



## **Rights, Responsibilities and Respect: The Report of the Human Rights Consultation Committee**

### **Youthlaw's response**

#### **Introduction**

Youthlaw is Victoria's state-wide community legal centre for young people. Youthlaw works to achieve systemic responses to the legal issues facing young people, through casework, policy development, advocacy and preventative education programs, within a human rights and social justice framework.

Youthlaw welcomes the Human Rights Consultation Committee's *Rights, Responsibilities and Respect* report and the recommendation to enact new legislation to better protect, promote and realise human rights in Victoria. We also commend the Victorian Government for committing to the introduction of a Charter.

While Youthlaw is disappointed with the limitations of some of the recommendations (eg. the exclusion of social, economic and cultural rights particularly given the strong community support for the inclusion of these rights) we believe the proposed *Charter* provides a foundation for future development and should be enacted. Youthlaw actively promotes the realisation of human rights and we envisage that the Charter will assist this process particularly by educating the community about rights.

The Charter should be the first step in an ongoing process and dialogue with the community. It must not be the only step. We urge the Government to commit to regular reviews of the Charter as recommended in the report and to look at enacting further measures to enhance rights particularly the inclusion of social, economic and cultural rights and rights for specific groups such as children and young people.

We wish to make a few comments in relation to some of the recommendations and sections of the proposed *Charter of Human Rights and Responsibilities Act 2006* as they relate to children and young people. This is an initial response and we hope to have the opportunity to make further comment as this discussion progresses.

#### **Responsibilities**

**Recommendation 3:** The new law should be called the Charter of Human Rights and Responsibilities.

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Youthlaw does not support the inclusion of 'responsibilities' in the title of the Act. The inclusion of the term responsibilities implies that Human rights are conditional rather than inherent. Youthlaw recognises that the no right is absolute and the enjoyment and exercise of rights is subject to limitations. Section 6 (2) adequately deals with the issue of limitations. Given that one of the strengths of the proposed Charter lies in its educative function, it is important that the Charter does not perpetuate existing misconceptions that rights are contingent on obligations. Respecting human rights necessarily entails responsibilities.

The proposed Act preamble notes that 'human rights come with responsibilities and must be exercised in a way that respects the human rights of others'. We recommend this be amended to 'human rights must be exercised in a way that respects the human rights of others'.

## Human rights

**Recommendation 5:** The Charter of Human Rights and Responsibilities should protect civil and political rights. The Charter should state that, in protecting these rights, it does not limit or exclude any of the other rights that a person may hold.

We reiterate Youthlaw's earlier position that a Charter should cover civil, political, economic, social and cultural rights. These rights are interdependent, interrelated and indivisible. The importance of these rights was also highlighted in the submissions made by young people as part of the initial consultation process undertaken by Youthlaw and the Youth Affairs Council of Victoria. Rights relating to housing, education and employment were all raised by the young people consulted. The inclusion of these rights would also strengthen the Government's commitment to addressing disadvantage in Victoria as outlined in *A Fairer Victoria*.<sup>1</sup> We urge the Government to consider extending the breadth of the Charter before its enactment or, at a minimum, at the point of review as outlined in Recommendation 34 of the report. If the Charter is to be limited to civil and political rights in the first instance, s.4 must remain to ensure that the Charter does not limit or exclude any other rights.

In saying that, we acknowledge that civil and political rights are of importance to young people and the Charter does have the potential to influence policy and legislative decisions about freedom of movement and public assembly for example.

We also commend the Committee for noting the importance of citizen participation in decision-making (s.17). Children and young people should have the opportunity to be involved in decisions that affect their lives in developmentally appropriate ways and be able to make an active contribution to public life. However, children and young people along with other groups in the community, often face barriers to participation

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<sup>1</sup> Department of Premier and Cabinet (2005) *A Fairer Victoria: Creating opportunity and addressing disadvantage*.

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that must be addressed if this right is to be realised. Section 17 should be strengthened to highlight the need for equitable access to opportunities to participate in public life and decision-making. This would align with Article Twelve of the Convention of the Rights of the Child that states:

(1) The Government shall assure that a child who is capable of forming his or her own views, has 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.

(2) For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law

We direct the Government to the work undertaken by the Youth Affairs Council of Victoria in partnership with the Office for Youth about providing greater opportunities for young people's participation.<sup>2</sup>

We also maintain our call for the rights outlined in the Convention on the Rights of the Child to be enshrined in legislation and hope that this will be considered as part of review process. The International Covenant on Civil and Political Rights, and indeed the International Covenant on Economic, Social and Cultural Rights were not designed to address the special needs and experiences of children and young people.

