

YACVic's Response to the National Human Rights Consultation
Committee

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About the Youth Affairs Council of Victoria

The Youth Affairs Council of Victoria (YACVic) is the peak body representing the youth sector in Victoria. YACVic provides a means through which the youth sector and young people voice their opinions and concerns in regards to policy issues affecting them. YACVic works with and makes representations to government and serves as an advocate for the interests of young people, workers with young people and organisations that provide direct services to young people. YACVic also promotes and supports the participation of young people in debate and policy development areas that most affect them. YACVic's resources are primarily directed towards policy analysis and development, research and consultation and to meeting the information, networking, education and training needs of our constituency.

Introduction

YACVic welcomes the opportunity to contribute to the National Human Rights Consultation process. YACVic commends the Australian Government for pursuing the question of how human rights can be better protected in Australia. YACVic also commends the Federal Government for encouraging community engagement in this critical discussion, through the processes of the Consultation Committee.

YACVic fundamentally supports the introduction of an Australian Charter of Human Rights. YACVic sees the introduction of a Charter as one core initiative amongst several that need to happen in Australia to securely protect human rights, including the rights of children and young people.

YACVic focuses in this submission on the protection of children and young people's rights and submits that in order to do this effectively, the following initiatives are important:

- Introduction of a National Charter of Human Rights, encompassing Civil and Political Rights, Economic, Social and Cultural Rights, the rights of the child as enshrined in the Convention on the Rights of the Child, the rights of Indigenous people as enshrined in the UN Declaration on the rights of Indigenous peoples and those rights enshrined in the Convention on the rights of persons with a disability;
- Community education on human rights to support cultural change and respect for rights;
- Measures to support compliance with the Charter within Government, and
- The establishment of a Commission for Children and Young People.

In this submission YACVic illustrates the many ways in which young people's rights are challenged or breached in Australia today, highlighting the serious need for enhanced protection of human rights. YACVic believes that it is in the interests of *all* Australians for a Charter of Human Rights to be implemented.

YACVic has highlighted the human rights implications of a range of State and Federal Government policy initiatives and draft legislation in its advocacy work. This experience informs this submission, along with consultations YACVic has observed or conducted with young people directly to hear their perspectives on human rights.

YACVic hosted a focus group of 6 young people in Metropolitan Melbourne on the 20th of May. YACVic also observed and assisted with a consultation hosted by Youthlaw with youth service providers in Seymour and Shepparton on the 8th May 2009. In 2005 YACVic worked collaboratively with Youthlaw to run 6 consultations with young people in Shepparton, East Gippsland, Croydon, Moonee Valley and the Inner City of Melbourne, to

inform the deliberations of the Victorian Human Rights Consultation Committee, which recommended the enactment of the Victorian Charter of Human Rights and Responsibilities to Parliament. The issues raised by young people in those consultations, relating to the human rights that were important to them, have also been reiterated in this submission.

Australia needs more effective human rights protection

Human rights are commonly taken for granted within Australia, with many community members presuming that their human rights are protected when they are not. Australia is the only developed country in the world without a broad based legislative or constitutional protection of human rights such as a Bill or a Charter of Rights. Currently, there is no formal way to stop Parliament legislating to impair the ability of Australians to enjoy their rights. In fact, legislation is often an agent of discrimination.

The Commonwealth Government now has an exciting opportunity to show leadership on such an important issue. Implementation of an Australian Charter of Human Rights provides the Commonwealth Government with an opportunity to deliver to the community protections that they want. In drawing from research by Salvaris and others, Di Sisely (formerly commissioner for Equal Opportunity for Victoria and Chair of the Australian Council of Human Rights Agencies) makes the point that ‘when you look closely into what people value, protection of human rights is high on their agenda, although they may not use the term human rights, but instead talk of fairness, equality or “a fair go”’.¹

As will be discussed in more detail later in this submission, young people that YACVic has talked to also want their rights, and the rights of others, better protected in Australia.

Young people need more effective human rights protection

Young people are not a homogenous group. The diversity of young people means that their experiences of discrimination are also diverse and as such individual young people experience different forms of discrimination, such as racism, sexism, homophobia or discrimination on the basis of a disability, to name a few. The specific needs and experiences of young people need to be taken into account when considering the protection of young people's rights. Despite the fact that young people are not a homogenous group, YACVic finds that young people are discriminated against as a population group and as such the protection of their human rights needs specific attention.

The following are examples of some of the human rights breaches that are commonly experienced by young people. Examples of breaches of Civil and Political rights and Economic, Social and Cultural rights are provided. Alongside these is a discussion of the ways in which Indigenous young people are commonly denied enjoyment of their rights and some case study material outlining how human rights have been invoked by the Youth Disability Advocacy Service to improve outcomes for young people accessing the service.

Civil and Political rights

Whilst the International Covenant on Civil and Political Rights (ICCPR) stipulates a few rights specific to children, all civil and political rights are important to young people. In some cases these rights have been openly challenged or undermined. The following are some examples where this has been the case, which reinforce the importance of the protection of these rights.

The right to vote

In 2004, the Federal Government made an attempt to pass legislation to have the electoral role closed on the day an election was called. Had this legislation been passed it would have prevented thousands of young people who were not enrolled from voting thereby

removing their right to vote. As this example shows, young people are vulnerable to changes in legislation regarding the vote and their right to vote requires protection.

