



Young People

Having their say about human rights

Youthlaw Submission to the National Human Rights Consultation Committee

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List of Abbreviations

Australian Human Rights Commission	AHRC
Australian Law Reform Commission	ALRC
Charter of Human Rights and Responsibilities	Charter
Committee on Economic, Social and Cultural Rights	CESCR
Community Legal Centre	CLC
Convention on the Rights of the Child	CROC
Human Rights Committee	HRC
International Covenant on Civil and Political Rights	ICCPR
International Covenant on Economic, Social and Cultural Rights	ICESCR
Victorian Equal Opportunity & Human Rights Commission	VEOHRC

Part A – Executive summary

1. Executive summary

- 1.1 Youthlaw welcomes the opportunity to contribute to the National Human Rights Consultation (Consultation). We commend the Australian Government on its initiative to undertake the Consultation.

The protection of human rights is of great relevance to young people as they are vulnerable to diminution of their rights and are often less able to assert and protect their rights.

We believe that young people's human rights need to be better protected.

Youthlaw is committed to ensuring young people are engaged in the consultation process and that their voice is heard by the Committee.

- 1.2 This submission examines in turn, each of the three questions asked by the National Human Rights Consultation Committee (Committee).

Part C- Question1:

Which human rights should be protected and promoted in Australia?

While stressing the importance of protecting all human rights, civil, political, economic, social and cultural, the submission will focus on a number of child specific rights that are of particular importance to children and young people. The importance of these rights will be discussed in detail.

Part D - Question 2:

Whether these human rights are sufficiently protected & promoted in Australia?

In our organisation's experience there are a number of significant gaps in the protection currently afforded to human rights of young people. The submission relies on examples, case studies and comments from young people to highlight the deficiencies in the current system of rights protection. There is particular emphasis on the failure to treat children and young people equally in law and practice. We highlight commonplace forms of discrimination experienced by a range of marginalised young people. We also give examples of laws, policies and procedures that discriminate against young people on the basis of their age and status as young people.

**Part E - Question 3:
How Australia could better protect human rights?**

To better protect young people's human rights Youthlaw submits the federal government introduce a Human Rights Act which protects and promotes all civil, political, economic, social and cultural rights human rights, and specific children's rights contained in the United Nations Convention on the Rights of the Child ("CROC").

To support this recommendation we highlight the positive impact the Charter of Human Rights and Responsibilities ("the Charter") is having in facilitating better outcomes for young people in Victoria.

A Human Rights Act should provide for a freestanding, independent cause of action for breaches of rights which is accessible and appropriate to all in the community, including children and young people.

To assist with the protection and enforcement of young people rights we call for the establishment of independent national Commissioner for Children and Young People.

We also recommend a number of complementary initiatives that will be necessary to ensure the effectiveness of such a Human Rights Act, including

- a. Public education campaigns on human rights
- b. Human rights education embedded in school curriculum
- c. Human rights training for government agencies and public authorities
- d. Mechanism to promote youth participation in legal and government processes
- e. A national child rights policy framework with adequate budgetary allocations that enable the effective implementation of the rights of children and young people.

Part B – About this submission

2. About Youthlaw

2.1 Youthlaw is Victoria's state-wide community legal centre for young people under 25 years. 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 is located at Frontyard Youth Services in central Melbourne. This is a group of co-located services including crisis housing support, Centrelink, legal and health services, provided for young people who are homeless or at risk of becoming homeless.

2.2 Youthlaw is active in law reform and policy processes, where young people have the potential to feel the impact. Our submissions in law reform processes are within a human rights framework and articulate the rights, as set out international instruments and the Victorian Charter, which are affected by current laws, proposed amendments or new laws, policies and procedures.

Recent submissions and law reform work of Youthlaw, includes:

Federally

- A forum and report reviewing the implementation of the recommendations of the 1997 Report by the Australian Law Reform Commission (ALRC) and Human Rights and Equal Opportunity Commission (HREOC) *Seen and Heard: priority for children in legal processes* (November 2007)
- Submission to the Australian Law Reform Commission Privacy Review (2007)
- Submission to the National Youth Commission Inquiry into Homelessness (2007)
- Submission regarding to the Homelessness Green Paper (2008)
- Submission to discussion paper “*A national framework for protecting Australia’s children.*” (2008)
- Submission to Standing Committee of Attorney General (SCAG) regarding a draft model spent convictions bill (2009)

