

# **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**



**youthaffairs**  
COUNCIL OF VICTORIA INC.

## **Youth Affairs Council of Victoria**

The Youth Affairs Council of Victoria (YACVic) is the peak body representing the youth sector. YACVic provides a means through which the youth sector and young people voice their opinions and concerns in regard to issues and policies 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.

## **Youthlaw**

Youthlaw is Victoria's first state-wide young people's community legal centre and began operations in early 2002. Youthlaw works to achieve systemic responses to the legal issues facing young people, through casework, policy development, advocacy and preventative education programs.

The views and opinions expressed in this report do not necessarily reflect the views of the Youth Affairs Council of Victoria Inc (YACVic) or Youthlaw except where specifically stated.

## Introduction

Over recent years, there has been an increasing concern about the implementation of human rights conventions, laws and treaties in Australia. For those working with children and young people, the United Nations Convention on the Rights of the Child (CROC)<sup>1</sup> is of primary relevance. CROC articulates the rights that children and young people up to the age of eighteen years of age are entitled to under most international instruments.

More than a decade ago, Australia agreed it would be accountable for the implementation of CROC. This means that all levels of government are bound to have laws that reflect those rights and they, along with non-government organisations and the private sector, are strongly encouraged to have policies and practices that comply with CROC.

The Australian Government has to submit reports on compliance with CROC to the United Nations Committee on the Rights of the Child every five years. Australia's first report was due in January 1993 but was 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 2003. This will be considered by the UN Committee on the Rights of the Child in mid 2005.

Non-government agencies have the opportunity to provide an alternative or shadow report. In Australia some parts of the non-government sector, coordinated by Defence for Children International - Australia and the National Children's and Youth Law Centre (NCYLC), is preparing a shadow report. This process is coordinated by a national steering committee of state representatives. A consultation paper, *What's Up CROC?* was written by DCI-Australia and the NCYLC to facilitate consultations.<sup>2</sup> An alternative report will be sent to the United Nations Committee and will be considered along with the Federal Government's report in June 2005.

Youthlaw and YACVic have worked together to develop Victoria's contribution to this shadow report. Youthlaw and YACVic believe it's essential to raise the profile of CROC in Victoria. We are aware of continuing resistance to CROC, confusion about what it means and how CROC can and should be implemented here. For example, an article that appeared in *The Age* newspaper reported that 'things have been tougher for parents' since Australia's ratification of CROC in 1990.<sup>3</sup> This demonstrates a fundamental and dangerous misunderstanding about CROC and highlights the need for greater attention to it in Victoria.

Youthlaw and YACVic worked in partnership to organise two roundtable discussions about the implementation of CROC to assist the compilation of Victorian issues. These roundtables also provided a chance to pilot a workshop around CROC which may be used in the future as part of ongoing monitoring processes.

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<sup>1</sup> Roundtable participants mentioned that the term 'CROC' should not be used given that the international standard is 'CRC' and because of negative connotations associated with the word 'CROC'. We use the term 'CROC' in this report simply to ensure consistency with the consultation documents prepared by the National Children's Youth Law Centre, Defence for Children International – Australia and national steering committee for the shadow reporting process (see below).

<sup>2</sup> National Children's and Youth Law Centre and Defence for Children International – Australia (2004) *What's Up CROC? – Background Briefing and Consultation papers*. Available at: <http://www.ncylc.org.au/croc/home.html>

<sup>3</sup> Burgess, R (1 April 2004) 'Runaway Teens', *The Age*.

## The roundtables

YACVic and Youthlaw organised two roundtables in April 2004. The purpose of the roundtables was to:

- Raise awareness about CROC so that participants, and the children and young people they work with, can think about and give feedback on how laws, policies and practice do or do not comply with CROC.
- Know more about what CROC means to participants in their work with children and young people.
- Look at useful ways of measuring and logging compliance with CROC in Victoria from the perspective of children and young people and organisations that work with children and young people.
- Enlist participants' knowledge, and that of the children and young people they work with, in highlighting the ways we do and do not comply with CROC in Victoria.

Given the constraints associated with the shadow reporting process (see limitations of the process below), the roundtables were targeted at people who work directly with children and young people in the child, youth and legal sectors and who have a broad overview of social justice issues within their respective sectors. While the process did not enable all stakeholders to be involved, we specifically targeted a range of organisations to ensure that a diversity of issues was covered.

The roundtables were targeted at two groups. The first involved representatives of the child, youth and family sectors who worked in direct service or policy advocacy roles. The second involved representatives from the legal sector. The sessions were held on different days and were slightly modified according to the group.

Twenty-three people participated in the first roundtable on April 22 2004. Participants represented a broad range of fields including state schools, community child care, residential care, courts, multicultural, homelessness, early childhood, juvenile justice and foster care.

Twenty people participated in the 'lawyer' roundtable on April 28 2004 representing Community Legal Centres, Legal Aid, private practice, legal academia, courts and legal and social rights policy.

Both groups involved state government representatives from the Department of Victorian Communities and the Department of Justice. These participants had 'observer' status and were not expected to actively engage in discussions. As a result, the issues raised in this report reflect the views of those from non-government agencies and not the government representatives.

Both roundtables were facilitated by Danny Sandor, Past President, Defence for Children – Australian Section. Danny generously donated his time to prepare for and facilitate the roundtables.

Roundtable discussions were based on a selection of the themes raised in *What's Up CROC?* Participants were provided with a range of materials prior to the sessions and were asked to bring along a 'shopping list' of issues regarding the implementation of CROC in Victoria. These lists were then further developed during the roundtable. This report, *The Victorian CROC Roundtable Report 2004*, details the issues raised in these discussions.

## **The Rights of Children and Young People Working Conference 2001**

In addition to these roundtables, we also utilised material from *The Rights of Children and Young People Working Conference* held in Victoria in 2001. The conference, organised by the Federation of Community Legal Centres in Victoria, aimed to raise awareness about CROC and to bring together key stakeholders to assess compliance with CROC. Issues were raised at this forum that are relevant to this current discussion. As the Working Conference 2001 was held within the United Nations CROC reporting period, some of the issues raised are included in *The Victorian CROC Roundtable Report 2004* to build a stronger body of knowledge. This report should be read in conjunction with the *Working Conference 2001 report* as together they canvass issues relevant to CROC in Victoria at two points in time.<sup>4</sup>

### **Limitations of this process**

There was general consensus among participants that the roundtables provided a great opportunity to raise awareness about CROC and to share experiences. Participants were keen to continue their involvement in these discussions. See Appendix One for a summary of the feedback we received from the roundtables.

While these roundtables were successful in achieving our objective as a pilot, Youthlaw and YACVic recognise that there were limitations to our process and as such *The Victorian CROC Roundtable Report 2004*, cannot be considered a comprehensive review of issues but rather a snapshot of current issues. Given time constraints associated with the shadow reporting process and the limited resources that were available to undertake a comprehensive consultation, it was not possible to conduct a state-wide consultation as was desired. YACVic and Youthlaw did not receive additional funding to undertake this process and our limited available resources had to be targeted accordingly. We recommend that governments at both federal and state levels make funding available for future reporting processes to enable states and territories to conduct more comprehensive consultations.

A significant limitation of this process is that we did not consult with children and young people directly. From previous experience, we know that consulting young people and children takes a significant amount of time and resources if it is to truly engage them in the process. As several roundtable participants noted, the consultation paper was not accessible for children or young people and there were no resources to develop appropriate materials for the consultation. We did ask roundtable participants to talk to the children or young people they worked with prior to the roundtables so that their issues could be fed into the discussion. Youthlaw and YACVic strongly recommend that a child/youth participation strategy be developed as part of future reporting processes to ensure that children and young people are more directly involved.

Another limitation is the lack of Indigenous voices as part of this process. Several Indigenous agencies were invited to participate in the roundtables. However, only one was able to attend. We contacted Indigenous representatives as part of a more informal consultation process. Several roundtable participants were able to raise specific issues as they worked with Indigenous children and young people.

