

Equality & Justice

for people with disabilities



Advocate Autumn/Winter 2015

The Advocate



Villamanta Disability Rights Legal Service Inc.

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ACCESS – if you need this newsletter hard copy, large font size, Word or plain English, please let us know.

Editorial

It seems that every few weeks at the moment there is a new review or inquiry involving people with disabilities. We attempt to separate them and inform people with disabilities of the subject and timelines.

There are currently two reviews and three inquiries regarding the treatment of people with disabilities that are calling for submissions. These include:

- ✚ Review of the Charter of *Human Rights and Responsibilities Act*.
- ✚ Review of *Disability Standards for Education*.
- ✚ Senate Inquiry into the Abuse of People with Disabilities.
- ✚ Ombudsman Inquiry on the Reporting of Abuse of People with Disabilities.
- ✚ Victorian Parliament Inquiry of Abuse of People with Disabilities.

While we appreciate that it is very difficult to have the time to ensure your voices are heard, it is important that you contribute, even if it is only an email or a one-page document.

Please use this information to inform others in any way you see fit.

Julie Phillips
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Review of the Charter of Human Rights and Responsibilities Act 2006 (Vic) Terms of Reference (Plain English)

The Victorian Government wants to know if there are ways to improve the Charter of *Human Rights and Responsibilities Act 2006* to better protect the rights of individuals.

The review is focussing on three areas:

- 1. Ways to enhance the effectiveness of the Charter, including but not limited to:**
 - a) Looking at submissions from the 2011 Scrutiny of Acts and Regulations Committee review and the Committee's report.
 - b) Examine the effectiveness of the Victorian Equal Opportunity and Human Rights Commission relating to human rights complaints.
 - c) The effectiveness of the role of the Scrutiny of Acts and Regulations Committee.
 - d) The development of a human rights culture in Victoria.
 - e) The application of the Charter to non-State bodies when they provide State-funded services.

- 2. Any desirable amendments to improve the operation of the Charter, including but not limited to:**
 - (a) Explaining the sections of the Charter relating to public authorities, particularly, identifying public authorities and their human rights obligations.
 - (b) Explaining the sections relating to legal proceedings and remedies against public authorities.
 - (c) Clarifying the role of human rights in the developing of legislation.
 - (d) Explaining the function of the proportionality test outlined in section 7(2), and how it relates to legislation development and obligations on public authorities.
 - (e) Making clear the obligations of courts especially under sections 4(1)(j) and 6(2)(b)
 - (f) The need for allowing Parliament to provide an override declaration under section 31.
 - (g) The effectiveness of the declaration of inconsistent interpretation in section 36.
 - (h) The usefulness of section 35 (notification provision),
 - (i) Any other desirable amendments.

- 3. A recommendation under section 45(2) as to whether any further review of the Charter is necessary.**

Making a submission

Submissions for the review of the Charter can be lodged online at: www.charterreview.vic.gov.au

The submissions can be in any format from a story to a research paper. The submission needs to address your ideas, opinions or experiences with the Charter. You do not have to address all of the Terms of Reference. The reviewer welcomes any solutions you may recommend for the issues with the Charter.

The information provided in the review will be made public unless you state that it should be kept confidential. The submissions provided are used to understand different views and experiences of the Charter. They are not the only form of research used to conduct this review.

Thing to think about when making a submission:

- Your personal experience with the Charter, in particular between 2011 and 2015.
- The human rights that are important to you.
- Key benefits or challenges of the Charter.
- How you think the Victorian Government should promote and protect human rights.
- How you think the Charter should help Parliament and Government to balance different rights and interests.
- Examples of ways to improve human rights outcomes.
- What should happen if a person's human rights have been offended/breached?
- Any other suggestions you have for improving the Charter or strategies that may better protect human rights in Victoria.

How to make a submission?

Submissions can be made online, via email, mail or over the phone.

Submissions can be made by:

Online: www.charterreview.vic.gov.au

Mail: Charter Review Secretariat,
Level 24, 121 Exhibition Street,
Melbourne, Victoria, 3000.

Email: charter.review@justice.vic.gov.au

Telephone: (03) 8684 7512

If you would like help in making your submission please contact the Reviewer by one of the methods above. Submissions can be public, anonymous or confidential. Please state how you wish your submission to be treated; if it is not stated as confidential or anonymous it will be considered as a public document.

Before making a submission you should have read the Terms of Reference and the outlines for submission.

Call for Submissions

The deadline for submissions is 4 June 2015.

Confidentiality:

You can decide whether you wish your submission to be treated as public, anonymous or confidential.

- Public submissions can be referred to in the final report and placed online for the public to read. The name of the people or organisations will be listed in the review.
- Anonymous submissions can be referred to in the final report and made available to the public but the identity of the author/s will not be released.
- Confidential submissions cannot be referred to in the final report or made available to the public.

Please state how you wish your submission to be treated; if it is not stated as confidential or anonymous it will be considered as a public document.