Victoria

- Consultations and submission regarding the introduction of a Victorian Human Rights Charter (2005)
- Various submissions regarding amendments to sentencing laws (2006 and 2007)
- Submissions to both the Review of *the Equal Opportunity Act* (Victoria) , and the Review the Act's Exceptions and Exemptions (2008)
- Various submissions regarding different stages of the review of Criminal Procedures Bill (2008)
- Consultations and a joint submission regarding police move on powers proposed as new local law in the City of Frankston (2009)
- A forum and report monitoring the *Graffiti Prevention Act: One Year on* (2009)
- Submission to the President's Review of Victorian Civil and Administrative Tribunal (2009)

2.3 All of Youthlaw's casework, policy & project work is informed by the principal of youth participation embedded in CROC. Upholding this principal is fundamental in ensuring young people are able to enjoy their human rights.

Over the past few years Youthlaw has been actively involved in policy and advocacy project work aiming to educate and engage with disadvantaged and marginalised young people around their legal issues within a human rights framework, and supporting them to put their views to government and strategic decision makers. Currently the REAL Rights project involves engaging with groups of young people from various backgrounds from marginalised communities, with the aim to:

- increase their understanding of human rights and *The Charter of Human Rights and Responsibilities* ("The Charter")
- support them to identify, research and monitor their human rights issues, and
- promote a human rights framework and the Charter as advocacy tools for young people to influence policy and practices that relate to human rights issues that affect them.

We believe that such a human rights framework offers a powerful participatory framework, and that engagement of young people in human rights education and monitoring has enormous potential for building social inclusion, and identification of policy and legislative opportunities.

3. Scope of the submission

3.1 This submission responds to the three key questions raised in the Attorney-General's National Human Rights Consultation: Background Paper; from the perspective of young people, particularly those more disadvantaged and marginalised; namely young people who are homeless, have a disability or mental health issue, living in remote and rural areas, are engaged in the criminal justice system, are living or have lived in out of home care, or are newly arrived to Australia, and culturally and linguistically diverse.

Youthlaw's response is evidenced by:

- case studies from Youthlaw legal casework and law reform work over the last few years; and
- views of young people that we have consulted over the past couple of months.

3.2 Youthlaw is committed to ensuring young people are engaged in the consultation process and that their voices are heard by the Committee.

The Australian Human Rights Commission's *Let's talk about rights – A guide to help young people have their say about human rights in Australia*, and a number of their youth specific consultations and workshops with children and young provided important but limited opportunities of engagement.

Further assisting young people to engage in the consultation is a youth portal site (www.humanrightsact.tv), auspiced by Youthlaw and managed by the Australian Human Rights Group, which is a source of information for young people about human rights protection. The site has innovative interactive features designed by young people and others allowing input into the consultation. It has an on line submission form to the Committee and facilitates submissions being made by young people via SMS text messages and video clips.

Additionally Youthlaw facilitated, or co-facilitated, 14 workshops designed to engage young people in the consultation. Three workshops were run with 30 workers supporting young people in Braybrook (western metropolitan), Seymour and Shepparton (north-east rural Victoria).

Over 100 young people between the ages of 12 and 25 years (just over half being female) participated in eleven workshops. Of these 9 young people attended a workshop arranged by Gateway, Jesuit Social Services, which provides pathways to education, training and employment for disadvantaged young people with complex problems. (A separate workshop was run by YACVic with their youth membership).

Youthlaw facilitated ten workshops, being with:

- 13 homeless young people accessing Frontyard Youth Services (2 sessions),
- 7 members of the State Council representatives of WayOut, a support group for rural same sex attracted young people
- 9 members of Young Lions, Whitelion, an agency that works with young people in the youth justice system,
- 5 members of a youth leadership program being run by City of Whittlesea Youth Services,
- 7 young people (predominately of Horn of African descent) living in and around Braybrook at the Youth Enterprise Hub (hereafter referred to as “Braybrook” group),
- 11 Year 12 students from the rural and remote town ship of Tallangatta (far north east rural Victoria),
- 15 young people attending classes at the Adult Community Education school in Shepparton,
- year 7 students from McGuire College, Shepparton
- 5 members of a human rights project auspiced by Inner South Community Health Service.

Most of the workshops were 90 minutes in length. Given the language of human rights was not familiar to all group members, the initial part of the sessions were educative. Then they were then engaged in information gathering: discussion about their thoughts, experiences and ideas which has formed the basis of Youthlaw’s response to the consultation questions.

Part C – Question 1:

Which human rights should be protected and promoted?