Finally, while we intentionally targeted early childhood agencies to participate in the roundtables to ensure children's issues were raised, we acknowledge that the focus

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<sup>4</sup> Federation of Community Legal Centres Victoria (2001) *The Rights of Children and Young People Working Conference: forum report*. See <http://www.youthlaw.asn.au/workers/wdiscussions/croc.html>

of this paper is on youth issues. This reflects the particular field of expertise of Youthlaw and YACVic. This limitation shows the need for a more coordinated response to early childhood issues and we believe this could be undertaken by a Children and Young People's Commission which as outlined later in this paper.

To ensure that a diverse range of voices feed into the shadow report, we have also encouraged agencies to make their own submissions as part of the national process.

### **What next?**

A difficulty with the current process is that non-government agencies come together every five years or so to have input into the shadow reporting process but there is no mechanism to collect information during the course of the reporting period. As part of this roundtable process, we asked participants to consider what tools might be developed to monitor the implementation of CROC in the future. Some interesting suggestions were raised and Youthlaw and YACVic continue to explore possible options for ongoing monitoring. This is discussed later in this paper.

## Key issues

This report details the issues raised by roundtable participants. The report also draws from relevant research papers, publications and previous consultations that provide more detailed information about the issues raised. Each issue is linked to relevant CROC articles.

### Child protection

#### *Indigenous children and young people*

The consultation paper, *What's Up CROC?* briefly refers to Aboriginal and Torres Strait Islander children and young people in relation to child protection. Given the overrepresentation of Indigenous children within the Victorian care and protection system, these concerns should be raised as a specific and critical issue.

Victoria has the highest rate of Indigenous children placed in care in Australia.<sup>5</sup> Although comprising less than one per cent of Victorians aged 0-17, Indigenous children represent 8.3 per cent of the total number of clients within the child protection system, and are six times more likely to be removed from their family by Child Protection Services.<sup>6</sup> The Australian Institute of Health and Welfare (AIHW) notes that in Victoria:

- The notification substantiation rate ratio for Indigenous children to non-Indigenous children was 9.5:1
- The Care and Protection Orders rate ratio for Indigenous to non-Indigenous children was 12.4:1
- The children in Out-of-Home Care rate ratio for Indigenous children to non-Indigenous was 13.8:1.<sup>7</sup>

Roundtable participants noted that Indigenous children and young people are often placed in non-Indigenous care. There needs to be an increase in placement options to ensure that, where out-of-home placement is necessary, Indigenous children and young people are placed in Indigenous care with regard for the child's religious, cultural and linguistic background (CROC Article 20).

#### *Jurisdiction*

The Victorian *Children and Young Person's Act 1989* currently allows for notifications to be received on young people under the age of seventeen and for orders to run up to the age of eighteen. As CROC defines 'children' as under eighteen years (Article 1) participants called for the *Children and Young Person's Act 1989* to be amended to provide orders to be made up until the age of eighteen years. This also reflects recommendations from the Australian Law Reform Commission.<sup>8</sup> Policy and practice should then take into account the developmental differences between children and young people in determining appropriate protective responses.

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<sup>5</sup> Department of Human Services (2003) *Public Parenting: A review of home-based care in Victoria*, p.111.

<sup>6</sup> Victorian Council of Social Services (2003) *Plan and Deliver: access and opportunities for all Victorians: VCOSS State Budget submission 2004-5*, p.34

<sup>7</sup> Johnstone, H. (2002) *Child protection in Australia 2001-02: First National Results*, Child Welfare Series Number 31, Australian Institute of Health and Welfare, Canberra.

<sup>8</sup> Australian Law Reform Commission and Human Rights and Equal Opportunity Commission (1997) *Seen and Heard: Priority for children in the legal process*, Rec 190, p.463.

### *Permanent Care*

Concerns were raised at the roundtables regarding a perceived push to fast track the placement of children and young people into permanent care in Victoria. Recent discussions about permanency planning relate to issues around multiple out-of-home care placements and the impact of these placements on the child or young person.

While the need for stability for children and young people was a broadly accepted principle amongst roundtable participants, the specific concerns centred on the impact of permanent care on families. Some participants saw this perceived push as 'abandoning families' who are 'not monstrous just very disadvantaged and in need of support'.<sup>9</sup> This raises issues around children and young people's separation from parents and contact with parents and families after separation (CROC Article 9).

It should be noted that the fast tracking of permanent care is not an explicit government policy at present and there are a variety of views among stakeholders about this issue. The contentious nature of this issue was evident in recent consultations as part of a review of the child protection system.<sup>10</sup>

The current debate does highlight concerns about the under-resourcing of alternative care options and the need for appropriate services to be available (CROC Article 3). Participants argued that if there were more resources available to support children and families before crisis point, there might not be the need, or perceived need, for a 'fast-track' to permanent care.

### *Access*

Participants were concerned about children and young people's access to their parents and families when they are on Guardianship Orders. Under the *Children and Young Persons Act 1989 (Vic)*, a child or young person on a Guardianship Order is under the care of the Department of Human Services (DHS). How and when access occurs is an administrative decision of a government department rather than an order made by the Children's Court. Children, young people and families only have recourse to the Victorian Civil and Administrative Tribunal (VCAT) to review such government decisions.

Participants raised some problems with this process. A review by VCAT generally takes longer than seeking an order from the Children's Court. There may also be difficulties obtaining funding from Victorian Legal Aid (VLA) (more so for parents than children and young people) for review of administrative decisions. This area is complex because the Children's Court makes some decisions while others are made by the Department. While it may be preferable for the Children's Court to review DHS decisions, there are constitutional issues that might preclude this.

Participants also highlighted the need for children, young people and their families to all obtain specialist legal advice when agreeing to access provisions within court orders and when entering into voluntary agreements which are made with DHS rather than the Children's Court. Access provisions must be clear and appropriate. Inadequate DHS resources were cited as a reason for infrequent access visits, especially where access needed to be supervised. Concerns were raised where access did not occur or was ad hoc as this impacted on the long-term relationships within the family.

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<sup>9</sup> Comment from CROC Roundtable, April 22 2004.

<sup>10</sup> For more information see Department of Human Services (2004) *The report of the Panel to oversee the consultation on Protecting Children: The Child Protection Outcomes Project*, Melbourne.

### *Secure welfare*

Participants were also concerned that when children and young people are on Custody to Secretary or Guardianship Orders, DHS can make a decision to place the child or young person in secure welfare for up to twenty-one days. This is an administrative decision that does not require review by the Children's Court. This administrative decision can only be reviewed by the Victorian Civil and Administrative Tribunal which is unlikely to hear the review prior to the end of the twenty-one day period. This process is anomalous with the process for Interim Orders. Where DHS seeks secure welfare as an Interim Order, only the Children's Court can make this decision. Given that this decision effectively deprives a young person of his or her liberty, participants stated the review should be undertaken by the Children's Court because of the specialist knowledge of the Court in comparison to VCAT and the shorter period of time for a case to be heard in the Children's Court.

### *Convention on the Rights of the Child – Relevant Articles*

#### *Article 3*

- 1. In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.*
- 2. States Parties undertake to ensure the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her, and, to this end, shall take all appropriate legislative and administrative measures.*
- 3. States Parties shall ensure that the institutions, services and facilities responsible for the care or protection of children shall conform with the standards established by competent authorities, particularly in the areas of safety, health, in the number and suitability of their staff, as well as competent supervision.*

#### *Article 9*

- 1. States Parties shall ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child. Such determination may be necessary in a particular case such as one involving abuse or neglect of the child by the parents, or one where the parents are living separately and a decision must be made as to the child's place of residence.*
- 2. In any proceedings pursuant to paragraph 1 of the present article, all interested parties shall be given an opportunity to participate in the proceedings and make their views known.*
- 3. States Parties shall respect the right of the child who is separated from one or both parents to maintain personal relations and direct contact with both parents on a regular basis, except if it is contrary to the child's best interests.*

#### *Article 20*

- 1. A child temporarily or permanently deprived of his or her family environment, or in whose own best interests cannot be allowed to remain in that environment, shall be entitled to special protection and assistance provided by the State.*
- 2. States Parties shall in accordance with their national laws ensure alternative care for such a child.*
- 3. Such care could include, inter alia, foster placement, kafalah of Islamic law, adoption or if necessary placement in suitable institutions for the care of children. When considering solutions, due regard shall be paid to the desirability of continuity in a child's upbringing and to the child's ethnic, religious, cultural and linguistic background.*

