act 2006

3.1.25 Young woman with cerebral palsy provided with disability support services

A young woman with cerebral palsy was left in her home, alone and unable to leave, while waiting for the government to determine whether or not she was eligible for disability support services. Her advocate communicated with the government and argued that her treatment breached her right to protection from cruel, inhuman and degrading treatment, and her right to privacy, under the Charter. In response, the woman was quickly determined eligible to receive support services and placed on a waiting list for case management.

Source: Public Interest Advocacy Centre, Submission to the Review of the Victorian Charter, 2011

3.1.26 Guardianship revoked due to incompatibility of decisions with human rights

A woman with a cognitive disability contested the decision of her guardian to have her moved into a residential facility where no workers spoke her language, understood her cultural and religious beliefs or would prepare food in a way which was required by her religion. The woman and her family wanted her to stay primarily with them in her family home. PILCH assisted her to challenge the guardian's decision. Together with other arguments, her advocates argued that the decision breached her Charter rights to the protection of families and children, to enjoy her culture and to freedom of religion. The tribunal decided to revoke the guardianship.

Source: Public Interest Law Clearing House, Submission to the Review of the Victorian Charter, 2011.

3.1.27 Child with a disability exempted from detention in hotel quarantine

A family detained in hotel quarantine in Queensland complained to the Queensland Human Rights Commission about the impact of the detention on their child who has autism spectrum disorder. The child experienced serious food aversions which were not accommodated by the hotel quarantine operator. The family was also separated in quarantine so that the child's mother was not able to be supported by the other family members. The hotel quarantine conditions caused the child to experience serious distress. The Commission used the Queensland Human Rights Act to engage with Queensland Health and secure the family a fast-tracked exemption to the hotel

quarantine requirement one day after the family's complaint was lodged, allowing the family to quarantine at home.

Source: The First Annual Report on the Operation of Queensland's Human Rights Act 2019-20, p. 136.

3.1.28 Quarantine exemption for woman picking up assistance dog

A woman planned to visit Queensland from interstate to pick up her assistance dog, with her mother and her carer, during a period of COVID-19 border restrictions. She was granted an exemption to enter Queensland where she agreed to isolate for 14 days and then spend a week receiving placement of the dog. However, when they tried to arrange for accessible quarantine accommodation, they were told the woman's needs could not be met and her exemption approval was withdrawn. The assistance dog had been trained specifically for the woman's needs at substantial cost and they were concerned that she would lose the dog allocated to her if she was unable to visit Queensland. The complainant chose to have this matter dealt with under the Queensland Human Rights Act. Through early intervention, the complaint was successfully resolved for the woman. Her exemption application to enter Queensland was re-approved. Queensland Health organised suitable accommodation for her, her mother and her carer to complete 14-day hotel quarantine.

Source: The Second Annual Report on the Operation of Queensland's Human Rights Act 2020-21, p. 157

4. Conclusion

This submission outlines the common-sense outcomes where the Charter has often prompted a decision maker to think about an issue from a different human perspective and consider the needs of, or consequences for, different people including those with disability. This is the power of Charters. They prompt governments to think about the human impact of their actions, whether it's in delivering housing services, responding to people with mental illness, or supporting a young person with disability to exercise their rights when making decisions. Working properly, Charters embed human rights into the DNA of government. Protecting people's human rights is in all our interests. Charters of Rights help to make life better for everyone.

4.1 Recommendation

That the Disability Royal Commission recommend in its Final Report that there be an Australian Charter of Human Rights.

5. More information

Human Rights Law Centre, database of human rights case summaries

Human Rights Law Centre, advocacy guides to help people use Victoria's Charter of Human Rights

Victorian Human Rights and Equal Opportunity Commission, Annual Reports on the operation of Victoria's Charter of Human Rights and Responsibilities

Victorian Ombudsman, The Ombudsman for Human Rights: A Casebook

Queensland Human Rights Commission, Annual Reports on the Operation of the Queensland Human Rights Act

ACT Human Rights Commission, Human Rights Factsheets