4. Introduction

In determining which rights should be protected, the Consultation Committee should not only be guided by Australia's international obligations, but also the views of young Australians, as reflected in submissions to the Committee, and the information gathered at the various workshops we ran.

Youthlaw takes this opportunity to stress the importance of protecting all human rights; however our submission focuses on a number of child specific rights that are of particular importance to children and young people.

5. Which Rights should be protected and promoted?

Youthlaw submits that Australia has an obligation to protect each of the human rights contained in international human rights treaties which Australia has signed, including the United Nations Convention on the Rights of the Child (CROC).

5.1 Economic, social and cultural rights

The United Nations Committee on Economic, Social and Cultural Rights recently affirmed "the principle of interdependence and indivisibility of human rights and calls on the [Australia] to include economic, social and cultural rights when considering the submissions received." ¹

As the Committee would be aware the Victorian Charter protects civil and political rights and makes brief reference to cultural rights. It does not refer to economic and social rights, environmental rights or rights to self determination. Such piecemeal recognition of human rights is inconsistent with basic human rights principles and threatens their effective implementation. Young people do not talk about human rights using an arbitrary division of rights as being "*civil and political*" or "*economic, social and cultural*". Rather they talk about human rights as a collective set of rights many of

¹ Concluding Observations of Committee on Economic, Social and Cultural Rights – Australia (22 May 2009) paragraph 10.

which are interdependent and mutually re-enforcing. By way of example, a young woman we met at the workshop in Braybrook, raised the importance of environmental rights and discussed how the destruction of environment impacts on other human rights such as health, housing, equality and freedom from torture.

The young people consulted identified a broad array of civil, political, economic, social, cultural rights and child specific rights that are important to them as young people and need to be protected. This is highlighted by the 10 rights identified across the 11 groups of young people we met with as being most important for children and young people:

- Equality before the law and freedom from discrimination
- To feel safe (in public places, at home, work , school) and protected from violence
- Access to safe, affordable housing
- To participate in decision making and to have their views taken into account
- Right to education
- Freedom of speech
- Access health care
- Freedom of expression and your own identity
- Fair conditions at work
- To be treated with dignity and respect

5.2 Children's rights

Youthlaw submits that rights specific to children and young people should be protected so as to reflect and address the special needs and experiences of children and young people. CROC outlines the breadth of human rights designed to reflect the special place that children and young people have within society, both in needing to protect and promote their human rights as well as participating fully as the holders of human rights, ensuring children and young people may lead full and flourishing lives.

As a signatory to CROC, Australia has a responsibility to:

- respect and ensure child rights without discrimination of any kind (article 2)
- protect children in their best interest (Article 3) and as is needed by them by reason of being a child. (section 17 Victorian Charter) ;
- provide the supports and services necessary for their survival and physical, mental, spiritual and social development (Article 6); and
- ensure they can express their views and have them taken into account in accordance with the age and maturity of the child. (Article 12)

There is a growing trend and awareness at both the international and domestic level of the need to specifically protect and promote the rights of children and young people, reflecting key principles in CROC. Well over 20 national constitutions possess this characteristic and have provisions dedicated to the protection of children's rights.²

This ensures the development of legislative and social policy that is informed by the specific needs of children, and serves as powerful reminder that children alongside adults are holders of human rights.³

In doing so, they have also recognized the limitations of placing exclusive reliance on the two main international human rights covenants – the ICCPR and ICESCR- which are not designed to address the special needs and experiences of children and young people. While ICCPR and ICESCR rights apply to all people equally, which includes all children and young people, they tend to frame the rights of children and young people more in terms of the need to be protected, from an adult's perspective, rather than from the perspective of children and young people having human rights to exercise and enjoy themselves.

² National Constitutions with a section dedicated to the rights of children: Albania, s54; Angola- s30&31; Brazil- s227; Colombia-s44; East Timor-s18-19, Ecuador- s47&50; Ethiopia-s36; Finland- s5(3); Gambia-s29; Ghana-s28; Honduras-s119-126; Malawi-s23, Moldova-s 50; Nicaragua- s75; Namibia-s15; Paraguay-s54; Portugal- s69&70; Romania-s45; Slovenia-s56; South Africa-s28; Uganda, s34; Poland, s72; Thailand, s53, Ukraine, s52; Switzerland s11.

³ Committee on the Rights of the Child, General Comment No 5 (2003) on the General Measures of Implementation of the Convention CRC/GC/2003/5 (27 November 2003), paragraph 21.

