



**Submission to the**


**National Human Rights Consultation Committee**

**From**

**Health Issues Centre**

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Health Issues Centre Inc.  
Level 5, Health Sciences 2  
LA TROBE UNIVERSITY VIC 3086

 (03) 9479 5827

**Fax:** (03) 9479 5977

**Email:** [info@healthissuescentre.org.au](mailto:info@healthissuescentre.org.au)

**Website:**

[www.healthissuescentre.org.au](http://www.healthissuescentre.org.au)

Health Issues Centre welcomes the opportunity to make a submission to the National Human Rights Consultation.

## **1. About Health Issues Centre (HIC)**

HIC has been an independent, not-for-profit organisation for over 23 years, promoting consumer perspectives in the Australian health system.

Its mission is to improve health outcomes for all Australians, especially those who are experiencing health inequity.

It works with a wide range of consumers, health providers, researchers, governments and other health organisations to achieve this through:

- ▶ policy analysis and advocacy from consumer perspectives;
- ▶ consumer-focused research;
- ▶ supporting consumer and community participation at all levels of health services and in health policy development

Health Issues Centre has a Board of Governance consisting of consumers as well as health professionals, managers and researchers. The Centre's focus is mainly in Victoria but is also national where appropriate.

We make our contribution to the National Human Rights Consultation with particular reference to the consultation process, findings and recommendations arising from a discussion paper prepared by HIC in 2008 *'How does the Victorian Public Hospital Patient Charter meet the challenges of the new Victorian Charter for Human Rights and Responsibilities?'*

## **2. Social determinants of health, healthcare and human rights**

HIC begins by affirming our understanding of health and wellbeing as derived from the social determinants of health.

Our individual health and wellbeing, how we live, work, learn, what illnesses we get and our access and use of treatment, as well as their availability and quality are influenced by various structural and social determinants. These social determinants include economic, political and social inequities and stratification; economic and social values and policies and processes of governance. We recognise the Final Report by the WHO Commission on Social Determinants of Health as useful and comprehensive in providing evidence for this understanding of health as well as for defining principles of action on strengthening health equity.

When health is defined as a human right it reflects this complex and multi-layered understanding of health. This is reflected in Article 12 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) which states the right to health as 'the enjoyment of the highest attainable standard of mental and physical health.' HIC strongly supports health as a human right.

More specifically, healthcare provision is one component and potential contributor to our health.

In making the link between healthcare and human rights, HIC identifies five distinct and mutually reinforcing levels of rights for citizens:

- ▶ citizen's access to healthcare services. This includes recognition of the economic and social barriers to access of healthcare services by diverse population groups and particular efforts required to overcome these barriers.
- ▶ citizen's right to healthcare services that reflect and maintain her/his dignity and integrity
- ▶ citizen's right to attainment of health literacy
- ▶ citizen's right to make informed decisions that affect her/his health and well-being at the level of individual health care and programmes
- ▶ citizen's right to be part of the decision-making about health service and health policy development and other related policies which affect community wellbeing.

### **3. How could Australia better protect and promote human rights?**

**This submission will focus on the final question of the national consultation.**

**Here much of the discussion and ideas will focus on human rights and healthcare as it derived from our learnings from our more recent work in development of the discussion paper 'How does the Victorian Public Hospital Patient Charter meet the challenges of the new Victorian Charter for Human Rights and Responsibilities?'**

**HIC raises three key matters in response to this question.**

#### **3.1 *It is necessary that a National Human Rights Act be made meaningful and transparent to health, healthcare services and health consumers.***

HIC recommends that in the development of a National Human Rights Act, health as a human right be clearly articulated, in accordance with Article 12 of the ICESCR (explained above).

However, if a National Human Rights Act is only to include civil and political rights, then it will be necessary to develop a guiding framework for making the links transparent between human rights and health and healthcare services.

This was a key finding in relation to the VCHRR in the Victorian context and HIC believes can be very easily transferred to the national context.

The VCHRR contains 20 civil and political right. For many healthcare providers and even consumers and communities interested in healthcare, at first sight, civil and political rights seems removed from their area of practice and mandate.

