



beyondblue

the national depression initiative  
[www.beyondblue.org.au](http://www.beyondblue.org.au)

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Mr Edward O'Donohue, MLC  
Chairperson  
Scrutiny of Acts and Regulations Committee  
Parliament House  
Spring Street  
EAST MELBOURNE VIC 3002

Email: [charter.review@parliament.vic.gov.au](mailto:charter.review@parliament.vic.gov.au)

Dear Mr O'Donohue

I am writing in response to the **Inquiry into the Charter of Human Rights and Responsibilities**.

The Inquiry's Terms of Reference include consideration of the effect of the Charter on providing services; and the effect of the human rights compatibility statements in developing legislation. In 2010/11 *beyondblue* participated in the Victorian Government's consultation process on the *Review of the Mental Health Act 1986* and the *Exposure Draft Mental Health Bill 2010*. This process demonstrates how the charter is impacting service provision, and how human rights are being considered in the drafting of legislation. The *Exposure Draft Bill* considers, in particular, the right not to be subjected to medical treatment without full, free and informed consent (Section 10[C] of the Charter) and the right to recognition and equality before the law (Section 8 of the Charter).

#### **The effects of the Charter on the provision of services**

The *Exposure Draft Bill* outlines how mental health services will be provided to Victorians. This includes providing compulsory Treatment Orders for 28 days (Inpatient Treatment Orders) and 3 months (Community Treatment Orders). These Orders can be issued without a second psychiatric opinion and without review by an independent body. While the Bill does require a second psychiatric opinion after treatment has been provided to involuntary patients for three months, this opinion can be disregarded.

PO Box 6100, Hawthorn West VIC 3122

Tel: 03 9810 6100

Fax: 03 9810 6111

Web: [www.beyondblue.org.au](http://www.beyondblue.org.au)

Email: [bb@beyondblue.org.au](mailto:bb@beyondblue.org.au)

*beyondblue* info line: 1300 22 4636

ABN 87 093 865 840  
Beyond Blue Limited

*beyondblue: opening our eyes to depression and anxiety across Australia*

*Her Excellency Ms Quentin Bryce, AC – Governor-General of the Commonwealth of Australia – Patron*

As outlined in the *beyondblue* submission in response to the *Exposure Draft Bill*, allowing patients to be subject to a compulsory Treatment Order without independent reviews will pose risks to the patient being inappropriately assessed and diagnosed. This may result in patients receiving unsuitable and ineffective care. This process is not in accordance with best practice principles, and it does not uphold human rights.

People experiencing a physical illness are not subject to involuntary treatment without independent assessments and reviews. People experiencing an episode of mental illness are therefore being treated differentially under the *Exposure Bill*. The human rights of people with a mental illness – including the right not to be subjected to medical treatment without full, free and informed consent; and the right for people to be provided with recognition and equality before the law - are therefore being denied.

The experience of the *Exposure Draft Mental Health Bill 2010* demonstrates the importance of the legislation which governs the mental health system and service provision being harmonised with the Human Rights Charter.

### **The effects of the Charter's rule requiring human rights compatibility statements**

The Explanatory Guide which accompanied the *Exposure Draft* outlined the requirement to include a statement of compatibility in relation to the *Mental Health Bill* when introduced to Parliament. Throughout the Explanatory Guide there are references to how the *Exposure Draft* is improving the compatibility with the Charter. While the rule requiring a statement of compatibility appears to be influencing the development of bills, and ensuring human rights issues are considered, the experience of the *Exposure Draft* suggests that a more stringent process is needed to uphold human rights. As demonstrated through the assessment and treatment process of involuntary patients, the intentions and rights included in the Charter are not being implemented through the legislation.

### **Conclusion and recommendation**

*beyondblue* welcomes the community consultation on the Charter of Human Rights and Responsibilities. Protecting and promoting the rights of people with a mental illness, and their primary carers, is essential. The experience of the *Exposure Draft Mental Health Bill 2010* demonstrates that the implementation of the Charter needs to be improved.

To improve the Charter, **it is recommended that comprehensive mechanisms are developed to ensure that all new and existing legislation and service provision upholds the rights of people with a mental illness.** This could include independent, expert assessments, of how new and existing legislation can be amended to uphold human rights.

Improving the implementation of the Charter, to better protect and safeguard rights, will improve the quality of life and wellbeing of people with a mental illness.

Yours sincerely



Dawn O'Neil AM  
Chief Executive Officer