Part D – Question 2:

Are human rights sufficiently protected and promoted?

6. Introduction

Despite various mechanisms of protection, Youthlaw has identified a number of significant gaps in current protections of human rights for young people.

The deficiencies in the current system of rights protection are highlighted by a range of examples, case studies, experiences and comments from young people we consulted.

Particularly disturbing is:

- A failure to protect children and young people against many forms of discrimination or punishment on the basis of the status, activities, age. We highlight example of experiences of discrimination experienced by a range of marginalised young people. We also give examples of laws, policies and procedures that discriminate against young people on the basis of their age;
- A failure to protect children and young people from a range of abuse and violence;
- Young people suffer a unique deprivation of their participation rights in the current structure and framework of Australian governance and legal processes; they have a lack of a voice in the decisions that affect them.
- The myriad of ways we fail to provide the necessary support and services to promote the survival and development of children and young people, including a lack of housing, an inadequate youth income via social security, and high numbers of young people disengaged from the mainstream education system.

7. The current system for protecting and promoting human rights

There are in fact “very few legal protections of human rights” in Australia. The coverage is ad hoc and there are inevitably significant gaps in the protection of human rights as a result.

Australia has only partially implemented its international human rights obligations through domestic law. CROC for example is not directly implemented in Australia; it is not part of Australian law. There are no readily available remedies for breaches of the Convention. CROC is scheduled to the *Human Rights and Equal Opportunity Commission Act 1986* (Cth). This gives the Australian Human Rights Commission (AHRC - formerly HREOC) power to monitor compliance with the Convention and

make recommendations but its powers are limited and not adequately enforced. It has powers to investigate complaints that CROC rights have been violated by or on behalf of the Commonwealth or a Commonwealth agency but only in the exercise of a discretion or in abuse of power. Where legislation requires the right of the child to be set aside, AHRC can only advise the Parliament that the legislation should be amended. AHRC has no authority over the courts.

There are also a number of state and territory laws that protect specific human rights. Victorian state laws which reflect the human rights of children and young people as contained in the CROC, include:

1. a specialist youth justice system in the *Children youth and Families Act 2005*;
2. a direct instructions model for the participation of children and young people in the child protection and criminal jurisdictions of the Children's Court;
3. best interests being the paramount consideration in making decisions in the child protection jurisdiction of the Children's Court under the *Children youth and Families Act 2005* (although this does not necessarily apply to other decisions such as administrative decisions);
4. laws against discrimination on the basis of age (and numerous other grounds relevant to a diversity of children and young people) under the Equal Opportunity Act (Vic) 1995;
5. Children and Young Persons Infringement Notice System (CAYPINS) a method of enforcing infringement notices in the Children's Court; and
6. The Victoria Charter obliges government to consider protection of children in his or her best interests and is needed by reason of being a child (section 17)

In addition, there are many laws that were not enacted for the express purpose of protecting human rights but which have that effect. For example, there are statutory (and common law) restrictions on police powers, and laws which protect economic, social and cultural rights such as Medicare laws, education laws and industrial relations laws (i.e. the latter enforces the right to work and the right to a fair/minimum wage).

8. Failure of current system to adequately protect and promote human rights

What's the point of human rights if you don't uphold them?
(young person at Frontyard workshop)

The state of human rights for many disadvantaged groups in Australia remains precarious and vulnerable. Many basic rights remain unprotected and others are haphazardly covered by an assortment of laws as raised above. Most of the current protections can be easily removed (e.g. statutory and common law protections) or are not enforceable (e.g. human rights law not incorporated into domestic law).

Youthlaw has identified through our legal casework, law reform work, and workshops with workers and young people, a significant number of areas where children and young people have failed to have their human rights protected in Victoria.

In general terms the majority of young people we spoke to felt their human rights were not being sufficiently protected.

It's all well and good having these laws to protect an individual's rights, but are they working in practice?" (member of Young Lion, Whitelion)

This section below sets out many of the rights young people think should be protected (as contained in CROC, ICESCR or ICCPR) and discusses the extent to which the rights are currently protected. We provide case studies demonstrating the gaps in protection, based on the experiences of young people connected to either our casework service or law reform / project work, and examples cited by the young people who participated in workshops.

8.1 Right to equality and freedom from discrimination

Young people regularly experience forms of discrimination, the most common being systemic discrimination on the basis of their age and status as young people.