The terms of reference can be found here: <http://www.premier.vic.gov.au/review-to-strengthen-victorias-charter-of-human-rights>

The guidelines for submission, titled “Consultation Paper” can be found here: www.charterreview.vic.gov.au

Review of the Disability Standards for Education

The Disability Standards for Education (2005) are required to be reviewed every five years. The Minister for Education and Training and the Attorney-General have commissioned Urbis to undertake the 2015 review.

The Standards aim to ensure that students with a disability have access to and are able to participate on the same basis as students without a disability. On the same basis means that students with disability must have opportunities and choices which are comparable with those offered to students without disability.

People with a disability and their families, as well as organisations representing or working with people with disabilities are encouraged to contribute.

The Terms of Reference and Submission guidelines are outlined below in their original version as well as plain English.

Terms of Reference for the Review of the Disability Standards for Education **(Plain English)**

The Terms of Reference for this review are to:

1. Consider whether the Standards:
 - (a) Have helped people with a disability have the same access and participation in education and training on the same basis those without a disability.
 - (b) Have raised awareness and eliminated discrimination of people with disability in education and training.
 - (c) Are understood and are being correctly applied by education and training providers that meet student's needs.
 - (d) Are understood and used by students with a disability or their family to advocate for their rights.
2. Identify any recommendations that could improve the effectiveness of the Standards.
3. Examine the progress made by the Government in response to the 2010 Review of the Standards.

How to Participate?

There are three ways in which you can participate in this review:

1. By contributing to one or more of the discussion forums which focus on the following topics:
 - (a) What has been your experience of access and participation?
 - (b) Is the community aware of barriers faced by people with disability?
 - (c) How helpful are the standard for educators and education providers?
 - (d) Are the standards a useful tool for advocacy?
 - (e) How can we improve the effectiveness of the Standards?
2. By sharing your experiences in the "Share your story" section below

3. By making a submission

Written, audio and video submissions can be accepted on the website, or can be posted in a hard copy to: DSE Review

Economic and Social Advisory
Urbis
Level 12, 120 Collins Street
Melbourne, Victoria, 3000

Contributions and submissions will be accepted until the end of business (5pm EST) Friday 5 June. If you believe this timeframe is too short, contact Urbis immediately and give them this feedback.

Before making a submission it is encouraged that you read the [discussion paper](#). The website also provides access to an [optional submission template](#).
[Http://dsereview.urbis.com.au/2015-review-of-the-disability-standards-for-education-2005](http://dsereview.urbis.com.au/2015-review-of-the-disability-standards-for-education-2005)

Senate Inquiry of Abuse of People with Disabilities

This inquiry is focusing on violence, abuse and neglect against people with disabilities. Anyone that has information of relevance, such as a family member of a person with a disability, former or current staff member of a disability organisation can contribute by making a submission.

A full outline of the Terms of Reference and the Submission guidelines for this Inquiry has been provided in a previous issue. Below is a recap of some of the main points.

Violence, Abuse and Neglect (abuse) could be any number of things including: someone hurting you, kicking you, pinching or hitting you, someone is calling you bad names, having sex with you when you do not want them to, touching you in places you do not want them to, holding you so you can't move, or taking your money. For a full list see previous issue.

Anyone can complain provided that they have information relating to the abuse of a person with disabilities, this could be a disability support worker, a parent, or the person with a disability.

The Senate Committee wants to know how often the abuse is happening, what happens when the person with a disability tells others about the abuse, do people who complain about abuse get into trouble, do people who complain get ignored, are there rules and laws protecting people with disabilities from abuse, why is the abuse happening, what needs to happen to protect people with disabilities.

Victorian Parliamentary Inquiry Into Abuse in Disability Services

Victorian Family and Community Development Committee

Terms of Reference

For inquiry, consideration and completion of an interim report no later than 31 July 2015 and a final report by no later than 1 March 2016 an inquiry into abuse in disability services and —

- a. in particular the inquiry will include but not be limited to:
 - i. **why abuse is not reported or acted upon**; and
 - ii. **how it can be prevented**;
- b. the Committee should note that the Victorian Ombudsman is currently conducting an investigation into how allegations of abuse in the disability sector are reported and investigated, including the effectiveness of the statutory oversight mechanisms in reviewing incidents and reporting on deficiencies (Ombudsman's investigation) and that this investigation will cover services which include residential, respite and day programs funded by the Victorian Government;
- c. in undertaking the inquiry, the Committee should:
 - i. seek not to prejudice any investigations being undertaken by the Ombudsman or any Victorian Government agencies or any legal proceedings; and
 - ii. work cooperatively with the Ombudsman to avoid unnecessary duplication;
- d. the inquiry will be conducted in two stages:
 - i. **Stage 1:**
 - A. the Committee should consider the strengths and weaknesses of Victoria's regulation of the disability service system with a view to informing Victoria's position on appropriate quality and safeguards for the National Disability Insurance Scheme, this may include issues being considered for the quality and safeguards framework including:
 - I. workforce recruitment, screening, induction, training and supervision;
 - II. provider registration requirements;
 - III. systems for handling complaints; and
 - IV. the impact of current systemic safeguards on the rights and protections of people accessing disability services;
 - B. the Committee should have regard to any preliminary findings, recommendations or advice from the Ombudsman's investigation, and any other evidence that the Committee considers appropriate;
 - C. the Committee is requested to provide an interim report to the Parliament (on the matters set out in paragraph (d)(i)(A)) no later than 31 July 2015;

ii. Stage 2:

