



Villamanta Disability  
Rights Legal Service Inc.

## Villamanta Disability Rights Legal Service Inc.

A Victorian Statewide Service

Villamanta advances the rights of people who have a disability related  
justice issue

## Villamanta Disability Rights Legal Service Inc.

14<sup>th</sup> June, 2009

The National Human Rights Consultation Secretariat  
Attorney General's Department  
Robert Garran Offices  
Barton ACT 2600

Dear National Human Rights Consultation Committee:

### Submission to the National Human Rights Consultation

Please find forwarded herewith Villamanta Disability Rights Legal Service Inc.'s  
submission to the National Human Rights Consultation.  
We respectfully request that you consider our submission.

Yours faithfully,

**Deidre Griffiths**

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## **1. Villamanta Disability Rights Legal Service Inc.**

1.1 Villamanta Disability Rights Legal Service Inc. (Villamanta) is a Victorian state-wide community legal centre (CLC) that works only on disability related legal and justice issues. Villamanta has a priority constituency of (works mainly for) people who have an intellectual disability. Villamanta's purpose is to ensure that people who have a disability, especially those who have an intellectual disability, know about their rights and are enabled to use the law to get their rights acknowledged and acted upon. Villamanta has a free-call 1800 number Telephone Advice, Information and Referral Service, does individual legal casework, provides community legal education (CLE) for people who have a disability and those who support them, training on disability rights and other related matters to service providers and others in the community, does systemic Policy & Law Reform work and sells some publications. Villamanta is funded by the Australian Government under the National Disability Advocacy Program (NDAP) and reports to the Department of Families, Housing, Community Services & Indigenous Affairs (DFACSA). It is an active member of the Victorian Federation of Community Legal Centres, the National Association of Community Legal Centres, the Law Institute of Victoria, the Victorian Disability Advocacy Network (VDAN) and the Disability Advocacy Network Australia (DANA).

1.2 All of Villamanta's work is underpinned by a fundamental belief in the Human Rights of all people and in particular those who have a disability. Villamanta has been actively involved in the development of the United Nations Convention on the Rights of Persons with Disabilities and also the Victorian Charter of Human Rights and Responsibilities and in the development of anti-discrimination legislation.

## **Acknowledgements**

Villamanta acknowledges with thanks the work and submissions of Queensland Advocacy Incorporated, the National Association of Community Legal Centres and the Law Institute of Victoria, some of which it has utilised in the process of writing this submission.

## **2. Villamanta's position on an Australian Charter of Rights**

2.1 Villamanta believes that an Australian Charter of Rights should be adopted as a matter of urgency and calls upon the Consultation Committee to recommend the adoption of such a Charter, and the Australian Government to enact the relevant legislation, as quickly as possible. Villamanta believes that a Charter of Rights is a vital measure to ensure that human rights violations that affect many Australians, and in particular people who have a

disability, are identified, prevented and remedied. We also believe that a Charter can only enhance Australia's current system of democracy. We recommend that the option of a review of the Charter, after five years, including the possible future inclusion of recognition of Human Rights in the Australian Constitution (which we believe is the preferable location for legal recognition of human rights), should be specifically provided for in the Charter legislation.

## Villamanta believes Australia needs a Bill of Rights for the following reasons:

1. It will protect the rights of all Australians, including marginalised, disadvantaged and vulnerable minorities, in particular people who have a disability.
2. It will bring Australia into line with every other Western democratic nation and enhance our reputation as a tolerant and harmonious democracy. Australia is now the only Western democratic nation which does not have a constitutional or legislative bill of human rights.
3. It will encourage healthy checks and balances between our legal system and our government. If new laws are made or existing laws challenged, Parliament and courts will both have to assess whether this is compatible with our human rights standards.
4. It will prevent arbitrary government action by requiring prior assessment against a human rights yardstick.
5. It will provide a safeguard so that Parliament cannot overlook human rights considerations if it wants to pass controversial laws on areas like police powers, voting, sedition, workplace relations, privacy, freedom of speech, censorship, the rights of Indigenous people, people who have a disability or counter-terrorism.
6. It will improve government policy-making and administrative decision-making, by providing clear guidelines that put fundamental human rights above politics.
7. It will help Australia to meet its obligations under the UN treaties we have signed.
8. It will help to educate Australians about human rights and our system of government.
9. It will help to promote a climate of mutual respect and understanding among Australia's various communities.
10. It will remind all of us that in a strong, democratic and inclusive society, human rights also entail responsibilities – to respect the rights of others, to observe the law, and to live our lives mindful of our common humanity.

### **3. Villamanta's position on the particular rights that should be covered by the Charter**

3.1 Villamanta believes that the Charter should include the following rights that require protection and promotion: civil and political rights; economic, social and cultural rights; rights of specific groups within the population, including people who have a disability, racial minorities, women, children, and indigenous persons.