*Article 37*

*States Parties shall ensure that:*

*(a) No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment.*

*(b) No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time;*

*(c) Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person and in a manner which takes into account the needs of persons of his or her age. In particular, every child deprived of liberty shall be separated from adults unless it is considered in the child's best interest not to do so and shall have the right to maintain contact with his or her family through correspondence and visits, save in exceptional circumstances;*

*(d) Every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance, as well as the right to challenge the legality of the deprivation of his or her liberty before a court or other competent, independent and impartial authority and to a prompt decision on any such action.*

### **Child sexual abuse**

Several participants raised concerns about child sexual abuse, in particular abuse perpetrated within organisations, and the alleged mishandling of abuse cases. There was concern that this issue was not being adequately addressed by either the State or Federal Governments. While participants raised specific examples, we cannot refer to these cases for legal reasons. However, since the roundtables, the Victorian Ombudsman has completed a report into certain allegations of alleged child sex abuse. While the report is confidential, Victoria Police has indicated that it will re-open four child sex abuse investigations as the Ombudsman found shortcomings in the way the cases had been handled. This issue has been the subject of several media reports.<sup>11</sup>

#### *Convention on the Rights of the Child – Relevant Articles*

*Article 19*

*1. States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.*

*2. Such protective measures should, as appropriate, include effective procedures for the establishment of social programmes to provide necessary support for the child and for those who have the care of the child, as well as for other forms of prevention and for identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatment described heretofore, and, as appropriate, for judicial involvement.*

*Article 34*

*States Parties undertake to protect the child from all forms of sexual exploitation and sexual abuse. For these purposes, States Parties shall in particular take all appropriate national, bilateral and multilateral measures to prevent:*

*(a) The inducement or coercion of a child to engage in any unlawful sexual activity;*

*(b) The exploitative use of children in prostitution or other unlawful sexual practices;*

*(c) The exploitative use of children in pornographic performances and materials.*

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<sup>11</sup> For example, Hughes, G. (8/7/04) 'Police 'failed' on child sex abuse cases', *The Age*, p.1; Hughes, G. (9/7/04) 'Sex victims would name police, MP, say groups', *The Age*, p.1.

## Asylum seeker and refugee children and young people

Roundtable participants expressed concern that current federal government policies regarding the detention and treatment of asylum seeker and refugee children, young people and their families, contravene Australian's obligations under CROC. Long periods of detention and the limited legal and social supports available to children, young people and their families in the community were overriding issues of concern.

Of particular concern is that the Federal Government has argued that children seeking asylum are not protected by CROC because CROC is not specifically mentioned in the Migration Act. However, this breaches Australia's obligations under the *Vienna Convention on the Law of Treaties*.<sup>12</sup>

There was also concern about the distinction made between lawful and unlawful asylum seekers. Those with a valid visa authorising their stay in Australia are termed lawful non-citizens and those who are without a valid visa are termed unlawful non-citizens. This can lead to discrimination against those deemed unlawful. There is also concern about the separation of families where one parent is deemed lawful and the other an unlawful non-citizen.

Extensive research has been undertaken in this area which explores these issues in more detail. We refer to leading reports including:

1. Justice for Asylum Seekers Network (2003) *Improving outcomes and reducing costs for asylum seekers*.
2. Asylum Seekers Project (2003) *Welfare issues and immigration outcomes for asylum seekers on Bridging Visa E*.
3. Catholic Commission for Justice, Development and Peace (2003) *Special report: Concerns about Ministerial discretion in migration matters*.
4. Catholic Commission for Justice, Development and Peace in conjunction with the Western Young People's Independent Network (2002) *Damaging kids: Children in Department of Immigration and Indigenous Affairs' immigration detention centres*.
5. Human Rights and Equal Opportunity Commission (2004) *A last resort? National inquiry into children in immigration detention*.
6. Catholic Commission for Justice, Development and Peace (2003) *The Australian Human Rights Register Report December 2002-November 2003*.
7. Marston, G. (2003) *Temporary protection permanent uncertainty: The experience of refugees living on Temporary Protection Visas*, Centre for Applied Social Research, Melbourne.
8. Centre for Multicultural Youth Issues (2002) *All I ask for is protection: Young people seeking asylum in Australia, Issues Paper 12*.

### *Detention*

CROC specifies that the detention of children should only be used a measure of last resort and, if necessary, must be for the shortest appropriate period of time (Article 37b). Roundtable participants were concerned that the detention of children seeking asylum is used as a first resort in Australia. Children have to remain in detention until they are granted a visa or are deported and participants expressed concern about the length of time this took – in some cases years. There was concern that detention undermines the principle that the best interests of the child is the primary consideration in all actions concerning children (CROC Article 3). Participants were

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<sup>12</sup> Article 27 of the *Vienna Convention on the Law of Treaties* states that '[A] party may not invoke the provisions of its internal law as justification for its failure to perform a treaty'.

also concerned about the offshore detention of children and young people and stressed that the Government's obligations under CROC must also extend offshore.

#### *Temporary protection visas*

Participants highlighted a number of concerns with the Federal Government's Temporary Protection Visa (TPV) policy including:

- There is no right to family reunification under the current TPV system. This means many young people, particularly unaccompanied children and young people, have no access to family support.
- Young people who are TPV holders are ineligible for Youth Allowance and a range of other social security benefits.
- It is difficult to 'roll-over' a TPV to other types of visas which offer greater stability.
- It is difficult to access state funded services such as the Education Maintenance Allowance and state funded housing and health services.

Participants indicated that these issues undermine children and young people's health and wellbeing.

#### *Bridging Visa E*

Concerns were raised about the lack of support available for asylum seekers on a Bridging Visa E (BVE). Participants thought that this undermined asylum seeker's transition to life in the community. Asylum seekers on a BVE have:

- No right to work.
- No right to Medicare.
- No right to the Asylum Seeker Assistance Scheme.

A working paper by the Asylum Seeker Project, Hotham Mission, notes that 'a wide range of serious welfare concerns arise for these groups left in the community with no right to work, healthcare or welfare-based support. This includes the risk to homelessness, the impact on health and overall wellbeing, particularly for child asylum seekers'.<sup>13</sup> Welfare Issues for asylum seekers on a BVE are covered in greater detail in a research report by the Asylum Seekers Project.<sup>14</sup>

#### *Unaccompanied children and young people*

There are increasing numbers of unaccompanied children and young people under eighteen years of age (also called unaccompanied minors) arriving in Australia and claiming asylum in their own right. Participants indicated that these children and young people require special attention given they do not have the protection or support of parents or guardians. Participants were concerned that there are no age sensitive guidelines for unaccompanied children and young people that recognise developmental differences between children, young people and adults.

Participants also expressed concern about the Attorney General's dual roles. The Minister is the legal guardian of unaccompanied children and young people and must act in their best interests. However, the Minister also makes decisions regarding their visa applications and may force their removal from Australia. Participants saw this as a conflict of interest. That is, the person who is responsible

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<sup>13</sup> Asylum Seeker Project Hotham Mission (May 2004) *Minimum Standards of Care for Asylum Seekers in the Community: Draft Working Paper*.

<sup>14</sup> Asylum Seekers Project (2003) *Welfare issues and immigration outcomes for asylum seekers on Bridging Visa E*.

for ensuring that the best interests of the child are met is also responsible for administering asylum policy. There is no independent guardianship arrangement in place.

*Minister for Immigration and Multicultural and Indigenous Affairs v B and B*

The roundtables coincided with a judgement by the High Court in the case of the Minister for Immigration and Multicultural and Indigenous Affairs v B and B.<sup>15</sup>

Participants were concerned about the impact of this decision on the children involved in the case and for all children in immigration detention.

Previously, the Full Court of the Family Court held that the Family Court, in exercising its welfare jurisdiction, may make orders for the protection of children of marriages, including those in immigration detention, where the Court has the Constitutional power to do so. The majority of the Full Court (Per Nicholson CJ and O’Ryan J, Ellis J dissenting) also found that CROC had been incorporated into the *Family Law Act 1975* by the *Family Law Reform Act 1995* and thus the court had jurisdiction to make orders in relation to all children in Australia, including children in immigration detention. The Minister for Immigration and Multicultural and Indigenous Affairs sought to review all aspects of the Full Court decision in the High Court.

