



# Strengthening Human Rights in Victoria

**AASW Victorian Branch Submission to the  
Inquiry into the Charter of Human Rights and Responsibilities**

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## Introduction

The Australian Association of Social Workers (AASW) is the professional body representing social workers in Australia. The AASW is the accrediting body for all tertiary social work programs in Australia and also for the assessment of overseas qualified social workers. The AASW Victorian Branch representing over 1500 social workers working in diverse settings, in responding to Victorian Inquiry into the *Charter of Human Rights and Responsibilities*, seeks to inform the review and future development and implementation of Human Rights in Victoria. This submission is underpinned by a number of key principles and case studies.

Social workers are employed at the interface between the person and their environment, and AASW members provide a range of services across a number of different areas. These include child and family welfare, child protection, disability, rehabilitation, income support, corrections and juvenile justice, housing support and homeless services, aged care, health and mental health. These interactions with vulnerable people give social workers a unique perspective on Human Rights.

*"Human rights provide social workers with a moral basis for their practice at all levels<sup>1</sup>"*

Social work interventions are typically multi-level and multi-layered. Interventions may include individual counselling, psycho-education and practical support for family carers, family therapy involving client and family, and case work with groups of clients or families. Social workers are human rights practitioners and work with individuals, families and communities to improve their health and well-being within a human rights framework. Working both systemically and directly with people, the AASW and by extension AASW members, recognises individuals' right to self-determination, autonomy, right to be free from discrimination, right to housing, employment, education, social, cultural and religious freedoms.

The AASW Code of Ethics<sup>2</sup> positions social work as a profession that is committed to "the pursuit and maintenance of human well-being. Social work aims to maximize the development of human potential and the fulfillment of human needs." The Code of Ethics also highlights human dignity and the pursuit of social justice as key values guiding the work of the profession.

This commitment is demonstrated through advocacy to advance the international civil and political rights of individuals, as well as working to ensure people can meet their economic, cultural and social rights:

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<sup>1</sup> Ife, J *Human Rights and Social Work :towards rights based practice* Cambridge University Press ,Cambridge 2001

<sup>2</sup> AASW Code of Ethics 2010

*“The bread and butter work of most social workers. It involves putting services in place to meet rights like the right to education, health care, housing, income and so on. “<sup>3</sup>*

Social workers are also involved in undertaking research, social policy development, administration, management, consultancy, education, training, supervision and evaluation within different levels of government and non-government services. This work is guided by AASW professional aims of raising awareness of structural inequities, promoting policies and practices that achieve a fair allocation of social resources and acting to bring about social change to reduce social barriers, inequality and injustice.

The AASW welcomes the opportunity to input to the Inquiry into the Charter of Human Rights and Responsibilities. The *Charter of Human Rights and Responsibilities Act 2006* outline the basic Human Rights of all people in Victoria after being introduced as an Act of Parliament. The Victorian Charter requires the State government, local councils and other public authorities (including agencies funded by Government to carry out services on behalf of Government) to comply with Charter Rights and to consider relevant Charter Human Rights when they make decisions –developing legislation, policies and operational practices. The Charter came into full effect on 1 January 2008 with the aim of building a fairer, more inclusive community by giving specific legal protection to 20 fundamental rights (these Rights relate to freedom, respect, equality and dignity).

The AASW welcomes the four year review of the Charter which aims to ensure that the Charter remains flexible and effective in supporting community values and aspirations in Victoria. In carrying out their professional tasks and duties, social workers strive to act in ways that give equal priority to respect for human dignity and worth and the pursuit of social justice. This commitment is demonstrated through service to humanity, integrity and competence, which characterise professional social work practice. Our submission is predominantly focusing on whether additional Rights should be added to the Charter. We submit that this should happen and have outlined why and which rights and principles should be part of the Charter following this review.

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<sup>3</sup> Calma, T. (2008) *The Role of Social Workers as Human Rights Workers with Indigenous People and Communities*. Presentation at the Social Work Orientation Week Seminar. Australian Catholic University. Available online: [http://www.hreoc.gov.au/about/media/speeches/social\\_justice/2008/20080212\\_socialwork.html](http://www.hreoc.gov.au/about/media/speeches/social_justice/2008/20080212_socialwork.html)

## **1. Summary of Recommendations**

### **Recommendation 1: Legal Protection of Human Rights**

1: The AASW acknowledges the benefits of the *Victorian Charter of Human Rights and Responsibilities* as an effective instrument to protect and promote human rights in Victoria and supports the further inclusion of additional Rights from other International Conventions and Principles.

### **Recommendation 2: Obligations on Public Authorities**

2: The AASW supports greater articulation, and enforcement, of obligations on public authorities to comply with rights articulated in the *Victorian Charter of Human Rights and Responsibilities*.