3.2 These rights include the human rights that are covered in the various international human rights treaties, conventions and protocols to which Australia is a party. We note that some important Optional Protocols have yet to be acceded to by Australia and believe that this should be done as a matter of urgency. We believe it logically and legally follows, and it is of vital importance, that the rights listed above be specifically recognised in Australian domestic law.

## **4. Are human rights currently sufficiently protected and promoted?**

4.1 Villamanta notes with great concern that in Australia, just as elsewhere in the world, people who have disabilities are subject to multiple and aggravated forms of human rights abuse, including neglect of their most basic survival needs. Such abuse and neglect occurs every day in various parts of Australia, including Victoria. Almost every Australian person who has a disability encounters human rights violations at some time and many experience them throughout their life.

4.2 Some Australians who have a disability have died of starvation in specialist disability services, have had life-sustaining medical treatments withdrawn or denied by health services, been sexually or otherwise assaulted without these crimes being appropriately dealt with by the service or legal systems, had their children removed from them by child protection authorities in a way that would not be done to a parent without a disability.

4.3 It is clear that the Australian and state Parliamentary systems alone are unable to fully and adequately protect the human rights of people who have a disability and in fact often contribute to the failure to prevent or correct human rights violations of people who have a disability.

For example, people who have an intellectual disability, or other significant disability, have been denied the right to become Australian citizens, because of their disability. This has been possible because the Migration and Social Security legislation are exempt from the Disability Discrimination Act 1992. Australia's accession to the Optional Protocol of the Convention on the Rights of People with Disabilities, at some future date, would enable people in this situation to complain to the Committee on the Rights of Persons with Disabilities about this discrimination by Australian legislation, which denies equality before the law and non-discrimination, non-discrimination in access to health care, and an adequate standard of living for some people.

Similarly, many people in Australia who have disabilities receive either no, or extremely inadequate, service support to enable them to live in the community. Provision for respite care and appropriate supported accommodation, and services to assist families to care for a person who has a disability at home, are grossly inadequate. Funding is often insufficient and people who have a disability are often forced to live in shared, inadequately funded, resourced and staffed group accommodation. Often people are inappropriately placed and subject to abuse from other residents or staff members. Families are desperate to have their family member accommodated and are therefore often afraid to complain about inadequate or non-existent services. Families have been victimised for speaking out about the problems they and their family member who has a disability, face. People in these situations could complain to the Committee on the Rights of Persons with Disabilities once Australia has acceded to the Optional Protocol of the Convention on the Rights of People with Disabilities, at some future date.

## **5. Better protecting and promoting human rights**

5.1 Villamanta believes that any proposal for an Australian Charter of Rights must be applicable only to natural persons, rather than to other legal personalities and that the rights of other legal entities (such as corporations) ought to be protected in other ways. Allowing other legal personalities to claim human rights protection under an Australian Charter of Rights would undermine public confidence in the Bill.

5.2 Villamanta also believes that any proposal for an Australian Charter of Rights must apply to (and be capable of being invoked by) any person subject to an Australian law. This would include all persons within Australian Territory (whether or not they are Australian citizens or residents) and all persons in other territories whose rights are

affected by the operation of Australian law. For example, we view it as essential that a person with disability who is an applicant for residency or citizenship of Australia is able to invoke human rights standards set out in an Australian Charter of Rights should it be necessary to do so.

5.3 People who have a disability will sometimes not have capacity to protect or secure their human rights and will therefore rely on others (such as a family member, friend or advocate) to act on their behalf. For this reason, we believe it is essential that any Australian Charter of Rights recommended by the Consultative Committee permit recognition of a personal representative of a person with disability who ought to be capable of acting on that persons behalf to exercise any right and remedy available under the Bill. Any supported or substitute decision-making arrangement must, of course, include appropriate safeguards against abuse that are consistent with those required by Article 12 of the Convention on the Rights of Persons with Disabilities.

5.4 Many human right violations experienced by people who have a disability are of a systemic or structural nature. Additionally, many people who have a disability are extremely disempowered, lack personal and social resources, do not have legal decision making capacity, or are exposed to retribution and stigma if they attempt to exercise a right or remedy. It is therefore essential that any proposal for an Australian Charter of Rights includes broad standing provisions that will permit appropriate representative and advocacy organisations to take action in the public interest to exercise any right or remedy available under the Charter on behalf of an affected class of persons. This will be a key means of ensuring that human rights actually penetrate to the lived experience of people who have a disability.