The right to freedom of movement

Young people's rights to freedom of movement are potentially undermined by proposed 'move on' laws or youth curfews that discriminate against young people directly.

Queensland, New South Wales and Western Australia have all introduced criminal and summary move on laws. In Victoria, Liberal Party Policies for the 2006 State election contained a pledge to Create Anti-Social Behaviour Orders (ASBOs).¹ This proposal draws from the UK Anti-Social Behaviour Act 2003. In 2005 in London, a young person successfully challenged the powers granted by this Act in the High Court, arguing that the restricted zones established by police 'infringed on his right to liberty under the European Convention on Human Rights, and discriminated against him because he was a child.'² The ruling drastically reduced police powers under the Act.

The right to privacy

Young people's rights to privacy are regularly challenged or breached. YACVic is aware that confusion and ambiguity exists within the community and within institutions/agencies that work with young people, around young people's rights to privacy. YACVic has noticed a perception in the community that young people's rights to privacy are different from other community member's rights to privacy, because of a perceived conflict of interest between the right to privacy and the protection of young people. For example, the rights of young people to independently access same sex attracted support networks has come under question from some parents and guardians. The protection of young people's rights to privacy through a charter of rights would clarify and enforce young people's rights to privacy.

¹ See the Liberal Party 2006 election Policy 'Combating Anti-Social Behaviour'. Accessed from www.vic.liberal.org.au/default.cfm?action=policies_2006 on 15/06/09.

² See article 'Boy wins court bid to end teen curfew' appeared in the Herald Sun 22/07/05. p.36.

The previous Federal Government's attempt to raise the age at which young people can access a Medicare card and therefore seek medical treatment independently of a parent or guardian, from 14 to 16, is a strong example of the potential for legislation to breach young people's rights to privacy.

The right to participate

Article 25 of the ICCPR states that 'every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 and without reasonable restriction:

- a) To take part in the conduct of public affairs, directly or through freely chosen representatives....

Young people commonly report that they highly value their right to participate in public debate and in decision making processes that impact on their lives. Young people are often over-looked in public consultation processes or not considered stakeholders in public policy issues. It is commonplace for policy relating to young people to be developed without any direct engagement with young people. For example, advocates have challenged how the recently announced Council of Australian Governments *Compact with Young Australians* on education and training can be realistically called a 'compact' when it appears that young people have not been directly consulted in its development or engaged in any process of negotiation or agreement of terms.

Young people's rights to participate in decision making that affects them are also protected by Article 12 (1) of the Convention of the Rights of the Child which states that:

Parties shall assure to the child who is capable of forming his or her own views the rights to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.

Often children and young people's rights to have a say in the matters affecting them are overlooked and their capacity underestimated.

Economic, social and cultural rights

The inclusion of Economic, Social and Cultural rights in a National Human Rights Charter is of central importance to the protection of young people's human rights. Here are just a few examples of the importance of protecting economic, social and cultural rights for young people.

The right to work

Young people's rights to work and rights within the workplace need protection. It is not uncommon for young people to lose work once they become too old to receive a youth wage. In 2004, Job Watch (a community legal centre specialising in employment law in Victoria) released a study of the fast food industry in which 145 young employees were surveyed.³ It found that:

- 26 per cent of respondents experienced a large cut in their regular hours of work and of those respondents an estimated 30 per cent stated that they were not provided with any reason for the reduction and 13.2 per cent said it was age related.⁴
- Approximately 14.5 per cent of respondents were removed from their roster and of some key reasons stated for their removal from the roster (excluding requesting to be removed from the roster) were as a form of disciplinary action, that their employer had forgotten to add them to the roster, and that they were dismissed from the job. In some cases young people were not given any reason for the reduction in hours.⁵

³ Smiljanic, V.(2004) *Fast Food Industry: A research study of the experiences and problems of young workers*. A copy of the report can be downloaded from www.jobwatch.org.au

⁴ Smiljanic, V.(2004) *Fast Food Industry: A research study of the experiences and problems of young workers*. Job Watch,p.1.

⁵ *Ibid.*

Young people are often exploited in the workplace in a number of ways. Examples such as workplace bullying, working unpaid in employment trials, being asked to perform unsafe tasks or tasks outside of their job description, being denied break time and not being paid overtime are commonly reported incidences of exploitation of young people at work. Young people often do not have a clear understanding of their rights to work and their rights at work. Including these rights in a Charter would assist in improving this awareness.

Job Watch's research also reveals that young people under the age of 15 are commonly employed without a child employment permit (60% of respondents under the age of 15 participating in the survey), as required under the Child Employment Act.⁶ This points to either ignorance of the requirements of the act, or deliberate exploitation of young workers.

The right to equal pay for equal work

Also relating to young people's rights at work is their right to equal pay for equal work. Whilst not specifically protected by the international Covenant on Economic, Social and Cultural Rights, Article 23 of the Universal Declaration of Human Rights protects these rights. It states that 'Everyone, without discrimination, has the right to equal pay for equal work.' It is, therefore YACVic's policy position that junior wages are discriminatory.