### **Recommendation 3: Compatibility Statements**

3: The AASW supports retaining the inclusion of human rights compatibility statements within new pieces of legislation.

### **Recommendation 4: Human Rights Awareness and Culture**

4: The AASW supports the development and implementation of measures aimed at promoting and educating Victorians about their rights under the *Victorian Charter of Human Rights and Responsibilities*.

### **Recommendation 5: Human Rights Accountability**

5: The AASW supports the continuing appointment of the Equal Opportunity and Human Rights Commission, an independent monitor, to provide advice to Government and monitor the operation of the *Victorian Charter of Human Rights and Responsibilities*.

### **Recommendation 6: Human Rights Limitations**

6: The AASW supports measures aimed at ensuring that rights are not restricted to those articulated within the *Victorian Charter of Human Rights and Responsibilities*.

### **Recommendation 7: Rights of Indigenous Peoples**

7: The AASW supports the adoption of key rights articulated within the *United Nations Declaration on the Rights of Indigenous Peoples* within the *Victorian Charter of Human Rights and Responsibilities*.

### **Recommendation 8: Rights of Persons with a Disability**

8: The AASW supports the adoption of key rights articulated within the *United Nations Convention on the Rights of Persons with a Disability* within the *Victorian Charter of Human Rights and Responsibilities*.

**Recommendation 9: Rights of the Child**

9: The AASW supports the addition of rights articulated within the *United Nations Convention on the Rights of the Child* within the *Victorian Charter of Human Rights and Responsibilities*.

**Recommendation 10: Rights of Women**

10: The AASW supports the adoption of key rights articulated within the *United Nations Convention on the Elimination of all forms of Discrimination Against Women* within the *Victorian Charter of Human Rights and Responsibilities*.

**Recommendation 11: Social, Economic and Cultural Rights**

11: The AASW supports the adoption of key rights articulated within the *International Covenant on Economic, Social and Cultural Rights* within the *Victorian Charter of Human Rights and Responsibilities*.

**Recommendation 12 : Rights of Persons with a Mental Illness**

12: The AASW supports the adoption of key rights articulated within the *United Nations Principles for the Protection of Persons with Mental Illness and the Improvement of Mental Health care* in the *Victorian Charter of Human Rights and Responsibilities*.

**Recommendation 13: Rights of Older Persons**

13: The AASW supports the adoption of key rights articulated within the *United Nations Principles for Older Persons* in the *Victorian Charter of Human Rights and Responsibilities*.

## 1. Whether Additional Rights should be included in the Charter?

### **Recommendation 1: Legal Protection of Human Rights**

1: The AASW acknowledges the benefits of the Charter as an effective instrument to protect and promote human rights in Victoria and supports the further expansion of the *Victorian Charter of Human Rights and Responsibilities*.

The case studies outlined by the Human Rights Legal Centre<sup>4</sup> illustrate how the Charter has enabled policies and legal decisions that have promoted human dignity and addressed disadvantage very effectively with some involved commenting that they did not think that policies would have changed had the litigation not been initiated. Many AASW members are working directly in the areas that are encompassed by the case studies: disability, mental health, corrections, housing & homelessness, and would testify to the effectiveness of the Charter in empowering some of the most vulnerable and marginalised people in Victoria who are often most impacted by the limited resources within these welfare systems as we witness on a daily basis. *“New figures reveal the Charter has been substantially considered in about 100 cases-20% relating to access to justice, 15% to housing and homelessness and 10% to mental health issues. Less than 3% concerned criminal law, remand and bail issues.”*<sup>5</sup> The inclusion of all the human rights contained in the *International Covenant on Civil and Political Rights* (ICCPR) and the *International Covenant on Economic, Social and Cultural Rights* (ICESCR), including the right of self-determination, would contribute to the conditions necessary for all people to live with dignity and participate fully and equally in our community.

### **Recommendation 2: Obligations on Public Authorities**

2: The AASW supports the greater articulation, and enforcement, of obligations on public authorities to comply with rights articulated in the *Victorian Charter of Human Rights and Responsibilities*.

In 2003, the Australian Capital Territory introduced the country’s first Act of its kind in Australia, the *ACT Human Rights Act 2004*. The Act protects Civil and Political Rights, such as equality before the law, protection from torture, freedom of expression, rights to security, and rights to a fair trial. It also articulates the Rights of minorities. Amendments to the Act were also adopted, affording protection of Economic, Cultural and Social Rights.

The Act also confers obligations on public authorities, with provisions being introduced in the ACT to enable people to take action against authorities who violate the Rights articulated by the Act. This has further empowered the operation of the Act. The AASW acknowledges that reporting and auditing frameworks are important to identify

<sup>4</sup> <http://www.hrlrc.org.au/content/topics/national-human-rights-consultation/case-studies/#victoria>

<sup>5</sup> Report by Human Rights Legal Centre in Munro, P *State told human rights a matter of decency* The Age 29 May 2011

systemic and structural issues and to monitor and evaluate the effectiveness of actions taken to address such issues. The Victorian Charter should mandate regular reporting by public authorities on steps they have taken to monitor and evaluate their processes for ensuring that their decisions and actions are compatible with human rights.