As previously mentioned Australia has enacted a number of laws to prevent discrimination, however, these legal protections operate in a piecemeal way in Australia, and equal opportunity and anti-discrimination laws do not cover all of the grounds of discrimination and fail to provide substantive equality. Australia's existing anti-discrimination laws contain many exceptions which entrench stereotypes, and perpetuate complacency towards age based discrimination and structural barriers to equality for young people.

8.1.1 Experiences of discrimination of young people generally

Through our casework, projects and conversations with young people, we are aware of many situations where young people are not being treated equally to adults or in accordance with international human rights obligations. This includes unequal treatment on the basis of;

- a. Laws that make it lawful to discriminate against young people;
- b. Laws that criminalise behaviour based on their age and status as young people (“status crimes”);
- c. Discriminatory treatment and practices (e.g. shopkeepers, police and ticketing inspectors).

“Children and adults ‘should be treated equally the same, like one shouldn’t get more than the other in ways of better treatment, like treat them better just because they’re older or younger’ (age 10)

Below are some examples of each:

8.1.1 a. Lawful discrimination on the basis of age - Youth Wages

Age-based wages and payments are discriminatory and have negative consequence for young people.

Section 25 of the *Age Discrimination Act (Commonwealth) 2004* and section 27 *EOA (Vic) 1995* provide exceptions to use the age of young person as the justification for paying them less than their older counterparts to do the same work without any consideration of skills or abilities. These provisions for youth wages allow employers to discriminate against young people under 21 years and perpetuates stereotypes of young people as being inexperienced and unskilled.

Youth wages deny the reality that housing, groceries and transport are no less expensive for young person who has left full-time education than it is for any other adult.

Some young people totally support themselves – it’s not fair
(participant of Gateway workshop)

8.1.1 b. Laws criminalising behaviours on basis of age - Status crimes

Young people are often perceived as troublemakers, associated with criminal or deviant behaviour, and viewed with fear or suspicion by other community members

particularly especially when ‘congregating in public places’.⁴ These perceptions can lead to sanctions being applied to regulate behaviour in public. While legislation may not explicitly target specific groups, experience in other Australian and international jurisdictions indicate that young people, the homeless and mentally ill are disproportionately impacted by laws regulating public space. They are particularly vulnerable to sanctions because they are more frequently in the public eye and so their behaviour comes under greater scrutiny.⁵

Public space regulation legislation such as anti social behaviour orders, curfews, move on powers, and graffiti prevention laws not only discriminate against young people but also breach the civil and political rights of young people to freedom from discrimination as well as the freedom of association and peaceful assembly. Young people are citizens, and have a right to be consumers and to enjoy public space the same as anyone else. Young people use public space to a greater extent than many other sections of the community.

Case-study 1: Move on powers

A number of states, including Queensland, New South Wales and Western Australia have introduced criminal and summary move on laws. Persons may be fined, charged, or arrested for breaching move on directions. Move on powers are so broad that they are open to misuse and unfair targeting of vulnerable and marginalised people, those frequenting public areas, including young people.

The Committee on the Rights of the Child has raised concerns, in the Australian context, about “local legislation that allows the local police to remove children and young people congregating, which is an infringement on (sic) children's civil rights”.⁶

A review conducted by the NSW Ombudsman⁷ of move-on powers introduced in 1998 authorising police to disperse people acting in a disruptive manner found that of 14,455 move-on directions issued during the one year study:

- 48% of all directions were issued to people under 17, with the peak age being 16.

⁴ Ibid p. 28.

⁵ Walsh, T. (2004) ‘Who is the ‘Public’ in Public Space’ A Queensland Perspective on Poverty, Homelessness and Vagrancy’ *Alternative Law Journal*, Vol 29, No.2, April 2004.

⁶ Concluding observations of the Committee on the Rights of the Child, Australia. 10/10/97. RC/C/15/Add.79.

⁷ New South Wales Ombudsman, *Policing Public Safety*, 1999, p.255.

- 16 year olds were nine times more likely to be 'moved on' than 26 year olds, and 19 times more likely than 36 year olds.
- Move-on directions were issued to young people more on the basis of who they were, rather than what they were doing.
- Young people hanging out in groups were often thought to be intimidating or likely to cause fear by their mere presence.
- In all recorded incidents for the year, young people under 25 represented 54% of total incidents, but the same group accounted for 79% of move on directions in the same period.⁸

Case study 2: Victorian Graffiti laws

The Victorian Government introduced new graffiti laws in 2007 (the *Graffiti Prevention Act (2007)*). The law disproportionately targets and unfairly impacts on young people. Although the law is for all people, young people are most likely to be stopped and searched because they are highly visible in public places and are significant users of public transport, where incidents of graffiti occur. In addition, young people, particularly students, are more, than other members of the community.