The High Court unanimously found in favour of the Minister for Immigration and Multicultural and Indigenous Affairs.<sup>16</sup> The High Court decided that the Family Court of Australia did not have the jurisdiction to order the release of children from an immigration detention centre or to make orders concerning the general welfare of children held in immigration detention. The Court found that CROC had not been incorporated into the *Family Law Act* although the Act was based on principles which are consistent with CROC.

*Convention on the Rights of the Child – Relevant Articles*

*Article 3*

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*Article 9*

*1. States Parties shall ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child.*

*Article 19*

*1. States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.*

*Article 22*

*1. States Parties shall take appropriate measures to ensure that a child who is seeking refugee status or who is considered a refugee in accordance with applicable international or domestic law and procedures shall, whether unaccompanied or accompanied by his or her parents or by any other person, receive appropriate*

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<sup>15</sup> B (Infants) and B (Intervener) and the Minister for Immigration and Multicultural and Indigenous Affairs SA82 of 2002. Coram: Nicholson CJ, Ellis and O’Ryan JJ.

<sup>16</sup> Minister for Immigration and Multicultural and Indigenous Affairs v B [2004] HCA 20 (29 April 2004), High Court of Australia, Gleeson CJ, McHugh, Gummow, Kirby, Hayne, Callinan and Heydon JJ.

*protection and humanitarian assistance in the enjoyment of applicable rights set forth in the present Convention and in other international human rights or humanitarian instruments to which the said States are Parties.*

#### *Article 37*

*States Parties shall ensure that:*

*(a) No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment.*

*(b) No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time;*

*(c) Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person and in a manner which takes into account the needs of persons of his or her age. In particular, every child deprived of liberty shall be separated from adults unless it is considered in the child's best interest not to do so and shall have the right to maintain contact with his or her family through correspondence and visits, save in exceptional circumstances;*

*(d) Every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance, as well as the right to challenge the legality of the deprivation of his or her liberty before a court or other competent, independent and impartial authority and to a prompt decision on any such action.*

#### *Article 39*

*States Parties shall take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of: any form of neglect, exploitation, or abuse; torture or any other form of cruel, inhuman or degrading treatment or punishment; or armed conflicts. Such recovery and reintegration shall take place in an environment which fosters the health, self-respect and dignity of the child.*

## **Juvenile justice**

### *Age jurisdiction*

The *Children and Young Persons Act 1989 (Vic)* defines a child as a person who is under the age of seventeen years at the time of offence. As such, cases involving seventeen year olds are not dealt with in the Children's Court but rather the adult court system. This was a key concern for participants. The jurisdiction of the Children's Court needs to be raised to the age of eighteen to conform with CROC.

The Victorian Government committed to lifting the age in 2000 but has not yet done so. The recent Justice Statement released by the State Attorney General, reiterates the Government's intention to raise the criminal jurisdictional limit of the Children's Court from seventeen to eighteen years in the Spring 2004 parliamentary session.<sup>17</sup>

Participants also commented positively on the highly regarded dual track system. Victoria operates a dual track option for young people in the criminal justice system. This gives courts the discretion to sentence young offenders aged between seventeen to twenty-one to either a juvenile justice facility or an adult prison (or non-custodial options as appropriate). Decisions are made taking into consideration the offender's prospects of rehabilitation and whether they are particularly impressionable, immature or likely to be subjected to undesirable influences in adult prison.<sup>18</sup>

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<sup>17</sup> Department of Justice (2004), *New directions for the Victorian justice system 2004 – 2014*, Attorney-General's Justice Statement.

<sup>18</sup> Sentencing Act 1991, Section 32.

### *Young people on remand*

A key area of concern related to the current age jurisdiction is that young people aged seventeen and over are currently held in adult remand facilities as the dual track option is only available at the time of sentencing. There is concern that vulnerable young people are being exposed to the adult prison system before any finding of guilt by a court. This is clearly contrary to CROC, which states that state parties should establish laws, procedures, authorities and institutions for children alleged as, accused of, or recognized as having infringed penal law (CROC Article 40).

An additional problem is the lack of specific youth units within adult facilities. There is no specific youth unit for young women nor is there a unit at the Melbourne Assessment Prison. A Catholic Social Services Victoria working paper notes that 'even where dedicated youth units are available within adult prisons they still fail to provide adequate protection or opportunity for the most vulnerable young people because:

1. The age range in these youth units is seventeen to twenty-five while in Youth Training Centres the upper age limit is twenty-one. Those aged seventeen years as well as the more vulnerable and immature of those aged eighteen and nineteen years, struggle enormously in a young person's unit situated in an adult prison. They are invariably damaged by the experience.
2. The emphasis in the Corrections system is containment and management of prisoners. The Juvenile Justice system on the other hand aims to rehabilitate and form. It works within a human services framework with greater access to a wide array of integrated services.
3. There is no guarantee within the prison system that the young person will be placed in the youth unit'.<sup>19</sup>

There is a need for secure juvenile justice remand facilities appropriate for both young men and women up to the age of twenty-one. Although this is outside the age of CROC, this age is in line with Victoria's dual track system and reflects the rehabilitative principles underpinning CROC. The Victorian State Government is currently building a new remand centre that includes a specific youth unit for young men. It is hoped that that the centre will address some of the current concerns.

### *Indigenous children and young people*

Indigenous children and young people are over represented in the juvenile justice system, particularly in rural and regional areas. Research suggests that in Victoria indigenous young people are around fourteen times more likely to be detained in juvenile justice facilities than non-Indigenous young people.<sup>20</sup>

In addition, there is concern that Indigenous young people in Victoria do not receive the benefit of diversionary programs such as a police caution to the same extent as non-Indigenous young people.<sup>21</sup> From July 2000 to June 2001, Indigenous young people received fewer cautions in all crime categories (except rape) than non-Indigenous young people. Victorian police guidelines advise that the offender should have no prior criminal history in order to receive a caution. It has been suggested that the gap between indigenous and non-indigenous rate of cautioning is partially

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<sup>19</sup> Catholic Social Services Victoria (2004) *The Development of a juvenile justice facility for vulnerable young people on demand working paper*.

<sup>20</sup> Bareja, M. & Charlton, K. (2003) *Statistics on Juvenile Detention in Australia: 1981-2002*, Australian Institute of Criminology Technical and Background Paper Series No 5.

<sup>21</sup> Victorian Aboriginal Legal Service (2004) *Police Cautioning of Indigenous Juvenile Offenders in Victoria*, Working document.

attributable to indigenous young people being more likely to have prior contact with police.<sup>22</sup>

#### *Convention on the Rights of the Child – Relevant Articles*

##### *Article 1*

*For the purposes of the present Convention, a child means every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier.*

##### *Article 37*

*States Parties shall ensure that:*

*(b) No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time;*  
*(c) Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person and in a manner which takes into account the needs of persons of his or her age. In particular, every child deprived of liberty shall be separated from adults unless it is considered in the child's best interest not to do so and shall have the right to maintain contact with his or her family through correspondence and visits, save in exceptional circumstances;*

##### *Article 40*

*1. States Parties recognize the right of every child alleged as, accused of, or recognized as having infringed the penal law to be treated in a manner consistent with the promotion of the child's sense of dignity and worth, which reinforces the child's respect for the human rights and fundamental freedoms of others and which takes into account the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society. their well-being and proportionate both to their circumstances and the offence.*

#### **'Anti-Terrorism' laws**

Participants raised concerns that the current 'terror laws' including the *Anti-Terrorism Bill 2004* apply to children and young people. The proposed laws allow for extensions of time for the questioning of suspects. This relatively new area of law is complex, and applies different rules to young people under sixteen and those aged sixteen to seventeen years old. A young person under sixteen years of age cannot be detained or questioned by ASIO. However, participants noted that given the current confusion and limited knowledge in the community about these laws, young people in this age group are likely to be detained.