**Recommendation 3: Compatibility Statements**

3: The AASW supports retaining the inclusion of Human Rights compatibility statements within the *Victorian Charter of Human Rights and Responsibilities*.

Through the scrutiny of legislation provisions contained in sections 28 and 30 of the Act, the Victorian Charter has played an important role in ensuring that all new laws are assessed against fundamental human rights standards. The Victorian Charter does not enable the courts to strike down laws which are inconsistent with stated rights. However, it goes some way towards supporting Human Rights by requiring consideration of the Charter's compatibility with new legislation, requiring the courts to interpret legislation in the framework of Human Rights, and requiring public authorities to comply with Human Rights. Statements of Compatibility are intended to strengthen parliamentary scrutiny of new laws for consistency with human rights obligations and to encourage early and ongoing consideration of human rights issues in policy and legislative development.

**Recommendation 4: Human Rights Awareness and Culture**

4: The AASW supports the further development and implementation of measures aimed at promoting and educating Victorians about their rights under the *Victorian Charter of Human Rights and Responsibilities*.

Some protagonists of the current Charter argue that “what you need to tackle injustice on a systemic level is clear statements of government services and the standards to which individuals are entitled...accompanied by benchmarking and reporting on the performance of service providers as well as proper channels of internal redress backed up with accessible external law remedies”.<sup>6</sup> However reliance upon the common law system has been questioned previously, including by some of Australia’s most senior judges. For example, former Chief Justice of the High Court Sir Anthony Mason has remarked: “*the common law system, supplemented as it presently is by statutes designed to protect particular rights, does not protect fundamental rights as comprehensively as do constitutional guarantees and conventions on human rights ... The common law is not as invincible a safeguard against violations of fundamental rights as it was once thought to be.*”<sup>7</sup>

<sup>6</sup> Merritt C *Victoria's A-G Robert Clark slams rights charter as ineffective* The Australian December 10, 2010

<sup>7</sup> Sir Anthony Mason, ‘The Role of a Constitutional Court in a Federation: A Comparison of the Australian and the United States Experience’ (1986) 16 *Federal Law Review* 1, 12 in Williams, G Senate Occasional Lecture on ‘Victoria’s *Charter of Human Rights and Responsibilities*: Lessons for the National Debate’, delivered at Parliament House, Canberra, 7 July 2006.

As Brian Burdekin, a former Australian Human Rights Commissioner, commented in 1994: *'It is beyond question that our current legal system is seriously inadequate in protecting many of the rights of the most vulnerable and disadvantaged groups in our community.'*

The Law Institute of Victoria LIV was a prominent and successful advocate for the Charter. The LIV and the AASW<sup>8</sup> also supported the establishment of a national human rights instrument. The Victorian Charter of Rights is not modelled on the United States Bill of Rights. It does not give the final say to the courts, nor does it set down unchangeable rights in the Constitution Act 1975 (Vic). Instead, it is an ordinary Act of Parliament like the human rights laws operating in the ACT, New Zealand and the United Kingdom. This ensures the continuing sovereignty of the Victorian Parliament. The Victorian Charter of Rights, like those instruments, is a 'parliamentary rights model', to use a term coined by Janet L Hiebert, rather than a law that focuses on enforcement by courts. As such, the Victorian Charter of Rights is designed to prevent human rights problems arising in the first place by improving the work of government and Parliament in the making and application of laws and policies. It does so by ensuring that human rights principles are a mandatory part of governmental decision-making.<sup>9</sup>

#### **Recommendation 5: Human Rights Accountability**

5: The AASW supports the continuing appointment of the Victorian Equal Opportunity and Human Rights Commission, an independent monitor, to provide advice to Government and monitor the operation of the *Victorian Charter of Human Rights and Responsibilities*.

The Victorian Charter established accountability and reporting processes. It makes the Victorian Human Rights and Equal Opportunity Commission the independent monitor of the operation of the Charter, and requires the Commission to prepare an annual report and provide advice to the Attorney General on its operation. It also mandates reviews and empowers the Ombudsman to investigate whether administrative action is incompatible with the Rights outlined within the Victorian Charter. The Victorian Charter should also vest the Victorian Equal Opportunity and Human Rights Commission with an own motion power to inquire into and audit the compliance of a public authority's policies, programs and practices with human rights. In addition to providing for judicial remedies, the Victorian Charter should be amended to empower the Victorian Equal Opportunity and Human Rights Commission to receive and conciliate human rights complaints using a similar process to that available for discrimination complaints under the *Equal Opportunity Act 2010* (Vic).