The penalties and fines are excessive and disproportionate to the offence, and potentially discriminatory. For example for the fine of possessing a spray can you can be given an on the spot infringement notice for \$567 or receive summons and be liable to a maximum fine in court of \$2835. Young people have limited capacity to pay financial penalties and excessive financial penalties will be an ineffective penalty for young people. Young people who can't afford to pay the on the spot fine of over \$550 and go to court will end up with a police record. Those who pay will not.

8.1.1 c. Discriminatory treatment and practices

Young people described many instances of discriminatory treatment, including being harassed by shopkeepers, police and ticketing inspectors. This treatment raises many questions about whether their right to equality and respect are adequately protected.

In any contact with a police officer for example, the child depends on the conduct of the officer for the enjoyment of their rights and relies on the officer to fully respect

⁸ Saul, B. 2000 'Olympic street sweeping: 'moving on' people and the erosion of public space', *Polemic*; 11(1): 34- 37.

those rights and is at the mercy of any officer who chooses to infringe or violate those rights.⁹

The people who are supposed to protect human rights are the ones who abuse them the most – police, government, transit officers (participant of Frontyard workshop)

By Shopkeepers

Casestudy 3: Mosquito device

An ultrasonic device advertised by manufacturers as ‘the solution to the eternal problem of unwanted gatherings of teenagers’ has been installed on the outside of a Melbourne suburban shop and is being considered by police and local councils in Queensland. The device known as the Mosquito emits a high pitched sound and can only be heard by those under 25 years of age. Despite widespread community opposition to the device, an estimated 3,500 devices are already in use in Scotland and England where it is used by shopkeepers and in shopping centres, malls and parks without regulation.

The use of the Mosquito will only reinforce ill-informed and prejudiced views in our society about teenagers. This device sends a message to our teenagers that they are not valued.

By Police

One young man who is a representative of the State Council for WayOut spoke glowingly of how helpful, informative and professional he had found his local Gay and Lesbian Liaison Officers (GLLOs) from Victoria Police when he required their support and protection. (WAYOUT)

Unfortunately many young people we assist and those we consulted speak of rude and disrespectful interactions with police, at best ill treatment, and at worse abuse. We hear mostly stories of general harassment in public places, young people being treated as suspects, subject to random and arbitrary searches. Police often stop young people in the street and ask for their names and addresses without a good

⁹ Blagg and Wilkie, “Young People and Policing in Australia: the Relevance of the UN Convention on the Rights of the Child”, [1997] *AJHR* 6.

reason.

Police were really rude to us when they pulled us over to check all our ID's to see if we should have had passengers under the P Plate laws.

(participant of Inner South Community Health Service workshop)

The police treat us like shit for being homeless and just don't respect us either verbal or physically (young person at Frontyard workshop)

[Being harassed and told to move on from public spaces] ...happens a lot at the Numurkah skate park, they come and target the kids. (student at ACE, Shepparton)

Laws such as move on powers, anti graffiti laws place more power in hands of police, which in turn enhances their ability to treat young people differently to how they treat adults. Under the *Graffiti Prevention Act* police have expanded search powers to search without warrant anyone 14 or over who is on or near to public transport for an aerosol spray paint can. Police can search without warrant for other graffiti implements (e.g. markers etc.) if they have a reasonable suspicion that the person has committed or is about to commit a graffiti offence.

Many young people between the ages of 14 and 18 who spoke to Youthlaw reported being stopped by the police up to 3 or 4 times in the past, sometimes more. These contacts usually took the form of questioning and searches, consistent with the powers appointed to police under the *Graffiti Prevention Act (2007)*.

Young people felt that they were stopped because of the way they looked, what they were wearing and where they were located. There was an overwhelming sense that this amounted to unfair treatment by the police. These searches are a regular part of life for these young people

Other anecdotes from the consultations imply a serious imbalance between interactions of young people and police. Obviously police have an important role to uphold the law and investigate reported criminal acts; however they also have an obligation that any interventions they employ on young people take into consideration their age, special circumstances and human rights.