In a submission to the Australian Industrial Relations Commission in relation to its award modernisation process, the National Children's and Youth Law Centre (NCYLC) highlighted that junior wage provisions are contrary to International Standards and Laws. In particular the NCYLC referred to the following standards:

- Article 32 of the United Nations' Convention on the Rights of the Child (CROC), to which Australia is a signatory, protects young workers from economic exploitation and requires that States take legislative and administrative measures to ensure that this protection is implemented. Article 2 of CROC requires that States take

⁶ *Ibid.*

appropriate measures to protect children and young people from all types of discrimination. Article 4 of CROC requires that States take measures to the maximum extent of available resources to ensure that the economic, cultural and social rights of children and young people that the Convention recognises are implemented.

- While the International Labour Organisation instruments on minimum wages do not explicitly forbid the fixing of different rates on the basis of age, its Committee of Experts stated in a General Survey of 1992 that:

‘..the general principles laid down in other instruments, and particularly those contained in the Preamble of the Constitution of the International Labour Organisation which specifically refer to the application of the principles of Equal Remuneration for Work of Equal Value have to be observed.’

- The International Labour Organisation Minimum Age Recommendation, 1973 (No. 146) stipulates that special attention should be given to the provision of fair remuneration to young people, bearing in mind the principle of equal pay for equal work. (Part IV, paragraph 13(1)(a).⁷

Whilst junior rates of pay continue to exist in the Australian wage classification system, young people’s rights to equal pay for equal work will be breached.

The right to an adequate standard of living, including food, clothing and housing

Twenty years after the landmark Human Rights and Equal Opportunity Inquiry headed by Brian Burdekin, the 2008 National Youth Commission Inquiry into Youth Homelessness

⁷ National Children’s and Youth Law Centre, (2008). *Submission on Award Modernisation Process to the Australian Industrial Relations Commission*. Available for download from www.ncylc.org.au

was held. It reminded us of just how serious the problem of youth homelessness had become in Australia in the twenty years since Burdekin:

Although 'youth homelessness' received a great deal of media attention following the HREOC Inquiry report, we have to face up to the fact that young people still become homeless and that youth homelessness is worse in 2008 than it was 20 years ago – the statistical evidence is that youth homelessness has doubled since Burdekin.⁸

We also know that, according to the 2001 Census data, young people (aged 12-24) made up almost half of the homeless population counted.⁹ More than one in three people experiencing homelessness are young people aged 12 to 24 years.¹⁰ As the *Which Way Home?* Discussion paper released by the Federal Government attests, 'this is the largest portion of the homeless population.'¹¹

Research from the Council to Homeless Persons and the Tenants Union of Victoria released in 2005 showed the dramatic vulnerability of young people with regards to the housing market, resulting in homelessness for some young people:

Put simply, for a young person on income support, trainee wages or the minimum wage, and relying on the private rental market, the options are extremely limited. Even marginal accommodation such as rooming houses and caravan parks are often beyond the reach of young people, with rents averaging \$120 to \$200 per week. Cheap share housing is limited, often in poor condition and poorly located

⁸ National Youth Commission, (2008). *Australia's Homeless Youth: A report of the National Youth Commission inquiry into Youth Homelessness*. p.V

⁹ Commonwealth of Australia, (2008). *Which Way Home? A New Approach to Homelessness..* p.19.

¹⁰ Commonwealth of Australia, (2008).*op.cit.* p.21.

¹¹ Commonwealth of Australia, (2008).*op.cit.* p.21.

relative to employment and educational centres. Young people on the margins of the private rental market commonly resort to couch surfing in a bid to sustain a roof over their heads.¹²

Since 2005, the property market has become increasingly competitive and demand affordable accommodation has increased dramatically. Australian Institute of Health and Welfare data for the Supported Accommodation and Assistance Program (SAAP) shows that in Victoria 21,400 children accompanied their families to seek assistance from homelessness services in 2007-08. This is an increase of 16% in the past two years in Victoria.¹³

The right to education

Young people's right to education is challenged and sometimes breached by a number of factors, including socio-economic status, geography, availability of integration support for students with a disability and access to literacy programs for newly arrived young people or other young people with literacy needs.

Article 13 of the International Covenant on Economic, Social and Cultural Rights compels Australia to recognise 'the right of everyone to education.' It goes on to state 'that education shall be directed to the full development of the human personality and the sense of its dignity, and shall strengthen the respect for human rights and fundamental freedoms.'

YACVic is seriously concerned by the disproportionate level at which young people from rural or regional Victoria defer a university placement and do not re-enrol in the course following that deferral. YACVic raised these concerns in a 2008 submission to the Victorian Parliamentary Education and Training Committee Inquiry into

¹² Tenants Union of Victoria & Council to Homeless Persons. *Young Persons' Housing Affordability Bulletin*. March 2005.

¹³ See Council to Homeless Persons. 'Governments must act now on record levels of child homelessness.' Media Release, 3rd April; 2009. Available for download from www.chp.org.au

Geographical Differences in the rate in which Victorian Students Participate in Higher Education. The following is an excerpt from that submission:

Data collected through the *On Track* survey reveals the dramatically higher levels of deferral of higher education placements by young people in rural and regional Victoria as compared to young people in metropolitan Victoria. As was acknowledged by the Rural and Regional Services and Development Committee Final Report of the *Inquiry into Retaining Young People in Rural Towns and Communities*:

Rural young people are more than twice as likely as their urban peers to defer taking up a university place following the completion of high school.