<sup>8</sup> AASW *Human Rights Protection in Australia*. Submission to National Human Rights Consultation June 2009

<sup>9</sup> Janet L Hiebert, 'Parliamentary Bills of Rights: An Alternative Model?' (2006) 69 *Modern Law Review* 7. in Williams, G Senate Occasional Lecture on 'Victoria's *Charter of Human Rights and Responsibilities*: Lessons for the National Debate', delivered at Parliament House, Canberra, 7 July 2006.

**Recommendation 6: Human Rights Limitations**

6: The AASW supports measures aimed at ensuring that rights are not restricted to those articulated within the *Victorian Charter of Human Rights and Responsibilities*.

One important feature of the Victorian Charter is that it does not limit Rights and freedoms to those it articulates. This overcomes some of the problems associated with defining and therefore limiting Rights.

**3. Whether the right to self-determination should be included in the Charter?****3.1 United Nations Declaration on the Rights of Indigenous Peoples**

In April 2009, the Australian Government formally endorsed the *United Nations Declaration on the Rights of Indigenous Peoples*. The Declaration articulates the Rights of Indigenous peoples to all Human Rights outlined in the Universal Declaration, the Right to live free from discrimination, to self-determination, and the Right to diversity of culture. Crucially, Article 19 stipulated that all signatory states must:

*Consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them.*

The AASW supports the Victorian Charter incorporating self-determination drawing upon the United Nations Common Understanding of a Human Rights Based Approach to Development Cooperation framework in particular:

- *Individuals, families and communities are recognised by the State as key stakeholders in their own development, rather than passive recipients of commodities, service provision and policy development.*
- *The State Government makes a commitment within service provision, legislative and policy outcomes and processes to be monitored and evaluated.*
- *Within management, processes, and outcomes, both top-down and bottom-up approaches are to be used in synergy.*
- *Strategic partnerships with key community stakeholders are identified, developed, and sustained, within core business processes.*

**Recommendation 7: Rights of Indigenous Peoples**

7: The AASW supports the adoption of key rights articulated within the *United Nations Declaration on the Rights of Indigenous Peoples* within the *Victorian Charter of Human Rights and Responsibilities*.

### **3.2 United Nations Convention on the Rights of Persons with Disabilities**

The *United Nations Convention on the Rights of Persons with Disabilities* contains provisions that specifically relate to concepts of equality and non-discrimination as they apply to people with disabilities. It also contains articles dealing with the specific discrimination suffered by both women and children with disabilities, and stipulates that signatory states must adopt appropriate measures to ensure the full development and empowerment of women and children. Significant attention is also paid to issues surrounding accessibility and participation.

Many areas of policy, programs, services, law and regulation relevant to the rights of people with disability are administered partly or wholly by State and Territory Governments. By including the *United Nations Convention of the Rights of People with Disabilities*, in the Victorian Charter, universal access would become a guiding principle. People with disabilities should not be locked out of employment, educational, social, cultural and political activities due to access issues. Access issues include both physical and social issues. People with disabilities, their families and carers have the right to access housing, sporting and other activities, recognising that people with disabilities are a diverse group and all their needs must be met. Current legislation, planning and funding does not adequately address these needs in Victoria.

The AASW and its members work to support, assist, advocate on behalf of, encourage and empower people with disabilities, their families and carers to give voice to their experiences, needs, wants and desires. Working from a human rights framework, the AASW and by extension AASW members recognise individuals' right to self-determination, autonomy, right to be free from discrimination, to housing, employment, education, social, cultural and religious freedoms.

In contributing a submission to the Victorian Charter Inquiry, the AASW does not seek to speak on behalf of people with disabilities, but rather to articulate the crucial role social workers play in supporting and assisting people with disabilities, their families and carers to overcome the many barriers inhibiting and prohibiting them from participating in society, culturally, economically and socially. Injustice, inequity, poverty and disadvantage are common to people with disabilities.

The AASW and its members work to encourage and empower people with disabilities to take control of their lives, to expect and demand their human rights. The UN Convention provides a clear framework for the changes that are needed to make sure that the human rights for people with disability in Victoria are further protected, respected and fulfilled. It also gives State Government, the non-government sector and Victorian community the opportunity to improve our knowledge about how well the rights of people with disability are respected.

Disability can be exclusionary on multiple levels and the focus of the Convention on rights and inclusion is vital. Many areas of policy, programs, services, law and regulation relevant to the rights of people with disability are administered partly or wholly by State Government and its funded providers within the NFP Sector. The Charter should include a commitment to achieving equitable outcomes for priority population groups including women with disability, Aboriginal people with disability and people from culturally and linguistically diverse backgrounds with disability.