They control your access to rights (participant of Gateway workshop)

If you don't cooperate with them they get nasty (participant of Gateway workshop)

If you think your rights are being breached and speak up they think your not cooperating (participant of JSS workshop)

Many of the young men (mainly African) who attended the workshop at the Youth Enterprise Hub in Braybrook (in western metropolitan Melbourne) have been subject to serious mistreatment by local police. Assaults by police are common place, and police frequently come into homes without warrants etc...The young males involved hold a very strong belief that it's racially driven. A couple of their friends were trapped and bashed by police, one young man had his tooth knocked out. Their comments include:

We've been threatened with pepper spray.

Our friend Zach got bashed. How can we complain? 'Who would believe it?'

"It's a way of life, you get used to it after a while".

For young people one of the main barriers to reporting crime as a victim is if you have a criminal conviction. If you have a criminal conviction you might feel that you are treated badly by the police because of the previous conviction.

Due to my past experiences I felt like I was being harassed and threatened by police, when I'd done nothing (student at ACE, Shepparton)

By ticket inspectors

Many young people have reported experiencing disrespectful treatment by public transport ticket inspectors and feeling unfairly targeted as suspicious due to their age.

See us & go up knowing we probably won't have a ticket (participant at Frontyard workshop)

Some of these exchanges stem from misunderstandings on both sides. Inspectors have a perception that young people are trouble makers and fare evaders, and are unaware or have limited understanding of the various factors that inhibit people's ability to buy a ticket, especially homeless young people.

Young people and passengers are often unaware of the powers inspectors have and

what they are/are not allowed to do. For example inspectors can use reasonable force to detain someone without a valid ticket. Inspectors have discretion whether to issue an infringement or not.

Young people get scared and defensive when they are confronted by large groups of inspectors, which leads to confrontation. Often confrontations that lead to assaults and other charges end in criminal records for young people which affect their future.

Case study 4: Ticket inspectors

One young person (17year) travelling on the train was approached by inspectors and when he was found not to have a valid ticket, they asked for ID so they could issue a fine. When ID was refused the inspectors tried to detain him and he resisted, leading to a physical confrontation that resulted in the passenger being assaulted. He was detained by 6 – 8 inspectors and was kicked while on the ground. He ended up in hospital. The inspectors all vouched for each other and said they used reasonable force. The CCTV footage wasn't clear so it was their word against the passenger's.

8.1.2 Experiences of marginalised groups of young people

There are a number of marginalised young people who do not enjoy their human rights on an equal basis, but rather experience differential treatment and they remain vulnerable to both direct and systemic discrimination. A range of young people at the workshops told us they are subject to false assumptions and negative stereotyping. A few examples include:

Children living in out of home care.

“Kids in foster care or DHS [Department of Human Service] are no good”

“We are sick of the stereotyping, and we are not valued as individuals”.
(member of Young Lions, Whitelion)

Young people and sub cultures

A young person with tattoos: there are lots of places they can't go for jobs, and they find tram inspectors hassle them.

A young woman who dresses as a Goth: the shopkeepers follow you to make sure you don't steal anything.

Young people of Muslim faith

A young Muslim woman wearing a hijab: encounters shop keepers who assume that she is stealing, hiding items under the hijab.

We focus below on experiences of a number of other marginalised groups of young people.

8.1.2 a. Young people with “criminal records”

Young people we assist who have had contact with the criminal justice system are often refused jobs or sacked from jobs on the grounds of their “*criminal record*”. Criminal record checks can frustrate their ability to participate in the community. In Victoria an employer can lawfully refuse to hire or sack a worker for a criminal record that has nothing to do with the particular job e.g. a supermarket can lawfully refuse to hire a young shelf stacker because of a drunk and disorderly offence committed three years ago. A police criminal record check not only reveals whether they received a criminal conviction, but also a finding of guilt without conviction.

8.1.2 b. Same sex attracted young people

Gay young people have many broad experiences of marginalisation and exclusion - differential treatment by family and peers. This case study provides a specific example of how exceptions available under anti discrimination law (in this instance the *Equal Opportunity Act (Victoria) 1995*) can be employed to exclude non-heterosexual people from access to various community services.

Case study 5: WayOut Discrimination claim

In 2007 the coordinator of WayOut, a youth-suicide prevention initiative that hosts gay support groups for young people based in Victorian rural regional areas, sought to organise a weekend forum for young people and workers. They sought to book facilities in Gippsland, but were refused when they provided details about their project and its aims. The Coordinator was told by owners of the facility, the Christian Brethren, that they would not be able to accommodate “*a group such as yours*”, as this conflicted with their religious beliefs and doctrine.