5.5 For reasons already outlined, people who have a disability, along with some other groups, will require assistance, both on an individual and class basis, to ensure that their human rights are recognised, respected, protected and fulfilled. In the absence of such assistance, an Australian Charter of Rights will be substantially meaningless for these groups. It is therefore essential that the introduction of any Australian Charter of Rights is supported structurally by the funding of appropriate advocacy organisations capable of ensuring access to justice for these groups. It is noted that a similar initiative was included as part of the implementation framework for the *Disability Discrimination Act* 1992 when it was first introduced. Disability Discrimination Legal Services were funded in each Australian State and Territory to assist persons with disability to secure their rights under the Act. We believe that these services ought to be augmented with additional jurisdiction and resources to become broader 'disability rights centres,' to assist people who have a disability to exercise their rights under an Australian Charter of Rights.

5.6. Villamanta believes that any Australian Charter of Rights must include a strong operational framework and mechanisms that will ensure that the rights it recognises are achieved in practice. This should include the following:

- A 'compatibility statement' that outlines in detail how the Charter is consistent with human rights, and any areas of inconsistency;
- Courts and tribunals exercising federal jurisdiction to be required to interpret Australian laws compatibly with human rights;
- Courts and Tribunals exercising federal jurisdiction to have the power to declare a legislative instrument (or an element of a legislative instrument) incompatible with human rights (or a human right). This to have the effect of rendering the legislative provision inoperative, unless re-enacted by the Australian Parliament;
- All Commonwealth public authorities to be required to act compatibly with human rights and to take human rights into account in decision-making;

- All non-government entities receiving public funding to provide services to the public to be required to act compatibly with human rights and to take human rights into account in decision-making;
- Individuals and classes of persons to be able to make complaints to the Australian Human Rights Commission about the violation of any human right incorporated into an Australian Charter of Rights. These complaints to be capable of conciliation by the AHRC. If conciliation is unsuccessful, such complaints to be capable of enforcement by a Federal Court or Tribunal;
- The Australian Human Rights Commission to be provided with specific jurisdiction to conduct own motion inquiries into grave or systemic human right violations. Reports from such enquiries to be required to be tabled in both houses of the Australian Parliament within 30 days of their production;
- The Australian Human Rights Commission to be empowered to make own motion complaints about human rights violations affecting an individual or class of persons. These complaints to be capable of enforcement in a Federal Court or Tribunal;
- The Charter to include provisions that make it an offence for any person to take detrimental action (including harassment, intimidation and victimisation) against a person who makes a complaint that a human right has been violated.
- The Charter to include provisions that require officers of public authorities and publicly funded non-government organisations providing public services to report violations of human rights to the Australian Human Rights Commission for investigation;
- The Charter to include provisions that provide strong whistleblower protection for persons who report violations of human rights to relevant authorities for investigation;
- The Australian Human Rights Commission to be provided with a plenary power to develop and recommend to the Australian Parliament mandatory human rights standards to give effect to a human right (or human rights) incorporated into any Australian Charter of Rights. Such standards, if adopted by the Parliament, to be binding upon all Commonwealth agencies, and all non-government agencies that receive public funding to provide services to the public;
- A requirement that the Australian Government develop and publish a whole of government National Human Rights Action Plan on a progressive basis (renewable every 3 years) to give effect to the human rights recognised in any Australian Charter of Rights;
- A requirement for all Commonwealth agencies to develop agency specific progressive human rights action plans (renewable every three-years) to give effect to the human rights recognised in any Australian Charter of Rights.

5.7 We believe it is essential that the proposed individual and group complaint mechanism that will provide remedies for the violation of Charter rights be designated a 'costs-free' jurisdiction, so that persons whose rights are violated will not be discouraged from bringing complaints.

5.8 Villamanta believes that any Australian Charter of Rights must include a strong performance framework that will ensure that the rights it recognises are actually achieved. This performance framework should include the following mechanisms:

- A National Office of Human Rights Policy Co-ordination to be established in the Department of Prime Minister and Cabinet under high level executive leadership. This Office to be provided with strategic operational responsibility for the National Human Rights Action Plan and for the coordination of agency-level human rights action plans;
- A Joint Standing Committee on Human Rights to be established by the Australian Parliament. This Committee to have among its functions:
  - Scrutiny of all Bills introduced to the Parliament and their associated compatibility statements. Such scrutiny to include a requirement that the Committee undertake public consultations and conduct its activities in public;
  - An annual public inquiry process into progress in the realisation of human rights recognised in any Australian Charter of Rights, and the effectiveness of implementation measures. This inquiry process to include a requirement that the Committee undertake public consultations and conduct its activities in public.

## Thanks

Villamanta Disability Rights Legal Service Inc. thanks the National Human Rights Consultation Committee for the opportunity to make this submission.

### **Submission prepared by Deidre Griffiths**

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