The Charter also should include significantly enhanced resourcing for disability representative and legal and advocacy organisations to participate in the development and monitoring of implementation actions.

Limited housing choices are available to people with disabilities. In keeping with the Convention, it is AASW's opinion that it is a principle of self-determination that clients and their families have a wide range of choices about accommodation. This and other housing issues are exacerbated due to the limited housing options available to people with disabilities, their families and carers locked out of employment, educational, social, cultural and political activities due to being unable to access buildings. People with disabilities, their families and carers have the right to access housing, sporting and other activities, recognising that people with disabilities are a diverse group and all their needs must be met.

**A case currently known to a Victorian AASW social worker:**

*John is a 46 year old man who suffers from MS. He is on the Disability Pension and called MS Society requesting assistance with his housing situation as his current rental property was being sold and he was required to vacate the property. Skyrocketing rental prices meant that he was unable to afford another private rental property with his current income. Having established community networks and friendships, it was his preference to remain in or around the area he was in. As a person with MS this was important for John emotionally, psychologically and mentally. Prior to his diagnosis, John was working full-time as a tradesman and was doing quite well. However, John ceased his employment following his diagnosis partially due to his MS symptoms which included reduced walking capacity and marked fatigue but also due to the fact that he was feeling victimised at work and made fun of for his disability. When I first spoke with John, he was less than one week away from having to vacate the property he was renting. He had already tried a few different housing and accommodation agencies, all of whom were not very helpful and some of which told him to call back when he was actually without a home. John expressed to me his frustration as he felt that everywhere he turned he was "coming up against brick walls". I myself as a worker attempted calling different housing and accommodation agencies in which most of the responses received (when I finally got a hold of them) were to redirect me to other agencies! At the time of writing, John is currently staying at the home of a friend and sleeping on their couch. This current accommodation is not only unsuitable and inappropriate for someone without a disability but even more-so for someone like John with a disability of MS, and who requires special accommodation needs such as step-less entry into the shower due to mobility issues. As it turns out, this particular accommodation which John is currently residing does have a step into the shower recess which results in John being unable to use the shower without being at risk of falling. As such, John has resorted to taking showers at the local pool. When asked how he felt about all this, John's response was "well, it's not ideal but it beats sleeping in the car".*

Women with Disabilities are twice as likely to experience domestic and family violence as women without disabilities. The power imbalance that exists within domestic and family violence relationships is magnified when a person with disability is the subject of violence directly or indirectly.<sup>10</sup>

**Common reflections of AASW members working with women with disabilities and mothers of children with disabilities seeking to escape domestic violence**

*Mother raising two children, both in their teens, one child has profound disabilities, requiring 24 hour care, specialised schooling and health care. The Father has a long history of extreme violence and alcoholism. All family members have suffered domestic and family violence at his hands; however the Mother has few options. She has been told she will not be able to access crisis accommodation due to her child's needs, alternative options of staying with friends and family are similarly impossible. As the child with disabilities grows, there are a range of increased needs in terms of equipment, support, home care and the like. Due to the daily violence, the Mother and child without disabilities struggle to survive each day. The impacts here are multiple: the child without disabilities has been fundamentally comprised; the Mother has been continually beaten physically and emotionally, has been undermined due to society's failure to support her and the children leaving the situation; and the child with disabilities is further marginalised and excluded.*

The ratification of the Convention by the Australian Government in July 2008 was welcomed by disability and human rights organisations; however, we note that ratification of the Convention does not mean that all states already fully comply with it in practice. There continue to be disproportionate and extremely limited specialized State funded services for example for people with an Acquired Brain Injury ABI across rural and remote Victorian communities. This means those who have an ABI frequently don't get services – both in terms of accessing clinical services and Allied Health Teams Care Co-ordination Management. This means families are left to try as best as they can to seek out services which are far removed from their locality. Those who have an accident on a Farm/Station also have very limited clinical /social service input as their particular injury does not fit into the current legislation. The other significant issue or one of many that needs urgent attention is access to and ability to use short/long term Respite services for young people with a disability, ABI and/or a mental illness who are living with their parents. Many of these families breakdown due the demands placed on them with limited real support.

**Recommendation 8: Rights of Persons with Disabilities**

8: The AASW supports the adoption of key rights articulated within the *United Nations Convention on the Rights of Persons with Disabilities* within the *Victorian Charter of Human Rights and Responsibilities*.