The British Institute for Human Rights in their second edition of their report, *The Human Rights Act - Changing Lives*, say '*...groups and people themselves are using not only human rights law, but also the language and ideas of human rights to challenge poor treatment and negotiate improvements to services by public bodies....ordinary people going about their day-to-day lives are benefiting from the law, without resorting to the law.*'

The experience in the UK indicates the potential of the both the VCHRR and the National Human Rights Act to impact on health services. However, to meet this potential, there is a need for a framework and methodology for making both legislation, at both levels directly accessible and meaningful to healthcare services and consumers.

To reiterate, in the case of a National Human Rights Act only including civil and political rights it will be necessary to develop a guiding framework for healthcare services and health consumers to clarify and understand human rights as it directly affects healthcare policy development and direct service delivery.

### **3.2 *The development of 'A National Human Rights Act' in Australia can strengthen mutuality in the relations between healthcare provider and health care consumer/citizen.***

During consultation with health service managers of a regional health service in Victoria about healthcare rights and human rights, they raised an important matter: the apparent defensiveness by some staff across the organisation in response to the promotion of a more specific Public Hospital Patient Charter, which is a statement of consumer rights and responsibilities in public hospitals. Staff cited and claimed their own rights as workers in contrast to patient rights. The promotion of the Patient Charter tended to open up an 'us' and 'them' stance by these staff.

However, HIC's observation during the consultation process with these managers and staff was their openness to be engaged with the Victorian Charter for Human Rights and Responsibilities (VCHRR) their careful consideration during the dialogue on the meaning of the rights encoded. The VCHRR opened up a discourse about everyone as rights-holders in relation to each other. It was not adversarial and seemed to open up a discussion on the standard people want to set for their treatment of each other, wherever that interaction was taking place.

The UN Special Rapporteur on Human Rights and Health identified health professionals as being pivotal in reinforcing people's human rights, but he also identified that they were mostly unaware of or uncomfortable about using a human rights framework in their practice (Human Rights Council, 2007).

In HIC's consultation it became apparent that the VCHRR can be an effective stimulus in the process of learning and practice change in healthcare service, towards a holistic framework which integrates participation, accountability and access to population groups who live with health inequities. This indicates the potential of a National Human Rights Act.

### **3.3 *There is a need for human rights education based on dialogue***

There is a need for provision of community-based learning and professional development on human rights and health and healthcare to both consumers/citizens and healthcare providers. Specific consideration should be given to:

- ▶ Understanding the social determinants of health and the contribution of healthcare to responding to health inequity
- ▶ Participatory learning and dialogue methodologies
- ▶ Integrating complexities of human rights and healthcare rights as part of the dialogue
- ▶ Use of practical case studies relevant to each right

These findings arose from the direct feedback from the consultation in regional Victoria with healthcare providers and community members and also reflected the processes used in the consultation workshops. It was clear from the consultation process that a discussion on human rights and consumer rights in healthcare opened up significant moral questions

about power and the complexity involved in balancing the different rights between different people.

As an example, two very different questions were posed during the consultation by health care managers and staff:

- ▶ 'How do we balance the rights of different patients using the same service; for example, rights to freedom of expression versus right of privacy?'
- ▶ 'How do health services implement their own rights; for example, the rights of health service to expect people to attend their appointments?'

It was clear from the questions they posed to each other and to the facilitators that staff used their experiences to deepen their understanding of potential contexts and circumstances in which such rights would be played out.

The dialogue model of learning not only allowed the complexities to be raised, it also guided their elaboration and discussion without creating a moral imposition. It allowed the complexities of human and healthcare rights to be explored by peers in a safe *and* challenging learning environment.

Importantly, healthcare staff and consumers were clear about the need for direct examples that gave practical meaning to the application of rights in a health service context. These included not only examples of complaints derived from complaints processes or even legal proceedings, but more so where services and consumers used healthcare rights and/or human rights to develop or advocate for improved service delivery and better treatment.

## **Conclusion**

Health Issues Centre supports the creation of a National Human Rights Act for Australia. We support the inclusion of the 'right to health' as one of the key rights to be included in the new legislation. If the 'right to health' is not explicitly stated within the new Act, it will be necessary to make the relationship between health and human rights transparent to healthcare providers and consumers and citizens interested in strengthening health and well-being in Australia.

## **References**

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