The current laws do allow for the detention, questioning and search of young people aged sixteen to seventeen years old. While a parent or some other person must be present to represent the young person's interests, such a person cannot be 'disruptive' or risks being asked to leave and another representative called. There are concerns about search powers, which extend to strip searches for sixteen to seventeen year olds. Participants opposed these 'anti-terror' laws applying to children and young people and expressed concern about the impact of these laws on the children of adults detained under these laws.<sup>23</sup>

Participants were also concerned that proposed laws allow for 'appropriate' legal representation for those detained and questioned under the laws. It is unclear who a

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<sup>22</sup> Ibid

<sup>23</sup> Australian Muslim Civil Rights Advocacy Network (2004) *Terrorism Laws: ASIO, the Police and You*.

proposed 'appropriate legal representative' might be, and whether it will be independent, timely and appropriate for children and young people.

The 'anti-terror laws' are subject to change and represent a hotly debated and fluid body of law. These changes require the ongoing scrutiny by non-government organisations to ensure human rights are upheld.

#### *Convention on the Rights of the Child – Relevant Articles*

##### *Article 37*

*States Parties shall ensure that:*

*(b) No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time.*

## **Housing**

Roundtable participants indicated that housing/homelessness should be considered a separate theme as part of the reporting process.

### *Homelessness*

Participants were concerned at the high level of youth homelessness in Victoria. Young people aged between twelve and twenty-five years of age are the single largest group assisted by the homelessness service system in Victoria. In 2001-02, the Supported Accommodation Assistance Program (SAAP) provided support to around 11,100 young people under the age of twenty-five in Victoria. This is 38% of the total clients accessing the homelessness service system. Among the population of young Victorians in 2002-2:

- One in 1,110 of those aged 12-13 used homelessness services.
- One in 270 of those aged 14-15 used homelessness services.
- One in 61 of those aged 16-17 used homelessness services.
- One in 48 of those aged 18-19 used homelessness services.<sup>24</sup>

The Government has published a Victorian Youth Homelessness Action Plan which considers ways to address some of these issues.<sup>25</sup> This is a positive step and the implementation of this plan will be examined over the coming years to see what impact it has on youth homelessness in Victoria.

### *Children as clients*

Although children represent a high proportion of SAAP clients, children under sixteen are not recognised as clients in their own right.<sup>26</sup> The family unit is considered the client regardless of the number of children. Even though a number of agencies do have Children's Resource Workers, SAAP services were still said to lack a child focus, overlooking the specific needs of children in their response to families as a whole. Children in the homelessness system have complex needs that require appropriate services and support.

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<sup>24</sup> Office of Housing, Department of Human Services (2004) *Youth Homelessness Action Plan first stage report*, Melbourne.

<sup>25</sup> Ibid.

<sup>26</sup> See Australian Institute of Health and Welfare (2004) *Children accompanying homeless clients 2002-03: A report from the SAAP National Data Collection*, Canberra.

### *Refugees and Asylum seekers*

Asylum seekers and refugees have little access to support around housing options particularly those on TPV's and Bridging Visa E.

#### *Convention on the Rights of the Child – Relevant Articles*

##### *Article 27*

- 1. States Parties recognize the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development.*
- 2. The parent(s) or others responsible for the child have the primary responsibility to secure, within their abilities and financial capacities, the conditions of living necessary for the child's development.*
- 3. States Parties, in accordance with national conditions and within their means, shall take appropriate measures to assist parents and others responsible for the child to implement this right and shall in case of need provide material assistance and support programmes, particularly with regard to nutrition, clothing and housing.*

### **Children and young people with disabilities**

Children and young people with disabilities have a wide range of diverse and sometimes complex needs and may face barriers due to the intersectional discrimination experienced through their age and impairment. Participants identified a number of key areas where children and young people with disabilities face disadvantage and discrimination within the community.

While advocates and workers with children and young people with disabilities did attend the roundtables and were also consulted following the roundtables, we acknowledge that the issues raised in this section are not a comprehensive account of all of the issues faced by children and young people with disabilities. Appropriate resources need to be made available to ensure that children and young people with disabilities, their families and carers, have the opportunity to participate in telling their stories about their experience of CROC compliance in Victoria.

#### *Funding shortfalls*

There were grave concerns about the difficulties facing children and young people with disabilities, their families and carers, when trying to access funds for necessary supports, services and equipment. Difficulties include having to negotiate the Government grants maze, funding shortfalls in particular geographic areas or in relation to particular areas of need and problems accessing out of hours care.

#### *Access to education*

One of the highest priority areas for children and young people with disabilities is access to education and training from early childhood to vocational or tertiary levels. Participants identified current problems with the accessibility of curriculum and educational institutions and levels of support and resources available to students. Of particular note were the difficulties faced by children and young people in the transition from one stage of the education system to the next, such as primary to secondary school, and also the transition from education to employment.

#### *Institutional care*

Concerns were also raised about the availability and appropriateness of institutional care for children and young people. Young people with acquired brain injuries who live in nursing homes was raised as a key concern.

### *Care and protection*

Participants were concerned about the care and protection available to seventeen year-old young people with disabilities. This group of young people fall between the jurisdiction of the *Children and Young Persons Act 1989 (Vic)* and the *Guardianship Act 1986 (Vic)*. The former only allows the Children's Court to make an order for a young person under seventeen years and the latter only has jurisdiction for adults eighteen years and over. Participants called for the child protection jurisdiction of the Children's Court to be raised to eighteen years old to address this gap.

### *Mental health*

Young people with mental illnesses were identified as experiencing high levels of discrimination and stigmatisation within the community.

### *Non Therapeutic Sterilisation*

The Standing Committee of Attorney's General Working Group's (SCAG) recently released an issues paper, *The Non Therapeutic Sterilisation Of Minors With A Decision-Making Disability*, as part of a review of legislation and practice around the non-therapeutic sterilisation of children and young people with disabilities, particularly girls and young women with cognitive impairments. Youthlaw, YACVic and the Disability Discrimination Legal Service, prepared a joint submission which highlighted the need for the human rights of the children and young people to be reflected and protected in any resulting legislation and practice.<sup>27</sup>

### *Advocacy*

A recent positive initiative of the Department of Human Services is a proposal to fund a non-government organisation to provide individual and systemic advocacy services to young people with disabilities in relation to the legal issues. This process is still underway.

### *Convention on the Rights of the Child – Relevant Articles*

#### *Article 2*

*States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.*

#### *Article 3*

*1. In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.*

#### *Article 6*

*States Parties shall ensure to the maximum extent possible the survival and development of the child.*

#### *Article 12*

*1. States Parties shall assure to the child who is capable of forming his or her own views the right 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.*

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<sup>27</sup> Youthlaw, Youth Affairs Council of Victoria and Disability Discrimination Legal Service (2004) *Protecting Potential Protecting the Reproductive Rights of Children with Cognitive Impairment – Submission in response to the Standing Committee of Attorney's General Issues Paper.*

#### Article 23

1. States Parties recognize that a mentally or physically disabled child should enjoy a full and decent life, in conditions which ensure dignity, promote self-reliance and facilitate the child's active participation in the community.
2. States Parties recognize the right of the disabled child to special care and shall encourage and ensure the extension, subject to available resources, to the eligible child and those responsible for his or her care, of assistance for which application is made and which is appropriate to the child's condition and to the circumstances of the parents or others caring for the child.
3. Recognizing the special needs of a disabled child, assistance extended in accordance with paragraph 2 of the present article shall be provided free of charge, whenever possible, taking into account the financial resources of the parents or others caring for the child and shall be designed to ensure that the disabled child has effective access to and receives education, training, health care services, rehabilitation services, preparation for employment and recreation opportunities in a manner conducive to the child's achieving the fullest possible social integration and individual development, including his or her cultural and spiritual development.

#### Article 24

1. States Parties recognize the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health. States Parties shall strive to ensure that no child is deprived of his or her right of access to such health care services.

#### Article 28

1. States Parties recognize the right of the child to education and with a view to achieving this right progressively and on the basis of equal opportunity, they shall, in particular:
  - (a) Make primary education compulsory and available free to all;
  - (b) Encourage the development of different forms of secondary education, including general and vocational education, make them available and accessible to every child and take appropriate measures such as the introduction of free education and offering financial assistance in case of need;
  - (c) Make higher education accessible to all on the basis of capacity by every appropriate means;
  - (d) Make educational and vocational information and guidance available and accessible to all children.