<sup>10</sup> Salthouse (2007) *Completely Knocked Out: Australian perspectives on disability, disempowerment and domestic violence*  
<http://www.wvda.org.au/salthousedv07.htm>

### 3.3 United Nations Convention on the Rights of the Child

Social Workers work in the government and non-government sectors providing child focussed services in both Child and Family Wellbeing programs, school based welfare and child protection, out of home care, early intervention, policy and management. Social work takes a rights-based approach consistent with the *United Nations Convention on the Rights of the Child* (1989). Significant numbers of AASW members work in child protection in several relevant fields, including in family violence services, the Family and Children's Courts, in child protection services, specialist mental health therapeutic counselling and as relationship and children's counsellors in a range of roles including direct case work, management, policy and a variety of early intervention roles. Social workers are recognised throughout the world as the core professional group in child protection policy, management and practice.

In ratifying the *United Nations Convention on the Rights of the Child*, Australia is required to raise awareness of the Convention, ensure that provisions within it relating to the rights and participation of children in society apply to each child, to make appropriate legislative and administrative to implement the rights of children and report to the United Nations Committee on the Rights of the Child regularly against progress that has been made in this area. The Right to protect cultural freedom is limited to the point where it begins to harm women and children (especially the girl child). Many old 'customs' and 'traditions' which disadvantage and control women are perpetuated under the guise of 'culture and heritage' thus not allowing for advancement/critical discussion and change and furthermore continues to protect abhorrent practices.

One significant influence is that all countries except for the USA and Somalia are now signatories to the United Nations Convention on the Rights of the Child (UNCRC) which provides a set of legal standards for protecting the global well-being of children and young people. The Convention emphasises the promotion of children's rights including 'special protection and assistance' via alternative care for those lacking parental care in order to promote their 'physical and psychological recovery and reintegration'<sup>11</sup> .

To be sure, the UN Convention formally defines those children who are entitled to additional support as being under the age of 18 years, and may therefore be interpreted as mainly applying to preparation for leaving care rather than post-care

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<sup>11</sup> United Nations *Convention on the Rights of the Child*, 1990, General Principles, United Nations, Geneva. Articles 20 and 39

support. But a 2005 UN day of general discussion on 'children without parental care' recognized that support should include assisting transitions from care to independence. Reference was made to providing children with an external support person, promoting family links, teaching children relevant living skills, and providing half-way houses to ease the transition<sup>12</sup>.

In addition, the UN guidelines for the protection and alternative care of children without parental care recommend that young people be equipped with independent living skills so that they are able to be self-reliant; that they be given specialised assistance with the transition process; and that young people be actively involved in the process. After-care services should be provided including ongoing access to social, legal and medical services and financial support, plus access to appropriate educational and vocational opportunities. In November 2009, the United Nations General Assembly formally welcomed the guidelines which are now legally binding.<sup>13 14</sup>

In December 2010 the AASW strongly supported the introduction of a Commonwealth Commissioner for Children and Young People Bill 2010 and argued for the power of such a Commissioner to include being able to prepare his/her own independent report to the UN Committee on the Rights of the Child. The AASW also submitted there should be provision for longer-term development of common approaches across jurisdictions in matters such as performance reporting and monitoring. By adding the key rights articulated within the *United Nations Convention on the Rights of the Child* to the Victorian Charter such provisions would be strengthened in Victoria.

**Recommendation 9: Rights of the Child**

9: The AASW supports the adoption of key rights articulated within the *United Nations Convention on the Rights of the Child* within the *Victorian Charter of Human Rights and Responsibilities*.

**3.4 International Convention on the Elimination of All Forms of Discrimination Against Women**

Working from a strengths and rights-based framework, social workers seek to empower women and children to view themselves as active survivors rather than victims of violence. Social workers address these effects by working from an advocacy

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<sup>12</sup> Herczog, M, 2009, 'Care leavers: how the UN Committee on the rights of the child protects their rights' in *Preparation for Independent Living*, SOS Children's Villages International, Innsbruck, pp 12-13.

<sup>13</sup> Ibid

<sup>14</sup> United Nations, 2009, *Guidelines for the Alternative Care of Children*, Resolution adopted by the General Assembly, Sixty-fourth session agenda item 64, United Nations.

perspective through influencing policy, structures and other sites of power that ultimately aim to minimise family violence. The serious and pervasive nature of domestic and family violence undermines the fabric of families, communities and the broader Victorian society. The coercive control of women and children through physical, sexual, emotional, financial and social means directly contravenes Australia's commitment to the *UN Declaration of Human Rights, the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and the Rights of the Child*.

As a signatory to CEDAW, all Australian governments including the Victorian State Government and authorities mandated under its laws such as Local Government and government funded agencies should continue to implement policies and programs to eradicate discrimination in all its forms, against all women regardless of ability, race, religion or cultural background. The current Review of the Victorian Charter presents a wonderful opportunity to include the Rights outlined in CEDAW. As the case studies highlight adequate access to safe and secure accommodation is a crucial issue. Public and community housing options for people with disabilities are minimal-many of them are women who have particular accommodation needs eg. women only houses and it is still impossible for the majority of women and children escaping domestic and / or family violence to access SAAP crisis housing options.