- A. the Committee should consider any further systemic issues that impact on why abuse of people accessing services provided by disability service providers within the meaning of the *Disability Act 2006* are not reported or acted upon and this should include:
 - I. any interim measures to strengthen the disability services system prior to transition to the National Disability Insurance Scheme;
 - II. any measures to strengthen the capacity of providers to prevent, report and act upon abuse to enhance the capability of service providers to transition to the National Disability Insurance Scheme; and
 - III. any measures to support people with a disability, their families and informal supports to identify, report and respond to abuse;
- B. the Committee should undertake research to determine best practice approaches to how abuse of people accessing services provided by disability service providers within the meaning of the *Disability Act 2006* can be prevented and this should include:
 - I. identifying early indications of abuse;
 - II. strategies to prevent abuse occurring;
 - III. consideration of needs specific to particular cohorts;
- C. the Committee should examine the powers and processes of Victorian investigation and oversight bodies with jurisdiction over abuse of people with a disability, with particular focus on the ongoing role of these bodies in the context of the National Disability Insurance Scheme; and
- D. the Committee should have regard to the final report, findings and recommendations of the Ombudsman's investigation, and any other evidence that the Committee considers appropriate.

Call for submissions

The Committee welcomes written submissions from the Victorian community addressing any aspect of issues relating to Stage 1 of the Inquiry. A Submission Guide will be available soon on this website.

Submissions close on Wednesday 10 June 2015.

A further opportunity to contribute to Stage 2 of the Inquiry will be provided at a later date.

All submissions are public documents unless confidentiality is requested and granted by the Committee.

Submissions can be provided in either hard copy or electronically.

Hard copy submissions should be sent to:

**The Executive Officer
Family and Community Development Committee
Parliament House
Spring Street
EAST MELBOURNE VIC 3002**

Electronic submissions should be sent by email to fcdd@parliament.vic.gov.au

Submissions close on Wednesday 10 June 2015.

<http://www.parliament.vic.gov.au/fcdd/inquiries/article/1853>



Ombudsman's Investigation into disability abuse reporting

On 8 December 2014 the Ombudsman announced an investigation into how allegations of abuse in the disability sector are reported and investigated.

The investigation is looking at:

- services which include residential, respite and day programs funded by the Victorian Government
- the oversight responsibilities of agencies including the Department of Human Services and the Disability Services Commissioner.

The Ombudsman is keen to hear directly from people who have had experience of reporting abuse, as clients, family members or staff in the sector.

What can I complain about?

The Ombudsman wants to know about your experiences in reporting abuse, not into the abuse itself. If you are a person with a disability, a worker, a family member, an advocate or any other person who has reported abuse and you are unhappy with how that complaint was handled, the Ombudsman wants to hear from you.

What is abuse?

Some of the dictionary definitions of abuse are:

to treat in a harmful, injurious, or offensive way:

to speak insultingly, harshly, and unjustly to or about; revile; malign.

to commit sexual assault upon.

Physical abuse - when someone physically hurts you e.g. hits you, kicks you, physically restrains you when they don't need to, pinches you etc. Neglect can be included.

Psychological/emotional abuse - when somebody talks to you in a way that is very distressing and upsetting, or does something to you that you find distressing and upsetting, like locking you up or bullying.

Sexual abuse - when someone has sex with you, or does sexual things with you that you don't want.

Who can I complain about?

You can complain about Service Providers and Regulators who receive money from the Victorian government. This means not only government services, but services who receive their funding through government.

If you have suffered abuse, and made a complaint, but feel you have been ignored, or disagree with the way the complaint was investigated, the Ombudsman wants to know.

Service Providers - organisations that provide you with accommodation, training, respite, programs and carers. For example Department of Human Services, Yooralla, Scope, any private services receiving money from government, Department of Education, Schools, After-Care Programs.

Regulators - these are organisations that you go to, who you believe should be able to fix your complaint for you. Examples are Department of Human Services (Head Office, Regional Office), Department of Education (Head Office, Regional Office), Disability Services Commission, Office of

the Public Advocate, Victorian Equal Opportunity and Human Rights Commission and the Ombudsman.

How do I complain?

You can write to the Ombudsman through letter or e-mail.

You can ask to meet personally with someone from the Ombudsman's office.

You can telephone the Ombudsman's office.

You can ask someone to help you, including a worker or disability advocacy agency.

You can ask for an Auslan Interpreter, other language interpreter or Communications Support Worker.

Do I have to give my name?

No. Complaints can be anonymous.

Submissions can be posted or emailed to the Ombudsman.

Via email

disability@ombudsman.vic.gov.au

By post

Victorian Ombudsman

Level 1, North Tower

459 Collins Street

Melbourne 3000

Phone: 9613 6222

There is no closing date presently for submissions.

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