## Public space

Young people are significant users of public space. It is accessible, it is a place to hang out and, importantly, it is free. For this reason, young people are highly visible in public space and their presence can attract criticism, suspicion or fear when groups of young people are perceived as troublemakers. This is particularly true of privately owned or operated 'public space' such as shopping centres where young people may not have the financial means to participate economically. Participants noted that young people can be targeted by authorities such as the police, transit police, public transport officers and security guards, when using public space, even if they have committed no offence. A recent survey of young people's attitudes towards public transport found that over two thirds (of 296 respondents) felt that young people are not treated fairly by ticket inspectors because of their age.<sup>28</sup> Targeting can lead to their exclusion from the space when they are 'moved on' which contravenes the right to freedom of association and peaceful assembly (Article 15).

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<sup>28</sup> Youth Affairs Council of Victoria and Inner City Regional Youth Committee (2004) *Young People and Public Transport in the Inner City*, YACVic.

### *Convention on the Rights of the Child – Relevant Articles*

#### *Article 15*

- 1. States Parties recognize the rights of the child to freedom of association and to freedom of peaceful assembly.*
- 2. No restrictions may be placed on the exercise of these rights other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order, the protection of public health or morals or the protection of the rights and freedoms of others.*

#### *Article 31*

- 1. States Parties recognize the right of the child to rest and leisure, to engage in play and recreational activities appropriate to the age of the child and to participate freely in cultural life and the arts.*
- 2. States Parties shall respect and promote the right of the child to participate fully in cultural and artistic life and shall encourage the provision of appropriate and equal opportunities for cultural, artistic, recreational and leisure activity.*

### **Bail conditions and exclusion zones**

Issues were raised by participants about the imposition of exclusion zones as special conditions of bail, which exclude young people from the Melbourne CBD or other specific locations. Police can release people on bail, after they have formally interviewed a person they suspect has committed a criminal offence. Police can grant bail under the *Bail Act*. This agreement is then registered with the Court in an administrative, not a judicial, process. Police might ask that the accused agree to abide by additional bail conditions, called Special Conditions, which may include exclusions zones. Participants believed that such exclusion zones were being unfairly and regularly imposed on suspects, particularly those accused of drug related offences, denying access to appropriate health services, friends, families and disproportionately restricting freedom of movement and association. There are no police policy or standing orders regarding how the police decide when, how, what and to whom Special Conditions will be applied.

### *Convention on the Rights of the Child – Relevant Articles*

#### *Article 15*

- 1. States Parties recognize the rights of the child to freedom of association and to freedom of peaceful assembly.*

### **Search and seizure powers**

Participants raised concerns about two recent legislative amendments which expand police search powers as they are likely to have a disproportionate impact on young people.

#### *Volatile Substances*

*The Drugs, Poisons and Controlled Substances (Volatile Substances) Act 2003 (Vic)* came into effect in July 2004. The new laws do not make it an offence to possess or inhale volatile substances but police have the power to search, seize (implements used when inhaling volatile substances), apprehend and detain young people under the age of eighteen years who are inhaling or are likely to inhale a volatile substance. This is a significant departure from precedents set by other seizure and confiscation powers. Police do not have any other search powers unless a person is under arrest or suspected of being involved in a limited range of illegal activities. The stated intention of the legislation is 'to allow for an integrated police and health response, that takes into consideration the best interests of the young person'. However, there

are concerns about the police capacity to address complex health and welfare issues using a best interests model. There are also concerns that young people may be inadvertently caught up in the criminal justice system if a search by or struggle with police leads to subsequent charges.

A positive aspect of the new legislation is that the new laws have a 'sunset' clause. This means that the legislation will be monitored and reviewed for two years after which time the legislation will need to pass through parliament again to remain in effect, unless the sunset clause itself is repealed. In addition, the legislation requires that police must make a record of every search, seizure and/or detention conducted and provide a copy of the record of the search, seizure or detention to the young person if the young person requests a copy, within twelve months of the search. This is a welcome safeguard attached to the new legislation. However, there are concerns that young people will be unaware that they can ask for this record, and how the impact of this legislation on young people will be determined.

#### *Search for weapons*

Section ten of the *Control of Weapons and Firearms Acts (Search Powers) Act 2003* allows for police to search without warrant for prohibited weapons they have 'reasonable grounds for suspecting that a person is carrying or has in his or her possession in a public place or a non-government school a prohibited weapon, a controlled weapon or a dangerous article'. Of particular concern to participants is that Sub-section 1a states that 'the fact that a person is present in a location with a high incidence of violent crime may be taken into account in determining whether there are reasonable grounds for suspecting that the person is carrying or has in his or her possession a prohibited weapon, a controlled weapon or a dangerous article'.

Participants did not believe that it is reasonable to suspect a person is carrying a weapon on the basis they are in a 'location with a high incidence of violent crime'. This breaches the right to freedom of movement and undermines the presumption of innocent until proven guilty.

#### *Convention on the Rights of the Child – Relevant Articles*

##### *Article 3*

- 1. In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.*
- 2. States Parties undertake to ensure the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her, and, to this end, shall take all appropriate legislative and administrative measures.*
- 3. States Parties shall ensure that the institutions, services and facilities responsible for the care or protection of children shall conform with the standards established by competent authorities, particularly in the areas of safety, health, in the number and suitability of their staff, as well as competent supervision.*

##### *Article 15*

*States Parties recognize the rights of the child to freedom of association and to freedom of peaceful assembly.*

##### *Article 37*

*States Parties shall ensure that:*

- (a) No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age;*

*(b) No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time;*  
*(c) Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person and in a manner which takes into account the needs of persons of his or her age. In particular, every child deprived of liberty shall be separated from adults unless it is considered in the child's best interest not to do so and shall have the right to maintain contact with his or her family through correspondence and visits, save in exceptional circumstances;*  
*(d) Every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance, as well as the right to challenge the legality of the deprivation of his or her liberty before a court or other competent, independent and impartial authority and to a prompt decision on any such action.*

## **Child care**

### *Privatisation*

There were concerns raised about the privatisation of child care. One participant suggested that there has been a 'surreptitious' privatisation of child care by government which has resulted in an increase in costs and a decrease in quality of care to children. Parents also report that that it is still difficult to secure places for their children.

### *Out-of-school hours care*

A comment was made that there should be greater regulation of out-of-school hours care.

### *Convention on the Rights of the Child – Relevant Articles*

#### *Article 3(3)*

*3(3). States Parties shall ensure that the institutions, services and facilities responsible for the care or protection of children shall conform with the standards established by competent authorities, particularly in the areas of safety, health, in the number and suitability of their staff, as well as competent supervision.*

#### *Article 18(3)*

*18(3). States Parties shall take all appropriate measures to ensure that children of working parents have the right to benefit from child-care services and facilities for which they are eligible.*

## **Participation in decision making**

Participation involves children and young people being active in decision-making processes that affect them. Their participation should be underpinned by some key principles:

- Empowerment: children and young people developing power and control over their lives through their participation.
- Purposeful engagement: children and young people taking on valued roles, addressing issues that are relevant to them, and influencing real outcomes.
- Inclusiveness: ensuring that *all* children and young people are able to participate.

Many participants felt challenged by how they could promote meaningful child and youth participation within their own organisations and in the wider community. There was concern that participation is often quite token and the child or young person's voice is not really respected or taken into account. There was particular concern

about the level of resources available to organisations to support children's and young people's participation. Often funding levels do not provide for extra time and resources to support participation.

A positive step has been taken in Victoria with the Department of Victorian Communities working in partnership with YACVic to produce handbooks around consulting with young people, young people on boards and committees and young people's participation in their communities. The aim of these resources is to promote youth participation more broadly.<sup>29</sup>

### *Best interests*

Some workers were challenged by working within the best interests model in the Family Court of Australia and in ascertaining the authentic wishes of children and young people within this system. Within the Family Court, children have a child representative. This lawyer is not bound to act on what the child wants (direct instructions) but rather tells the Court what is in the child's best interests.