In evidence collected by the 2006 On Track survey, 13.3% of rural students who completed VCE in 2005 deferred tertiary study in this year, as opposed to only 6% of students from metropolitan schools.¹⁴

On Track data released in 2007 shows a gradual increase in deferral of study by rural young people over the last three years at a disproportionably higher rate than metropolitan students. Over the three years 2005 to 2007, the percentage of completers who deferred tertiary study has increased by five percentage points in non-metro regions but only by one percentage point in metro regions.¹⁵

Results from the Centre for Post compulsory Education and Lifelong Learning (CPELL) tracking surveys also reveal disturbing interstate comparisons between the deferral rates of Victorian students compared to students in Queensland and South Australia. Results from these surveys suggest that the rate of deferral by non-

¹⁴ Rural and Regional Services and Development Committee, (2006). *Inquiry into Retaining Young People in Rural Towns and Communities: Final Report*. See findings 6.22 and 6.23, p 207.

¹⁵ *On Track* annual year 12 completer surveys, 2005, 2006, 2007, DEECD, Melbourne.

metropolitan students in Victoria is only slightly lower than the rate of deferral by South Australian non-metro students (15.7% in Vic as compared to 16.8% in SA). In the survey data Victorian rural students are recorded as deferring at a markedly higher rate than rural students in Queensland (15.7% in Vic compared to 10.4% in Queensland). YACVic recognises that there are a host of reasons that impact on a young person's decision to defer. However, given the experience of geographic isolation possible in SA and QLD compared to Victoria, these statistics raise some questions around why Victorian students are deferring at such a comparatively high level.

Higher deferral rates do translate into a lower rate of re-enrolment in higher education places by rural young people as compared to metropolitan young people. The Rural and Regional Services Committee heard disturbing evidence from Professor Rob Wallis, the Pro Vic-Chancellor (Regional and Rural) of Deakin University that:

“deferment rates for students in south-west Victoria are double those of Melbourne students. The reason is almost always financial...[and] importantly our data shows only about half these students re-enrol.”¹⁶

As the Inquiry noted, ‘it would appear that many who delay this transition for financial reasons never commence their intended higher education course.’¹⁷

A full copy of YACVic's submission to the Victorian Parliamentary Education and Training Committee Inquiry into Geographical Differences in the rate in which Victorian Students

¹⁶ Evidence from professor Rob Wallis, Pro Vice Chancellor (Rural and Regional), Deakin University as cited in Rural and Regional Services and Development Committee, (2006). *op.cit.* See finding 6.28, p 209.

¹⁷ *Ibid.*

Participate in Higher Education can be downloaded from the YACVic website at www.yacvic.org.au

Cultural Rights

The right to take part in cultural life, as stipulated in Article 15 of the Covenant on Economic Social and Cultural Rights, is essential for all young people. It is important that the right to participate in all forms of cultural life are recognised, not just the right to participate in dominant cultural spheres.

A 2000 Victorian Aboriginal Health Service report, *Study of Young People's Health and Well-being: The Strengths of Young Kooris*, highlighted the critical importance of cultural connection to Koori young people. The report stemmed from the Young People's Study of Health and Well-being carried out by the Health Services from January 1996 to January 1999. Of those who participated in a survey, 80% reported that they had Koori spiritual beliefs and over half said these beliefs were very important to them.¹⁸

Recognising diverse cultural rights in a National Charter of Human Rights would support young people's capacity to celebrate and develop their cultural life.

Indigenous young people and human rights

YACVic is particularly concerned about breaches of Indigenous young people's rights and the discrimination faced by Indigenous young people. YACVic is the auspice agency for the Victorian Indigenous Youth Advisory Council (VIYAC). VIYAC provides an opportunity for young Indigenous people from across Victoria to come together and have a say about issues of importance to them. Issues raised as part of the VIYAC program have thus far reflected the fundamental disadvantages faced by Indigenous people in Victoria, and

¹⁸ Victorian Aboriginal Health Service Co-operative Ltd (2000) *Study of Young People's Health and Well-being: The Strengths of Young Kooris*, Melbourne. p 23-26.

highlighted on a national level in the *Overcoming Indigenous Disadvantage Key Indicators 2007* Report.

Some findings of the *Overcoming Indigenous Disadvantage Key Indicators 2007* report of particular relevance to young people are listed below:

Life Expectancy at birth

- The life expectancy of Indigenous people is estimated to be around 17 years lower than that for the total Australian population.¹⁹
- In 2005, death rates in all age groups were higher for Indigenous than non-Indigenous people.²⁰
- When combining data from Queensland, WA, SA and the NT combined, the report finds that the death rate of Indigenous males in the year 2001-2005 was 29.8 per 100,000 compared to 12.5 per 100,000 for non-Indigenous males. For Indigenous females of the same age group the percentage of deaths was 23 per 100,000 compared to 9.7 per 100,000 for non-Indigenous females. These figures increased dramatically for the 15-24 years age bracket, with the rate of Indigenous males who had died at 207.7 per 100,000 compared to 76.6 per 100,000 for non-Indigenous males. For Indigenous females of the same age bracket, the percentage of deaths was 96 per 100,000 compared to 28.6 per 100,000 for non-Indigenous young women.²¹

¹⁹ Steering Committee for the Review of Government Service Provision, Productivity Commission.(2007) *Overcoming Indigenous Disadvantage Key Indicators 2007 Report*. Commonwealth of Australia. p. 3.2.

