

# CITIZENS' CHARTERS

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## *Platitudes on the walls of government offices?*

This article is based on an address to a seminar organised by the NSW Office on Social Policy in February 1994.

It is fair to say that charters are the 'flavour of the month' in Australia. They have been proposed or are being developed in a number of areas.

- Charters for public hospital patients are being developed in the health area, in both State and Commonwealth spheres, as a requirement of the Medicare Agreement. These are charters for public hospital patients only, rather than for all health consumers. The NSW Health Department, for example, has incorporated its public hospitals patients' charter into a document entitled *Commitment to Service* (June 1994), and has also established a Customer Focus Unit. The movement for a consumer charter of consumer health rights for Australians has been given impetus by a seminar in Newcastle on 28-29 July, convened by the Australian Consumers Forum and the University of Newcastle. The seminar discussed a draft charter that could apply to the private and community sectors, as well as the private system, and issued 'The Newcastle Declaration for an Australian Health Charter'.
- The Access to Justice Advisory Committee, established by the Commonwealth Minister for Justice, Duncan Kerr, and Attorney-General, Michael Lavarch, in 1993, recommended that each federal court and tribunal develop and implement a charter specifying standards of service to be provided to members of the public, so that people using our public justice system would have access to information about the courts, their rights, and expectations of service from the court system (*Access to Justice: An Action Plan*, May 1994).
- The Deputy Prime Minister, Brian Howe, has advocated a charter of rights and responsibilities containing a set of national standards or benchmarks in key areas of social policy, in the inaugural Ernest Burgmann lecture in Sydney on 13 July 1994. He framed this within the concept of 'civic republicanism', active citizenship based on positive liberty and positive duties.
- The Assistant Treasurer, George Gear, has announced that the Commonwealth will be developing a *Charter of Taxpayer Rights*.

So given this activity in the State and Commonwealth spheres, the debate is obviously not about whether charters of rights will exist in Australia, but about their shape and, in particular, their effectiveness.

The crunch question is, are the charters anything more than nice sounding documents, full of worthy aspirations of service and standards, or will they make a real difference to the way citizens interact with government?

To answer this we need to consider what action is needed to promote citizens' rights, and what a charter could contribute.

### **A change of culture**

The main benefit of a charter from a public interest perspective is to force a change to a new culture that clearly tells citizens, first, that they have

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rights and, second, defines those rights. Just as importantly, a charter would inform those who deliver government services, that their role has changed.

When consumers have clearly articulated rights, the days of any lingering nostalgia for the paternalistic model of service delivery will be over. Those behind the desk, on the end of the phone, and those engaged in developing and delivering services, all have to come to terms with this major shift in culture.

Without a change in the 'corporate' culture, citizens' charters will be little more than platitudes framed neatly on the wall of government offices.

I offer an example in the federal sphere. The Commonwealth Government administrative review package includes freedom of information legislation, judicial review of government decisions, and merits review of decisions by tribunals such as the Administrative Appeals Tribunal.

Administrative review is successful, and probably only successful, when it is accepted by government departments as a positive phenomenon that provides feedback about their operations, and allows them to review their performance and standards of service to the public.

I have been told that external administrative review is seen by some departmental staff as a threat. Some staff take it very personally when one of their decisions is changed by an external review body. Their attitude is defensive rather than accepting that another view of a person's entitlements is possible, particularly in the light of further and better information.

I suggest that if staff feel this way, then this culture starts from the top. If those in charge don't accept external review or a complaints system, then this attitude will filter down to all staff in the organisation.

It is similar with charters of rights. Those public servants delivering services need to approach their job with a completely different mindset — that the citizens they are serving have rights, and that they are accountable for ensuring those rights are achieved.

This also applies to professionals who deliver services, for example, doctors. As long as they use public facilities and are paid from the public purse, they have to understand that charters apply not only to the admissions clerks and ward clerks, but to them as well.

The first thing that is needed to promote citizens' rights is a radical change of attitude among those who deliver government services. This means changes in training, induction, language, policy manuals, performance indicators, and expectations of outcomes — just for starters!