In comparison, the *Children and Young Person's Act 1989 (Vic)* was seen as more progressive in that it allows for direct instructions from children and young people and the court then makes a decision based on the best interests of the child.

### *Convention on the Rights of the Child – Relevant Articles*

*Article 12 (1) States Parties shall assure to the child who is capable of forming his or her own views the right 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.*

*Article 13 (1) The child shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of the child's choice.*

## **Employment**

Concerns were raised by participants about the safety, welfare and protection of young workers particularly those under the age of fifteen years. Following the roundtables, the *Child Employment Act 2003 (Vic)* came into effect. According to a JobWatch report, the Act strengthens protections relating to the employment of children under the age of fifteen years. These protections include police checks for employers and only allowing children to perform light work that is not harmful to a child's health, safety, moral or material welfare.<sup>30</sup>

### *Youth wages*

Young people often earn less than adults for the same work. The *Equal Opportunity Act 1995 (Vic)* states that 'an employer may pay an employee who is under the age of twenty-one years according to the employee's age'. There is concern that this can result in the economic exploitation of young people as they do not receive equal pay for equal work.

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<sup>29</sup> Youth Affairs Council of Victoria and Department of Victorian Communities (2004) *Consulting young people about their ideas and opinions, Young people on boards and committees and Creating change in your community*, unpublished – due for release October 2004.

<sup>30</sup> Jobwatch (June 2004) 'The Child Employment Act 2003: a welcome and important new development', *Jobwatching*.

### *Minimum age of employment*

The *Child Employment Act 2003 (Vic)* sets a minimum age of employment at thirteen. There is no minimum age for the employment of children in a family business or in the entertainment industry and there is a minimum age of eleven for children delivering newspapers and advertising material and making deliveries for a registered pharmacist. This is seen as a positive move and in line with United Nations standards regarding a minimum age of employment.

### *Minimum hours of work*

Hours of work are regulated by the *Child Employment Act 2003 (Vic)*. Children can be employed for a maximum of three hours per day and twelve hours per week during school term and a maximum of six hours per day and thirty hours per week during school holidays. These hours are inclusive of rest breaks. Children can only be employed between the hours of 6.00am and 9.00pm. Children must receive a minimum rest break of thirty minutes for every three hours worked and at least twelve hours break between finishing one shift and commencing the next. Employment during school hours on a school day without an exemption is prohibited. These provisions are seen as an important means of protecting children's health, safety and wellbeing and their right to education.

### *Workplace violence and harassment*

Violence and harassment of young people in the workplace continues to be a serious concern, particularly when young people are not fully aware of their rights and have limited bargaining powers. A recent report by JobWatch examines the experiences of young workers in the fast food industry. The report details problems in relation to occupational health and safety, workplace violence and bullying, and non-payment of legal entitlements.<sup>31</sup>

### *Convention on the Rights of the Child – Relevant Articles*

#### *Article 32*

- 1. States Parties recognize the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development.*
- 2. States Parties shall take legislative, administrative, social and educational measures to ensure the implementation of the present article. States Parties shall in particular: (a) Provide for a minimum age or minimum ages for admission to employment.*

#### *Article 19*

- 1. States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.*

## **Income support**

Participants voiced concerns about young people not having access to an adequate income and the negative consequences that stem from this. Research indicates that young people face a much higher risk of poverty than older people due to high rates

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<sup>31</sup> JobWatch (2004) *Fast Food Industry: A Research Study of the experiences and problems of young workers*.

of youth unemployment and relatively low rates of social security payments.<sup>32</sup> The adequacy of income support payments directly affects young people's ability to participate in the economic and social life of the community. Circumstances in which young people need money do not differ greatly from circumstances in which older people need money. They have the same basic needs: rent, board, bond, utility costs, food, furniture, clothing, health and entertainment. Yet the current income security system discriminates on the basis of age and the rates of payments for young people differ significantly from other payments. Age related income is based on the assumption that the younger the person is, the less income they need. However, the essential costs of life are not age related. Young people do not receive discounts on food, rent, bills, petrol etc. Therefore anomalies in payment rates cannot be justified.

#### *Convention on the Rights of the Child – Relevant Articles*

##### *Article 26*

- 1. States Parties shall recognize for every child the right to benefit from social security, including social insurance and shall take the necessary measures to achieve the full realization of this right in accordance with their national law.*
- 2. The benefits should, where appropriate, be granted, taking into account the resources and the circumstances of the child and persons having responsibility for the maintenance of the child, as well as any other consideration relevant to an application for benefits made by or on behalf of the child.*

##### *Article 27*

- 1. States Parties recognize the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development.*

### **Access to services**

Participants expressed concerns about children and young people's access to generalist support services. Current systems often force young people to present with 'problems' in order to access a service. For example, a young person might have to admit a mental health issue in order to access a shower or food or use a washing machine provided by a service. Participants thought that this pathologises the young people involved.

There were identified gaps in access to support services and treatment programs in rural and regional areas, especially in mental health support for young people. A recent public forum in Melbourne organised by a coalition of agencies, attracted over 600 young people, families and workers which gives some indication of the size of this problem and the level of anxiety about it in the community.<sup>33</sup>

The access of Indigenous children and young people to appropriate and timely social support services was also of concern, especially given the current Federal Government's dismantling of the Aboriginal and Torres Strait Islander Commission (ATSIC) and the mooted 'mainstreaming' of Indigenous services.

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<sup>32</sup> Australian Council of Social Services (2003) *The bare necessities: poverty and deprivation in Australia today*.

<sup>33</sup> The forum, *Call to Action: Youth Mental Health*, was held on June 29 2004 at Melbourne Town Hall. Supporting organisations included Orygen Youth Health, Mental Health Council of Australia, Beyondblue, Sane Australia, Our Community, VicHealth, Centre for Adolescent Health, Mental Illness Fellowship Victoria, YACVic and the Alcohol and Other Drugs Council of Australia.

## *Medicare*

There is concern about a Federal Government proposal to raise the age at which young people can access a Medicare card, without parental consent, from fifteen to sixteen years of age. There is concern that this proposal will undermine young people's access to accessible, affordable and timely health services. While most young people in Australia are healthy, many will experience health issues at some stage simply because of the developmental nature of adolescence. It is vital that young people are encouraged and supported to access health services in their own right to ensure that these issues are addressed in a timely manner.

### *Convention on the Rights of the Child – Relevant Articles*

#### *Article 24*

- 1. States Parties recognize the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health. States Parties shall strive to ensure that no child is deprived of his or her right of access to such health care services.*
- 2. States Parties shall pursue full implementation of this right and, in particular, shall take appropriate measures:  
(b) To ensure the provision of necessary medical assistance and health care to all children with emphasis on the development of primary health care.*

#### *Article 27*

- 1. States Parties recognize the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development.*
- 3. States Parties, in accordance with national conditions and within their means, shall take appropriate measures to assist parents and others responsible for the child to implement this right and shall in case of need provide material assistance and support programmes, particularly with regard to nutrition, clothing and housing.*

## **Children and Young People's Commission**

Roundtable participants overwhelmingly supported the call for a Victorian Children and Young People's Commission. One participant suggested that this was the 'key issue to hammer' because of its relevance to all the issues raised and all CROC articles. A Commission would also help monitor the implementation of CROC in government, non-government and private sectors.

In 2001, YACVic published *Are You Listening to Us? The case for a Victorian Children and Young people's Commission*. Six principles are fundamental to this model.

- Independence – accountable to Parliament in order to ensure objectivity and candor.
- Statutory powers – established by legislation which gives the Commission the necessary authority to carry out its functions.
- Focus on children and young people up to the age of eighteen – ensure the rights and interests of children and young people are not overlooked in favour of those of adults.
- Adequate resources – commensurate with the responsibilities of the Commission and determined by Parliament.
- Broad perspective – broad jurisdiction that takes into account all levels of government, non-government and commercial organisations which impact on children and young people.
- Accessibility – accessible to all children and young people and recognises the diversity of children and young people.

The Commission would have the unique responsibility for protecting and promoting the rights of children and young people at a state level. It would also have a broad overview of the issues affecting children and young people in government, non-government and commercial sectors.

