

Charter of Human Rights and Responsibilities



Office of the Chief Psychiatrist Update for Services Forum

The Victorian Charter

- Charter is an ordinary Act of parliament
- Charter is modelled on UK, NZ and ACT human rights instruments
- Encourages a human rights dialogue between executive, parliament and the courts
- It protects the rights of individuals

How does the Charter work?

- Sets out the rights protected
- Provides guidance on when and how rights can be limited
- Parliament
- Courts and Tribunals
- Public Authorities
- Equal Opportunity and Human Rights Commission
- Ombudsman

Application of the Charter – Public Authorities

- Public authority includes:
 - an entity established by statute that has functions of a public nature (eg: public hospitals)
- Unlawful for Public Authorities to:
 - act in a way that is incompatible with a human right; or
 - Fail to give proper consideration to a relevant human right when making a decision

(Section 38 (1))

Mental Health & Human Rights

The jurisprudence recognises that mentally ill persons are a particularly vulnerable group and extra vigilance is required to ensure respect for human rights.

The *Mental Health Act* already requires that any restriction on the liberty of patients and any interference with their rights, privacy, dignity and self-respect are kept to the minimum necessary in the circumstances (s.4(2)).

Rights most relevant in mental health

- Humane treatment when deprived of liberty
- Protection from cruel, inhuman or degrading treatment
- Right not to be subject to medical treatment without consent
- Liberty and security of the person
- Right not to be subject to arbitrary detention
- Freedom of movement
- Right to privacy
- Protection of families and children
- Fair hearing

When might these rights be relevant?

- **Involuntary treatment – mental health service or CTO?**
 - Liberty and security of person
 - Freedom of movement
 - Privacy
 - Protection of families and children
- **Restraint and seclusion**
 - Liberty and security of person
 - Freedom of movement
 - Privacy
 - Humane treatment when deprived of liberty

When might these rights be relevant?

- **Treatment plans/medication-side effects**
 - Privacy
 - Humane treatment when deprived of liberty
 - Right to be free from medical treatment without consent
 - Right not to be subject to cruel, inhumane or degrading treatment
- **Leave**
 - Liberty and security of person
 - Freedom of movement
 - Privacy
 - Humane treatment when deprived of liberty
 - Protection of families and children

Limitations to rights

- Human rights are not absolute and can be limited in certain circumstances.
 - Safety of the individual
 - Protect rights of others
 - Community safety
 - Public health
 - Public order
- Section 7 of the Charter guides what is a reasonable limit

Limitations to rights – Is the proposed limit.....

- Lawful
- Necessary
- Reasonable
- Proportionate
- Logical
- Less restrictive of rights

Limitations to rights – Is the proposed limit.....

- Demonstrably justified
- Charter is about accountability
 - Can you explain the reasons for your decision when called to account for it?
 - What evidence do you have to demonstrate necessity, proportionality etc

What does this mean for my service?

- Human rights will increasingly be raised in complaint and review processes
- Staff need to be aware of their obligations
- Staff need to be able to articulate how they have considered Charter rights
- Identify areas where practice or policy may come under scrutiny
- Build human rights compliance into existing accountability, quality assurance, clinical review, monitoring processes