²⁰ Ibid.

²¹ Steering Committee for the Review of Government Service Provision, Productivity Commission.(2007)*op.cit.* p.3.7. See Table 3.1.2 Age specific death rates, 2001-2005 for full data and for qualifications relating to the data.

Years 10 and 12 retention and attainment

- In 2006, 21 percent of 15 year old Indigenous young people were not participating in school education, Only 5 percent of non-Indigenous 15 year olds were not participating in school education.
- In 2006, Indigenous students were half as likely as non-Indigenous students to continue to year 12.
- In 2004-05, a smaller proportion (22.1 per cent) of Indigenous people than non-Indigenous people (46.6 per cent) had completed year 12.
- The proportion of Indigenous students who achieved a year 2 certificate (after being enrolled in year 11 the previous year) changed little between 2001 and 2005.²²

Post secondary education – participation and attainment

- In 2004-05, non-Indigenous people were more than twice as likely as Indigenous people to have completed a post secondary qualification of certificate level 3 or above.²³

Labour force participation

- In 2004-05 Labour force participation rates for Indigenous people were lower than those for non-Indigenous people for both sexes and in all age groups.²⁴

Suicide and self-harm

- Suicide rates were higher for Indigenous people (between 18.8 and 45.0 per 100,000 population) than non-Indigenous people (between 10.8 and 15.5 per 100,000 population) in Queensland, WA, SA and the NT for 2001 to 2005.²⁵

²² Steering Committee for the Review of Government Service Provision, Productivity Commission.(2007) *op.cit.*p. 20

²³ Steering Committee for the Review of Government Service Provision, Productivity Commission.(2007) *op.cit.* p. 30

²⁴ Steering Committee for the Review of Government Service Provision, Productivity Commission.(2007) *op.cit.* p. 45

- A 2006 study of NT suicides between 1981 and 2002 using data from ABS death registrations and the NT's Coroner's office, found that between 1981 and 2002:
 - Amongst Indigenous people, males aged 25 – 44 years had the highest suicide rate, and males aged 10-24 had the second highest rate.
 - Amongst non-Indigenous people, males over the age of 65 were most at risk.²⁶

Child Protection substantiations

- From 1999-2000 to 2005-06 the substantiation rate for Indigenous children increased from 14.8 per 1000 children to 29.5 per 1000 children.
- Over the same period, the rate for non-Indigenous children increased from 4.2 per 1000 children to 6.5 per 1000 children.²⁷

Juvenile detention rates

- At 30 June 2005, Indigenous juveniles were 23 times more likely to be detained than non-Indigenous juveniles. The difference between the Indigenous and non-Indigenous juvenile detention rates has increased since 2001.²⁸

The failure of government services to protect Indigenous children and young people's rights

Alongside the statistics that make clear the level of disadvantage experienced by Indigenous young people impeding their full realisation of their rights, are the stories of failure of government services in protecting Aboriginal children and young people's rights.

²⁵ Steering Committee for the Review of Government Service Provision, Productivity Commission.(2007) *op.cit* . p.73

²⁶ Steering Committee for the Review of Government Service Provision, Productivity Commission.(2007) *op.cit* . p.80.

²⁷ Steering Committee for the Review of Government Service Provision, Productivity Commission.(2007) *op.cit* p.85.

²⁸ Steering Committee for the Review of Government Service Provision, Productivity Commission.(2007) *op.cit* . p.121

A recent Article appearing in The Australian reported that 'At-risk children sleep in police cells'.²⁹ The article stated that:

Aboriginal children in Broome have been forced to sleep in cells at the police station because child protection workers were sometimes unavailable and there was nowhere else for them to go..... *The Australian* was told police had picked up children after domestic violence incidents or after finding them wandering the streets late at night but could not always reach DCP staff.

The children were given a blanket and a bed in one of the station's cells to sleep the night.³⁰

Australia is negligent in it's protection of Indigenous children and young people's rights whilst the statistics and stories of profound disadvantage described above continue to be reality.

Case study material – invoking rights to improve outcomes for young people with a disability

The following case study material has been provided by the Youth Disability Advocacy Service and relates to ways in which the service have invoked human rights in advocating for positive outcomes for young people who seek their assistance. The Youth Disability Advocacy Service (YDAS) is a statewide advocacy service funded by the State Government of Victoria for young people with disabilities between 12 and 25. YDAS is auspiced by the Youth Affairs Council of Victoria and is a partnership between the Youth Affairs Council of Victoria, Disability Discrimination Legal Service, and Youthlaw.

²⁹ Perpitch, N. 'At-risk children sleep in police cells', *The Australian* 1/06/09. p.6

³⁰ Ibid.