### Consult the people who use the service

An integral part of this shift in thinking is the need for government to deliver its services in partnership with its citizens. Citizens' rights involve people in telling government what they need, and how effectively their needs are being met. This means consultation, and involvement of citizens in planning, implementation, and evaluation. I mean real consultation and real involvement — not the tokenism that I'm sure many of us may have experienced from time to time.

The NSW Office on Social Policy has addressed this through its best practice paper on *Better Service Through Consultation* (Social Policy Directorate, February 1994), where it submits that effective consultation is good government, good management, and good business.

So a second key element in promoting citizens' rights is consultation and involvement of citizens in government decision making.

### Provide information to the service users

A third key course of action to promote citizens' rights is provision of information, and an open administration that allows proper participation by citizens.

It is hard to play unless you know the rules of the game. The rules have to be in an accessible place and easy to read and understand no matter what language you speak. In addition a service user must get a copy of the real rules, not the pretend ones that are designed to put you off your game or make you think you're actually playing another one.

Further, the information might need to be in forms other than the written word. Too often we believe that because *we* are comfortable with words, everyone else is. Yet the generation growing up behind us is probably more familiar with a computer button than a bookmark.

I will scream if I hear another person say they have had a pamphlet translated into 13 community languages, and have therefore met their commitment to information for people of non-English speaking backgrounds.

We need to be a lot more creative in the way we deliver information about services and rights, and to use marketing techniques to ensure information is effectively targeted.

### An adequate complaints system

The fourth key to citizens' rights is an effective complaints handling system, both at the local level, and at the end point of a complaint. The system must have a perspective and role in systemic reform.

But while these systems have to be as effective as possible, we shouldn't see them as the answer to all problems. They come into operation when a problem has not been able to be resolved. It is well accepted that people can suffer from 'appeal fatigue' if there are too many obstacles in the way of problem resolution. We need good complaints mechanisms, but we also need effective service delivery at every level, so that problems can be resolved as close as possible to the source, and the complaints office is used only as a last resort. This requires good internal review and complaints systems, advocacy assistance, and information at the local level.

Complaints systems are generally for individuals, but they must have a systemic role in using individual complaints to identify problems within the system. I would go as far as to say that, without this broad systemic role, complaints systems are useless.

### Is a citizen's charter worth the effort?

It is clear that what is required is a dramatic change in thinking and attitude through all levels of government. Critics may ask — is it worth it? Is a citizen's charter worth all the time, trouble and expense that it would involve? What could a charter contribute to justify this effort?

In March 1993 the National Health Strategy published a book entitled *Healthy Participation*, which argued that about health care:

Making explicit statements about consumer rights can provide information to consumers and the community to assess, choose and be involved in debate about health care. While statements of rights can be seen to protect individuals, they can also provide a useful way of evaluating principles of equity, efficiency and effectiveness

in the health care system. That is, they can have a beneficial effect on the health care system as a whole, as well as protecting individuals in it.

The development of charters in each State and Territory can serve to expose the lack of nationally consistent standards across Australia. It also raises questions about the role of the Commonwealth Government in providing leadership in achieving nationally agreed charters. The rights of citizens of Australia should not depend on where they live. In fact, one of the worst outcomes of the move to citizens' charters would be that the rights and services people receive are defined by their postcode.

The consumer movement's response to the public hospital patients' charter in the Commonwealth and NSW State spheres has generally been one of great disappointment. In covering only public hospital patients the charter does not go far enough. It also provides little more than minimum standards.

Sydney's Public Interest Advocacy Centre, Melbourne's Health Issues Centre and other community groups have been trying to build on the documents to show what a comprehensive charter for health consumers might look like. PIAC's draft model was released at a seminar in Newcastle in July. It contains a mix of legal rights, policy and administrative practices, and 'moral' rights for consumers in the health care system. Some of these rights may not be enforceable in part or full. However, a

charter, by its nature, is a statement of aspirations rather than a straightforward reiteration of the status quo.

### Upping the ante

A broader charter of aspirations is the basis for 'upping the ante' in terms of citizens' rights. A charter must be comprehensive to fulfil an educative and informative role. A charter will not by itself create legal rights for which there would be sanctions, unless expressed to do so. However, if a broad charter were adopted by governments and enshrined in legislation, then it would have to be taken into account by departments, complaints bodies, the courts and tribunals, and could be used in a broader process of setting standards for the delivery of government services.