**Recommendation 10: Rights of Women**

10: The AASW supports the adoption of key rights articulated within the *United Nations Convention on the Elimination of All Forms of Discrimination Against Women* within the *Victorian Charter of Human Rights and Responsibilities*.

**3.5 International Covenant on Economic, Social and Cultural Rights**

The *International Covenant on Economic, Social and Cultural Rights* requires each state party to the Covenant to undertake steps to the maximum of its available resources to achieve the full realisation of the Rights recognised within the Covenant by all appropriate means, including particularly the adoption of legislative measures. The Victorian Charter potentially offers one of these legislative opportunities. The *International Covenant on Economic, Social and Cultural Rights* articulates Rights in the areas of economic participation, employment, advocacy, culture and freedom of association. It also requires states to guarantee that the Rights in the Covenant will be exercised without discrimination.

The social work profession is committed to maximising the wellbeing of individuals and society. It considers that individual and societal wellbeing is underpinned by socially inclusive communities which emphasise principles of social justice and respect for human dignity and Human Rights. Minimum standards of Human Rights include also the Right to adequate housing, income, employment, education and health care

Many AASW members are involved in the delivery or planning of housing support and homelessness services in a range of fields of practice. Many have worked within Supported Accommodation Assistance Programs (SAAP) and other related programs: crisis accommodation, housing information and referral, assistance with care and housing for the aged and youth and women's refuges. They also work across non-SAAP services involved with discharge and accommodation planning. Housing stress directly affects the health, educational, employment, and emotional well-being of individuals and families. It impacts upon both their current and future wellbeing and life-chances. Social workers have a commitment to working with individuals, groups and communities in the pursuit and achievement of equitable access to social, economic and political resources and this includes equitable access to the housing resources of the country. Social workers are directly involved with assisting individuals and families to locate and maintain secure and affordable housing but are experiencing increasing difficulties in achieving these outcomes.

The AASW supports the principles and aspirations of the *United Nations Universal Declaration of Human Rights* and other international conventions derived from that Declaration including the Right to housing<sup>15</sup>. Homelessness, inadequate housing and forced evictions represent violations of International Human Rights. The *International Covenant on Economic, Social and Cultural Rights (ICESCR)*, recognises the right to adequate housing which is regarded as more than the idea of just shelter.

*“Adequate shelter means ... adequate privacy, adequate space, adequate security, adequate lighting and ventilation, adequate basic infrastructure and adequate location with regard to work and basic facilities – all at a reasonable cost”.*

Adequate housing enables other basic rights to be enacted, including the Right to education and work, to vote, to participate in the community and optimise physical and mental well-being, and incorporates: legal security of tenure, availability of

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<sup>15</sup> Article 11(1) of the International Covenant on Economic, Social and Cultural Rights General Comment No. 4 on the Right to Adequate Housing

services, materials, facilities and infrastructure, affordability, habitability, accessibility, location and cultural adequacy.

At this current stage of development, despite improvements over the past few years with the development of more integrated housing and homelessness initiatives and record funding (2007-2009), housing policy is still not proportionately addressing the level of housing need being experienced across the State that would address the Rights to adequate shelter in terms of these international criteria.

**Recommendation 11: Economic, Social and Cultural Rights**

11: The AASW supports the adoption of key rights articulated within the *International Covenant on Economic, Social and Cultural Rights* within the *Victorian Charter of Human Rights and Responsibilities*.

### **3.6 International Principles for the Protection of Persons with Mental Illness and the improvement of Mental Health Care**

Social workers base their practice on a strong commitment to social justice, acknowledging the Rights of people with mental health problems, as set out in the *United Nations Principles for the protection of persons with mental illness and the improvement of mental health care* (UN, 2001). Social work in mental health takes particular account of the importance for clients' mental health of fulfilling social relationships and adequate housing with stable tenure. In particular, social workers advocate for policies which enable people with mental health problems to achieve the quality of life expected by the rest of the community This includes expanding their opportunities to obtain safe and stable housing and a range of support services Access to stable low-cost housing by people with a mental illness has been markedly reduced by the lack of affordable private rental housing, declining public housing stock, and of the uneven distribution and inadequate supply of not for profit social housing models.

Social workers work across the continuum of care in all health settings and are knowledgeable about all disease and treatment groups as well as prevention and early intervention. Social workers provide a unique interface working collaboratively with other professions, consumers, families and communities. Most social workers are employed by government or non-government organizations. In the health sector, social workers work across the continuum of care and in service settings such as community health, acute inpatient, rehabilitation, health promotion, mental health and Indigenous health. Social workers deliver services to individuals across the lifespan, and to families, groups and communities. Social workers are also employed in specialist mental health services comprising the fourth largest professional group in the public mental health workforce after mental health nurses, medical staff and psychologists. Social workers in all fields of practice have at least some clients with mental health problems, often in combination with other difficulties. They work with clients across the age range. Depending on the service setting, their clients may be children, adolescents, adults or older people. In addition many Victorian social workers are in private practice providing services through Commonwealth funded health programs, including ATAPS (Access to Allied Psychological Services).