Case study 1: Guardianship of Intellectually Disabled Young Man from Iraq

Situation:

Client a 23 year old Iraqi refugee with severe intellectual disability and autism. In May 2008, the Public Advocate (OPA) had been appointed as his limited guardian to make decisions regarding accommodation, health care and access to services (I acted as his advocate in that proceeding). In late August the client's mother informed us that her son was being moved from his current (long-term) respite facility to supported accommodation that he would share with one other client with severe behavioural issues. On his first visit to the family home after the change in residence, her son refused to return to the new accommodation. He made it clear that he was frightened of the other resident and was otherwise lonely, bored and unhappy there. There were no Arabic speaking workers in the home, and his ability to observe his religion and have contact with his family were restricted, as his parents were discouraged from visiting him (and therefore from delivering Halal food) while he settled in. We were informed that as the client refused to return to his new accommodation, OPA would apply to VCAT for authority to return the client by force if necessary (pursuant to s 26 of the Guardianship and Administration Act 1986).

How human rights were used:

Despite our opposition, VCAT granted the application under s 26. I informed OPA, via email, that we believed that the guardian's decision for the client to reside at the new residence against his wishes raised issues under the Victorian Charter of Human Rights and Responsibilities, namely the right to protection of families and children, the right to culture (bearing in mind that there were no Arabic speaking workers or residents at the residence) and the right to freedom of religion (bearing in mind the difficulty his mother had in ensuring Halal food was available to the young man). We asked that the guardian's manager review her original decision to have the client reside at the accommodation, and that they also review her decision to seek and exercise the s 26 order (preferably before the order was exercised). We also worked closely with a secondee solicitor at PILCH to

find free legal representation for the client's parents so that they could seek a reassessment of the guardianship order.

Outcome:

The s 26 order was not exercised, and the client was not forcibly returned to the shared accommodation. The guardianship order was revoked, with the result that the client could continue to reside at the family home, where he wished to be. Among other reasons given for her decision, the VCAT member noted that there were cultural and language benefits to the client being at home, and that his civil liberties were protected at home.

Case study 2: Lack of Disability Support for Young Mexican Woman with Cerebral Palsy

Situation:

Client a 19 year old Mexican immigrant with cerebral palsy. DHS particularly slow in responding to request for disability support services, with the result that the young woman was housebound and alone all day.

How human rights were used:

I emailed the DHS intake worker appointed to the case to inform her that the client's mental health was deteriorating as a result of her isolation and her inability to access the community or any disability support services. I reminded them that "The DHS has positive duties under the Victorian Charter of Human Rights and Responsibilities Act 2006 to protect the right of persons not to be treated in a cruel, inhuman or degrading way (s 10). Inhuman or degrading treatment can result from inadequate care or support. The right to respect for privacy is also protected by the Charter (s 13), and includes issues such as relationships with others and life in the community. It is clear that a person's private life is affected when she is unable to participate in the life of the community or access essential

social, cultural and recreational activities. Courts have recognised that decisions to refuse services may have serious implications for the right to respect for private life, and therefore public authorities cannot simply decide to withhold services without any justification."

Outcome:

One month later the client was referred to the Eligibility team at DHS, and is now (finally) deemed eligible for services and is on the waiting list for case management.

What have young people told us about human rights?

Young people whom YACVic has consulted in our May focus group and in previous consultations hosted to inform our submission to the Victorian Law Reform Commission in relation to issues of consideration in the introduction of a Charter of Rights in Victoria, have identified a broad range of rights that are important to them. This makes clear that for a Charter to be most relevant to young people in Australia, it needs to protect a range of rights, including Civil and Political rights, Economic Social and Cultural Rights, the Rights of the Child as identified in CROC, the rights protected by the Convention on the rights of persons with a disability and those protected by the UN declaration on the Rights of Indigenous peoples. When asked to identify which rights are important to them, young people in these consultations identified the following rights:

- Right to Education
- Adequate standard of living, right to social security
- Right to work
- Right to self-determination
- Right to rest leisure and recreation
- Right to freedom of thought and religion
- Right to participate in community life

- Right to Privacy
- Protection from exploitation
- Right to form unions
- Freedom of Movement
- Fair and just legal system
- Freedom from arbitrary arrest and detention
- Right to freedom from discrimination
- Right to health
- Freedom from abuse and violence
- Right to freedom of speech and expression
- Disability rights
- Freedom assembly and association
- Right to know name/nationality
- Freedom of thought and religion
- Indigenous rights
- Right to healthy environment
- Right to access safe, affordable housing.

Copies of the full reports of each of these consultations can be obtained by contacting YACVic.

When consulting with workers with young people in Seymour and Shepparton, some strong themes emerged. When asked what rights should be protected in a Human Rights Charter to ensure its relevance to young people, workers repeatedly identified the following issues:

- The need to protect and promote young people's rights to participate in community life and to self-determination,
- The need to protect young people's rights to an adequate income, standard of living and housing
- The need to protect young people's rights to education,
- The need to protect young peoples right to health by improving access to health services and information
- Young people's exploitation in the workplace,
- Young people's vulnerability to having their privacy breached and
- Young people's right to safety.

Which Human Rights should be protected and promoted?