The role of the Commission would complement and add to the work of existing bodies in Victoria such as the Equal Opportunity Commission and the Ombudsman. The Victorian Government has stated that it does not consider it is appropriate to establish a Children and Young People's Commission as there are other bodies at state and federal levels that carry out many of the proposed functions of a Commission. However, these bodies do not have an exclusive focus on issues affecting children and young people and are limited in their ability to address issues such as the rights of children and young people. An Office that is dedicated to the interests and rights of children and young people would be better able to advocate on their behalf and improve their status within the community.

A Commission would help the Government and community organisations to better implement CROC in practice. For example, the UN Committee on the Rights of the Child has stated in Concluding Observations that CROC is not generally known to the public in Australia. This was reiterated by roundtable participants who noted that there is not a good awareness of CROC among agencies or among children and young people. A Commission would take a lead role in raising awareness and understanding of CROC and in monitoring compliance with CROC (CROC Article 42). Similarly, a Commission would take the lead in engaging children and young people in planning, policy and program development, research, evaluation and other decision making processes (CROC Article 12).

A Coalition of organisations that support the call for a Commission was established by YACVic, Youthlaw, the Victorian Council of Social Services, the Centre for Excellence in Child and Family Welfare, Defence for Children International – Australia and the Law Institute Victoria in 2003. To date 71 organisations have joined or expressed support for this Coalition.<sup>34</sup>

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<sup>34</sup> See [www.yacvic.org.au/coalition](http://www.yacvic.org.au/coalition)

## Ongoing Monitoring of Compliance with CROC

As noted earlier, there is currently no ongoing mechanism to collect information about Australia's compliance with CROC throughout the reporting period. As part of this roundtable process, we asked participants whether compliance with CROC should be monitored in a more systematic and ongoing way. The general consensus was that there is a need to log compliance and that this should take into account government, non-government and private sectors.

Participants were asked to consider what tools might be developed to monitor the implementation of CROC in the future. Suggestions included:

- Setting up a website where agencies, children and young people can log compliance and breaches with CROC.
- Developing a survey for children and young people about their rights and whether these rights are respected within the community.
- Involving institutions in annual CROC audits.
- Approaching Kids Helpline to evaluate the data they collect in a CROC framework.
- Logging issues from a theme-based perspective - looking at a particular theme at different points in time within the monitoring period.

The consensus was that the role of ongoing monitoring was the responsibility of peak bodies in the absence of a Children and Young People's Commission at this stage.

Participants were also asked how children and young people could be involved in the monitoring process. Suggestions included:

- Developing more accessible materials for consultation with and involvement of children and young people such as a comic strip.
- Involving a cross-section of the children and young people, reflecting their diversity, and taking into account barriers such as access to technology when considering equitable access.
- Incorporating human rights principles into education curriculum at primary and secondary levels.
- Creating a 'CROC Idol' - a well-known person to raise awareness about CROC.
- Incorporating CROC issues into the mainstream media. For example, through popular youth oriented television series.

Participants noted that all suggestions require dedicated time and resources and that there is a need for longer term planning and resources to assist agencies to undertake these responsibilities.

Youthlaw and YACVic continue to explore possible options for ongoing monitoring, and the resources needed for doing so. Many participants offered their ongoing support in this process.

## Appendix 1: Feedback from Roundtables

Following is a selection of comments from roundtable evaluations.

### 1. What did you hope to get out of this workshop?

- To contribute to an ongoing campaign re CROC.
- More acute knowledge of the shadow report and the issues feeding into it.
- An opportunity to discuss where Victoria is falling down in relation to CROC.
- To gain perspectives on the rights of children from people working in different fields.
- An opportunity to listen to the views and concerns of practitioners about CROC compliance and problems in practice.
- Learn more about CROC and its practical effects on children in Victoria.
- A better understanding of issues to do with how the Convention connects with local concerns about children's rights.
- Tips on how to implement the principles and themes of CROC internally across own programs and services. Then how we can use our clout to advocate politically and socially to ensure CROC is being used and acknowledged.
- Increase my commitment to engage my organisation with CROC.
- Some greater understanding of how to describe issues of concern within the context of CROC.
- An opportunity to feed into the NGO report and an opportunity to network.

### 2. Did the workshop meet your expectations?

- Good inclusive format and sense of purpose.
- Very helpful in developing an understanding of issues.
- A fantastic forum to share ideas for implementing CROC and to raise awareness.
- Yes I thought it was excellent –well facilitated (thanks Danny) and adequate time for discussions.
- Yes I did leave with more knowledge and greater confidence in discussing CROC at the local level.

### 3. What new things do you know as a result of this workshop?

- The gap in care between *Children and Young Person's Act 1989 (Vic)* and the *Guardianship Act 1986 (Vic)*.
- Update on legal issues relevant to CROC.
- That there are great people with fire in their belly out there.
- Increased awareness in relation to developments and problems outside my work area.
- More about 'hot topics' in practice and better idea of key stakeholders.
- Better ways to capture child and youth issues.
- How organisations are working to create greater awareness of Convention and its implementation.
- A bit of history about CROC.
- More of a perspective on the level of awareness of CROC amongst organisations.
- More familiar with the purpose of the articles.
- Strategies to engage my organisation with CROC.

- More detailed understanding of CROC and who to hold responsible.

5. Did you find the workshop materials useful?

- Perhaps too much information.
- Not enough forewarning of what the workshop was to achieve.
- Yes – terrific for context and detail.
- Yes however the pre-existing shopping list limited ideas.
- User friendly – very good food for thought.
- Extremely – individually and for use ongoing in the future.

6. What was the best aspect of the workshop?

- Good facilitator and nice mix of attendees from varying areas of law.
- Hearing about other people's and organisation's ideas.
- Convenor was well informed, quick minded and encouraging of input – well managed sessions.
- Sharing of ideas.
- Excellent, concise facilitation.
- Opportunity to meet and listen to those dealing with CROC in practice.
- Meeting and sharing ideas with people genuinely committed to children and CROC.
- Calibre of the discussion, was well facilitated, and the materials provided.
- Being challenged to think – not just here to listen.
- Meeting like minded people.
- Diverse membership of the group.
- Connection with Youthlaw and YACVic (organisations I have not linked with before)

7. What could be improved about this workshop?

- More clear sense of purpose prior to the workshop.
- More young people – perhaps another workshop is needed to consult with young people as part of this process.
- A wider circulation of organisations and institutions.
- Shopping list distributed a little earlier.

8. What would be a useful way forward in:

(a) Raising awareness of CROC in Victoria?

- Inclusion of youth rights in high school curriculum.
- More user friendly children's rights materials for education and distribution.
- Involve institutions in annual CROC audits.
- Approaching Kids Helpline in respect of evaluating data they collect.
- I think there is a huge opportunity to create and run a program for young people and children starting NOW involving raising awareness of CROC and getting a submission to shadow report from children and young people as a practical component of this program.
- Making it a daily practice based in the organisations I have connections with.
- Keeping the network going; using peaks to keep CROC on the agenda for agencies and government.
- Community education campaign.

(b) Monitoring compliance with CROC?

- Web based and well promoted survey of young people about their rights and whether they are respected.
- More activity in NGOs and encourage young people's working groups within NGOs schools, youth groups etc.
- Children and Young People's Commission.
- Commitment to work with YACVic re Commission in Victoria
- Work with funders to ensure CROC is enshrined in standards and outcome objectives.

Other Comments

- Great work.
- Forum was excellent and Danny was a great facilitator.
- Indigenous issues only mentioned in passing but probably one of the most disadvantaged in the community.
- Thanks for organising – great opportunity to meet and listen to wide range of stakeholders.

The participants were asked whether they would make commitments to assist YACVic and Youthlaw in ongoing work. Commitments included:

- Ongoing cooperation and sharing of materials by participants.
- Assistance with compiling material and organising forums.
- Feeding back to networks in relation to CROC sessions.
- Raise the profile of CROC in own organisation and develop internal policies using CROC.
- Keen to participate in networks and consultations.
- Involvement of young people in talking about CROC.
- Create enthusiasm in own organisation.