A broad charter is important, but by necessity it cannot provide specific information for all occasions. For example, in the health area, a framework of general health rights is needed, but there is also a need for a charter of rights in specific instances, for example, your rights as a parent of a child in hospital, as an obstetric patient, in psychiatric settings.

The further down the line, the more specific and process-oriented charters will become. But these more detailed charters will operate within an overall framework that acknowledges the rights of all consumers who use that service.

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injuries are weakest.<sup>12</sup> The recent Court of Appeal decision in *Page v Smith* unreported, *The Times*, 4 May 1994, may herald the backlash with that Court purporting once again to articulate a dichotomy between 'physical' and 'mental' injuries.

Until falsifiable, physiologically demonstrable criteria can be articulated for PTSD, perhaps recovery for secondary and tertiary victims ought either to be precluded or become subject to a statutorily imposed ceiling. Such a step would be justifiable not because there is necessarily a distinction to be drawn between somatic and psychiatric injury, but because the one is currently so much more readily susceptible of proof than the other. In addition, the criteria for determining the extent of foreseeability of injury are so much more readily able to be articulated in the former than in the latter. Such a restriction on recovery would recognise the current state of knowledge about PTSD, the deficiencies present in the DSM and ICD regimes of classification, and the difficulties posed by the circumstances in which expert mental health evidence currently comes before courts and tribunals.

### References

1. See Pathe, M. and Mullen, P., 'The Dangerousness of the DSM-III-R', 1 *Journal of Law and Medicine* 47 at 51.
2. See Mendelson, G., *Psychiatric Aspects of Personal Injury Claims*, Charles C Thomas, Springfield, 1988, p.126.
3. At least in the United States context: See Helzer, J.E., 'PTSD in the General Population: Findings of the Epidemiological Catchment Area Survey',

(1987) 317 *New England Journal of Medicine* 1630. Notably DSM-IV speaks in terms of a prevalence ranging from 1% to 14%.

4. See Kosten, T.R., 'Treating Posttraumatic Stress Disorder with Phenelzine or Imipramine', and Davidson, J.R., 'Assessment and Pharmacotherapy of Posttraumatic Stress Disorder' in E.L. Geller (ed.), *Biological Assessment and Treatment of Posttraumatic Stress Disorder*, APA, Washington, 1990 at 187 and 205.
5. Baum, A., 'Emergency/Disaster Studies' in J. P. Wilson and B. Raphael (ed.), *International Handbook of Traumatic Stress Syndromes*, Plenum, New York, 1993 at p.132.
6. Orr, S.P., 'Psychophysiological Studies of Posttraumatic Stress Disorder', in Geller, above.
7. Kolb, L.C., letter to the editor, (1989) 146 *American Journal of Psychiatry* 811-12. Herman (J.L. Herman, *Taruma and Recovery*, Pandora, London, 1992, at p.119) has called for a new category of 'complex PTSD' to deal with the multiply caused disorder.
8. N.J. Mullany and P.R. Handford, *Tort Liability for Psychiatric Damage*, Law Book Co, Sydney, 1993 at p.38.
9. *Frye v United States*, 293 F 1013 (1923); see *Runjancic v R* (1991) 53 A Crim R 362; *R v Jarrett*, unreported, South Australian Supreme Court, 3 June 1994, per Mullighan J.
10. See I Freckelton, 'The Area of Expertise Rule' in I. Freckelton and H. Selby (eds), *Expert Evidence*, Law Book Co, Sydney, 1993.
11. 'Parents' are broadly defined under *Law Reform (Miscellaneous Provisions) Acts*, (1944, NSW) (1955, ACT) and (1956, NT) and 'spouses' include *de facto* spouses under the NSW legislation.
12. See, however, the challenging arguments of D. Mendelson, 'Legal and Medical Aspects of Liability for Negligently Occasioned Nervous Shock' (1995) *Journal of Psychosomatic Stress* (forthcoming); and the useful analysis of relevant cases by P. Handford, 'Compensation for Psychiatric Injury: The Limits of Liability' (1995) 2(1) *Psychiatry, Psychology and Law* (forthcoming).