Drawing from the International Human Rights Conventions and Covenants (to which Australia is either a signatory or has released a statement of support for as is the case of the rights of Indigenous people), a National Charter of Human Rights should protect and promote:

- Civil and Political Rights;
- Economic, Social and Cultural Rights;
- The rights of Aboriginal and Torres Strait Islander peoples as outlined in the UN Declaration on the Rights of Indigenous Peoples;
- The rights enshrined in the Convention on the rights of persons with a disability; and
- The rights of children and young people as articulated in the UN Convention on the Rights of the Child.

The UN Convention on the Rights of the Child

Children and young people up to the age of 18, have specific rights outlined in the **United Nations Convention on the Rights of the Child (CROC)** to which Australia is a signatory. The introduction of a National Charter of Human Rights provides an exciting opportunity to recognise these rights in a national context, strengthening the rights of children and young people.

Whilst Civil and Political Rights and Economic, Social and Cultural Rights apply to all people, they do not go far enough to clearly recognise the applicability of rights to children and young people. For example, Article 2 of the International Covenant on Economic, Social and Cultural Rights makes no specific mention of discrimination by age where it stipulates that:

The States Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

The International Covenant on Civil and Political Rights is limited in its engagement with the rights of children and young people, aside from the recognition of every child's right to protection, to a nationality and a provision to ensure all births are registered, in Article 24.

Existing accountability measures regarding Australia's compliance with CROC are inadequate with compliance reporting happening irregularly and infrequently.³¹ The

³¹ Australia is accountable to report on compliance with the Convention every 5 years, Australia's first report to the United Nations Committee on the Rights of the Child was due in January 1993 and not filed until December 1995. The second report was not filed when it was due in January 1998. A combined second and third report was filed in September 2005. For further discussion see Youthlaw and YACVic's report

inclusion of these rights in a National Charter could provide a much needed additional opportunity to reinforce them and to strengthen accountability to these important rights.

In summary, Children and young people's right need reinforcement and protection. The examples provided in this submission outline just a few issues on which children and young people's rights need particular protection. Young people are vulnerable to particular experiences of exploitation, are systemically discriminated against and do not access complaints and protection mechanisms effectively in general. It would be an oversight to miss the opportunity to reinforce these rights in a National Human Rights Charter.

Indigenous young people's rights

Indigenous young people also have specific rights as First Nations Peoples. The Aboriginal and Torres Strait Islander Social Justice Commissioner's *2008 Social Justice Report* deals extensively with the issue of how Australia can more effectively protect the rights of Aboriginal and Torres Strait Islander people.

The following passage from the report explains the importance of a broad range of rights being covered, highlighting the critical inclusion of economic, social and cultural rights in a Charter.

'Indigenous peoples will benefit from having formal protections for non-discrimination, equality before the law, self-determination as well as the full range of civil, political, economic, social and cultural rights in a Human Rights Act.

While all such rights apply generally to all members of the Australian community, they have a particular importance for

Implementation of the Convention on the Rights of the Child in Victoria: What do we know and what can we do. The Victorian CROC Roundtable Report 2004 – A Summary of issues raised at Victorian roundtables April 2004. Available for download on www.yacvic.org.au

Indigenous peoples. This is due to the overwhelming levels of disadvantage faced by Indigenous peoples, placing us among the most vulnerable to our human rights being breached, as well as the ongoing impacts of our historical treatment as a peoples.

For this reason, a Human Rights Act must be comprehensive in its scope and include economic, social and cultural rights (such as the rights to health, education and housing) in addition to civil and political rights.

The need for such comprehensive coverage in a Human Rights Act is demonstrated by examining the work of the Social Justice Commissioner over the past decade. The vast majority of research and recommendations that have been made by the Commissioner are to address outstanding human rights issues faced by Indigenous peoples relate to economic, social and cultural human rights and rights to effective participation in decision making that relates to the interests of Indigenous peoples.

A Human Rights Act that does not address these issues will be less relevant to Indigenous peoples and risks being less effective in addressing some of the key human rights challenges facing Indigenous peoples and Australia.³²

Amongst the various recommendations relating to improved protection of human rights for Indigenous people in the Aboriginal and Torres Strait Islander Social Justice Commissioner's report is Recommendation 5:

'That the Commonwealth Government adopt a Human Rights act that is comprehensive in its scope and includes:

³² Australian Human Rights Commission, (2009). *2008 Social Justice Report*. p.44

- Recognition of Aboriginal and Torres Strait Islanders peoples in the preamble;
- The right to self-determination;
- Economic, social and cultural rights and civil and political rights;
- Specific protections for Indigenous people where required; and
- The UN Declaration on the Rights of Indigenous Peoples scheduled as a relevant international instrument.³³

YACVic supports the implementation of this recommendation and extends it to include the rights of the child as articulated in CROC and the rights articulated in the Convention on the rights of persons with a disability.

Are these human rights currently sufficiently protected and promoted?

The numerous examples listed earlier in this submission of ways in which young people's rights are breached demonstrate that the human rights of children and young people are not currently adequately protected or promoted in Australia.