Social Workers recognize the need for the *United Nations Principles for the protection of persons with mental illness and the improvement of mental health care* being added to the Victorian Charter will require increased government investment in a range of safe and affordable housing models including supported housing models already

shown to be effective in meeting the particular needs of people with a mental illness if the Rights of people with a mental illness are to enjoy access to adequate housing.

The AASW recognise the need for the *United Nations Principles for the protection of persons with mental illness and the improvement of mental health care* being added to the Victorian Charter Issues would underpin a review of the harmonisation of mental health advance directives or psychiatric advance directives which currently remain unaddressed, despite the significant human rights challenges arising in their use. It appears from a consumer perspective that at least in Victoria, the adult “does not have the same right to refuse psychiatric treatment in the way that they may refuse treatment for a physical condition”<sup>16</sup>

Most people receiving treatment from public mental health services are those with continuing or recurrent mental illness. There is general agreement amongst clinicians, consumers and their families that mental health care and services for this group is inadequate. An important contributing factor is inadequate staffing for community mental health services. This results in high staff caseloads and an associated over-reliance on psychotropic medication rather than the full repertoire of psychosocial interventions, and insufficient outreach to consumers and their family carers to explore the area of Advanced Care Directives.

**Recommendation 12: Rights of Persons with a Mental Illness**

12: The AASW supports the adoption of key rights articulated within the *International Principles for the protection of persons with mental illness and the improvement of mental health care* within the *Victorian Charter of Human Rights and Responsibilities*.

### **3.7 International Principles for Older Persons**

In our society, we tend to define ‘older’ as being 65 years of age and over and in terms of it being an age of care and dependency with many aged care services requiring clients to be over 65 years of age. However in relation to this submission the AASW recognises people experience aspects of ageing across their life span and it is a term that can be culturally highly significant with Indigenous recognition of Elder status as a recognition of responsibility, authority and wisdom.

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<sup>16</sup> Topp, V. & Leslie, C. (2009) "Defending the Right to Autonomy and Self Determination: Advance Directives for Mental Health", Health Issues, Summer, 26-28.

The AASW supports the *International Principles for Older Persons* of Independence, Participation, Care, Self-fulfilment and Dignity being added to *Victorian Charter of Human Rights and Responsibilities*. By doing so the Victorian Charter would greatly strengthen attitudes to valuing the contribution, participation and Rights of Older persons when considering State Government legislation, funding and planning in relation to their

- Access to adequate food, water, shelter, clothing and health care
- Opportunity to work or to have access to other income-generating opportunities
- Ability to live in environments that are safe and adaptable to personal preferences and changing capacities
- Integration in society, participate actively in the formulation and implementation of policies that directly affect their well-being and share their knowledge and skills with younger generations
- Access to health care to help them to maintain or regain the optimum level of physical, mental and emotional well-being and to prevent or delay the onset of illness
- Access to social and legal services to enhance their autonomy, protection and care
- Ability to enjoy human rights and fundamental freedoms when residing in any shelter, care or treatment facility, including full respect for their dignity, beliefs, needs and privacy and for the right to make decisions about their care and the quality of their lives
- Access to the educational, cultural, spiritual and recreational resources of society
- Ability to live in dignity and security and be free of exploitation and physical or mental abuse
- To be treated fairly regardless of age, gender, racial or ethnic background, disability or other status, and be valued independently of their economic contribution.

**Recommendation 13: Rights of Older Persons**

12: The AASW supports the adoption of key rights articulated within the *International Principles for Older Persons* within the *Victorian Charter of Human Rights and Responsibilities*.

#### 4 Conclusion

Social workers are employed at the interface between the person and their environment, and AASW members provide a range of services across a number of different areas. These include child and family welfare, child protection, disability, rehabilitation, income support, corrections and juvenile justice, housing support and homeless services, aged care, health and mental health. These interactions with vulnerable people give social workers a unique perspective on Human Rights.

*"The principles of human rights and social justice are central to social work theorising, ethics and practice. These are concepts that bind. They are the values that sustain and nourish us and are at the heart of our work and cannot be shed even in these increasingly complex times"<sup>17</sup>*

The AASW supports the additional development of the *Victorian Charter of Human Rights and Responsibilities* to further protect and promote human rights in Victoria by adding additional Rights from other International Conventions and Principles as we have outlined.

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<sup>17</sup> Briskman, L. *Social work and the human rights of asylum seekers* in Victorian Social Work Vol 4 No2 July 2010

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