## Human Rights Statements

### Recommendations 13 and 14

Youthlaw supports the recommendation for Human Rights Statements to accompany Cabinet submissions. We also welcome the requirement for a Statement of Compatibility to be presented to Parliament. We are concerned that s.29 appears to make this optional. We believe a statement must be provided in all circumstances.

An important part of this statement would be to consider whether the policy or legislation is in the best interests of the child. Youthlaw is disappointed that the focus of the proposed Charter (in relation to children) is on the protection of children [s.16 (2)]. While the best interests of children underpins the Government's *Children First* policy<sup>3</sup> and the recently enacted *Children, Youth and Families Act*, best interests is not evident in the Charter. As such the Charter falls short of the Convention on the Rights of the Child. We believe that all legislation and policy should be considered in light of children's best interests. Article 3 (1) of the Convention provides that:

<sup>2</sup> Youth Affairs Council of Victoria and Office for Youth (2004), *Taking Young People Seriously* handbooks.

<sup>3</sup> Victorian Government (2004) *Putting Children First: the next steps*.

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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 must be a primary consideration.

In any consideration of legislation or policy there should be onus on government to justify decisions that are not in the child's best interest although obviously this would not be the only consideration. We would welcome further discussion about how this principle could be incorporated into the Charter.

### **Education strategies**

**Recommendation 22:** The Victorian Government should implement and resource ... human rights education strategies:

Youthlaw strongly endorses the need for appropriate education strategies as a means of turning rights rhetoric into reality. Indeed one of the most important functions of the Charter will be the education of politicians, public servants, the judiciary and the wider community. Youthlaw believes that the effectiveness of the Charter is contingent on it being understood and owned by the community. Community ownership in conjunction with enforcement mechanisms is the most powerful tool for the realisation of human rights.

Any education strategy must be accessible to groups such as children and young people, people from culturally and linguistically diverse backgrounds, people with disabilities etc. Our own work with young people highlights the need for targeted education materials and programs and we would be happy to continue working with the Government on this issue. It is vital that the Government provide adequate resources to communities and community organisations to ensure they engage in education processes. We recommend that there be specific strategies developed to engage children and young people both within and outside of school settings.

### **Human Rights Commissioner**

**Recommendation 23:** There should be a Victorian Human Rights Commissioner

Youthlaw supports the establishment of an independent Human Rights Commissioner. While we support the functions outlined in the report, we recommend that the Commissioner's office is able to initiate its own inquiries rather than simply take a reference from the Attorney General. It is vital that the role is properly resourced to carry out the necessary functions.

In addition to this role, we maintain our call for an independent Children and Young People's Commission to specifically focus on the rights, interests and well being of

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children and young people to ensure their voices are not lost in a more general discussion about human rights.

## **Annual reports and action plans**

### **Recommendations 25 and 26**

Youthlaw supports the proposed requirement for government departments to include information in annual reports about what they are doing to comply with the Charter and to develop action plans. Action plans should include annual benchmarks and outline strategies that promote and protect the rights of vulnerable and disadvantaged groups.

## **Remedies**

### **Recommendations 30 and 31**

The Victorian Government has an obligation under international human rights law to provide effective remedies for human rights violations. The rights contained in the Charter should be justiciable and directly enforceable by and in the Courts. Any mechanism for seeking remedy must be accessible to children and young people particularly given children and young people do not easily make complaints.

While we agree that the recommended interpretive clause and judicial review of decisions may provide opportunities for redress for some individuals, we know that young people do not easily make complaints or seek redress because these processes take time and young people may not have adequate information or legal assistance. We do not believe that the proposed system is any more accessible to children and young people and thus question whether these processes are sufficient to protect and promote rights.

## **Specific sections of the Draft Charter of Human Rights and Responsibilities Act**

### **Freedom of Movement**

s.11 (2) .....Does not apply with respect to person's lawfully detained or the subject of a court order restricting a person's movement.

Youthlaw recommends that this section be amended to relate specifically to violence intervention orders.

### **Freedom of expression**

14 (3b) for the protection of national security, public order, public health or public morality

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There is no objective definition of public morality. Youthlaw recommends the removal of the term 'public morality' as 'national security, public order and public health' suffice.

**Protection of families and children**

S16. (1) Youthlaw recommends the addition of the term 'without discrimination' to ensure 'family' is not too narrowly defined.

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