Young people also struggle to access existing complaints mechanisms in cases where they may have experienced a breach of their rights. Whilst data may not always reveal the age of complainants, YACVic collected evidence in developing a submission response to the Human Rights consultation discussion paper *Have your say about human rights in Victoria* that suggested that young people were vastly under-represented as complainants

³³ Australian Human Rights Commission, (2009). *2008 Social Justice Report*.p.93-94.

to the Victorian Human Rights and Equal Opportunity Commission, the Office of the Health Services Commissioner, and the Office of the Victorian Privacy Commissioner.³⁴

How could Australia better protect and promote human rights?

There are a number of ways in which Australia could better protect and promote human rights. The following are some key recommendations YACVic puts to the Consultation Committee to ensure that protections are relevant to children and young people.

Introduce a Human Rights Bill to enact a Human Rights Charter for Australia

YACVic recommends that the Commonwealth Government introduce a Human Rights Bill with a view to enacting an Australian Human Rights Charter. The Bill should proscribe a Charter that protects the rights of *all* people's within Australia, not simply citizens. The rights protected by the Charter should reflect those rights protected by the International Covenants and Conventions to which Australia is a signatory or has formally acknowledged support, therefore it should protect:

- All civil, political, economic, social and cultural rights;
- those rights specific to children and young people as enshrined by the Convention on the Rights of the Child;
- the Rights of Aboriginal and Torres Strait Islander Peoples as enshrined in the UN Declaration on the rights of Indigenous peoples and;
- those rights enshrined in the Convention on the rights of persons with a disability.

³⁴ YACVic (2005). *YACVic's response to the Human Rights Consultation Committee Discussion Paper*. pp 8-12. Available for download from www.yacvic.org.au

Like the Human Rights Charter models adopted in Victoria and the ACT, the Charter should be based on a 'dialogue' model, where by the government (incorporating the Parliament, Courts and Executive) would need to assess current statutory provisions and laws as to their 'compatibility' with the Charter. Human Rights would also need to be considered in the development of new laws and regulations with a view to ensuring their compatibility with the Charter. An assessment of compatibility would be reported in a statement to the Parliament.

The Act should relate to the work of all employees of the Commonwealth Government and of publically funded organisations to acknowledge and give effect to these rights in their daily work. It should also provide for a National Human Rights Charter to outline the role of the courts in enforcing the Charter by way of appropriate sanctions or penalties for breaking the law.

Support compliance within Government

Aside from introducing a Charter to protect Human Rights and accountability structures to ensure compliance with the Charter (as outlined in our response to question 2), the Government needs also to ensure that Government internal processes are compatible with the protection and promotion of human rights.

There are various ways that Government can enhance internal processes to improve compatibility with human rights principles. The auditing of existing and proposed legislation against human rights principles, such as those included in a Charter of Rights would help to ensure that legislation is not the source for human rights breaches. The establishment of departmental human rights committees able to monitor and recommend on the preservation and promotion of human rights in departmental process and policy may assist individual departments.

A Human Rights Parliamentary Committee could be established. It could scrutinise legislation and also investigate and make recommendations on improving the compatibility of Government funded programs with human rights. Existing Government structures and statutory bodies, or statutory officers could have their powers extended to include the examination of issues within a human rights framework.

Government also needs to ensure that children and young people are being heard by Government and are participating in decision-making processes. The Federal Government should be congratulated for initiatives of the Australian Youth Forum, which recognise that policy development processes need to directly engage young people to ensure their participation and are most effective for it. However more needs to be done to ensure that all Government Departments recognise and act upon their responsibilities to young people as citizens and community stakeholders and engage with young people in policy development.

Community Education and Cultural Change

The development of a charter will need to be supported by an extensive community education and public awareness campaign, to improve community understanding of rights and to cultivate the development of a culture that promotes and supports rights.

Public awareness campaigns need to be co-ordinated and ongoing. Young people in general would require a targeted education campaign, however such a campaign should celebrate diversity. Equally as important as education campaigns around rights, is developing the capacity of communities to enjoy their rights. Examining government programs within a human rights framework and independent investigations around systemic human rights breaches would help maintain a focus on empowering and resourcing individuals and communities to enjoy their rights. Community sector organisations have an essential role to play in creating community cultural change and promoting and protecting human rights in the community.

The role of a Children and Young People's Commission

Young people's rights also need to be protected specifically by a Children and Young People's Commission. The need for a Commission is evidenced by the lack of engagement by young people with existing complaints structures, the systematic discrimination that young people face, and the lack of opportunity for young people's voices and issues to be heard within political debate. It would not be the role of the Commission to take independent complaints, but rather to undertake systemic advocacy on behalf of young people, support young people and their families in making complaints, work with existing bodies to better enable them to cater for young people's needs and initiate independent inquiries and examine and analyse existing and proposed laws, policies and practices as to their impact on children and young people.

In 2001, YACVic released a discussion paper outlining a model for a Commission called *Are You Listening to us?* A copy of this discussion paper is attached as an appendix to this submission.

Conclusion

YACVic asserts its absolute support for the introduction of a Charter of Rights in Australia. In this submission we have provided information and recommendations for how a charter may be most able to provide protection of rights for children and young people. Whilst a Charter is not all that is required to protect and promote rights in Australia, it is a cornerstone to protection. We have also provided information about other initiatives that would protect and promote the rights of *all* Australians, including children and young people, and would encourage the Government to consider these options in order to ensure the relevance of its measures of protection to young people.