Members of WAYOUT lodged a discrimination complaint with Victorian Equal Opportunity and Human Rights Commission (VEOHRC) in early 2008. The matter was then referred to the Victorian Civil and Administrative Tribunal (VCAT). The Christian Brethren are defending their actions and rely on the exception in the *Equal Opportunity Act (Vic) 1995* (section 77) that allows a religious body to discriminate on the basis of a religious doctrine

Any exception should not be so broad as to be able to be applied to non secular, mainstream everyday activities, such as hiring accommodation facilities. To allow religious organisation's such a broad exception encourages prejudice and unfair treatment based on matters such as personal lifestyle, and seriously undermines the effectiveness of associated anti-discrimination provisions.

8.1.2 c. Homeless young people

From our extensive legal practice experience with homeless young people, we know that they are subjected to daily discrimination and less than equal treatment in areas of service provision, and in relation to public space through to interactions with the child protection and the criminal justice systems.

There is a stigma and stereotype attached to being 'homeless'. Social stigma and stereotypes create barriers and work against people trying to transition out of homelessness.

Homeless young people who attended the workshops at Frontyard Youth Services conveyed this message powerfully:

We are looked down on ...People don't understand our situation...

People think we're [homeless youth] all lazy, drug addicts (participant from Frontyard workshop)

As far as most people are concerned – if you're on the streets and not at home – you don't have the right to go to school – think that because you're not at home you don't want to do anything

Two specific examples of systemic discrimination were shared at the workshops:

- Child protection services (Department of Human Services) taking newly born babies away from mothers, not because they are a direct danger to the child,

rather because the young woman does not have stable accommodation.

- Some young homeless people believe they are discriminated against by housing services, whose workers do not even endeavour to secure them housing and don't support them to develop skills to seek out housing themselves. They feel their voice is ignored.

8.1.2 d. International students

Monash University found that of the more than half of the 200 international students surveyed, reported some form of discrimination, mostly at work and when they were seeking a place to live.¹⁰

Student visas allow students to work for a maximum of 20 hours per week when their course is in session and unlimited hours during periods of vacation. Many students experiencing financial hardship are forced to work for cash in hand and subsequently settle for very low wages, not saying anything as they are fearful of breaching visa and end up in detention.

Many students do not fully understand their rights (and responsibilities) as tenants as described in the *Residential Tenancies Act (RTA) 1997*. This makes them vulnerable to misinformation, deception and discrimination. Sometimes this lack of knowledge is exploited by real estate agents and more often by private landlords. It is not unknown for international students to be told that 'they have no rights as tenants as they are not Australian citizens'.

8.1.2 e. Young people living in remote and rural country towns (Tallangatta, Victoria)

An example of a law that seems discriminatory against young people and particularly young people living in remote country areas is Victoria's P plate laws. From July 2008, a two stage probationary licence was introduced with the driver being on a *red P* plate probationary licence for the first year and a *green P* plate probationary licence for the next three years. Red plate drivers are only permitted to carry one passenger aged 16-21 years, excepting family members.

¹⁰ Deumert, Marginson, Nyland, Ramia & Sawir, *The Social and Economic Security of International Students in Australia: Study of 200 student cases*, Monash Institute for the Study of Global Movements, Monash University, Australia, (2005).

The young people we spoke with living in Tallangatta saw this as a:

...blanket provision that targets all young drivers with the same brush.

They were critical of it for not taking into account the circumstance of young drivers in remote areas, who are so dependant of their cars, needing to travel comparatively long distances between towns, and the cost of petrol.

Instead of sharing one car, forced to take 3 separate cars without thought of what effect this has on the environment, especially when covering long distances.

8.1.2 f. Young people with disabilities

Case-study 6: Personal attendant care in tertiary education

Tertiary students with disabilities requiring attendant care and personal care (such as washing, toileting, dressing, eating and drinking) are often restricted or prevented from accessing a tertiary education. They are confronted by a lack of funding for, and the irregularity of the provision of attendant care services in Universities & TAFE. These students may pay for personal care through a range of time limited federal and state funded schemes (such as Future Funding, Support & Choice, TAC payouts). Or they may receive no financial assistance and either self fund, drop out of their studies, cut hours, or not or use the bathroom while on campus.

8.2 Right of the child to protection from violence and abuse

Children (aged under 18 years) are entitled to special protection in their best interests, on account of their vulnerability. Under article 19 of CROC Australia is obliged to 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.

What we know is that significant numbers of young people are not being afforded this right to special protection in the home, at school, in out of home care, in the community, and in the criminal justice system.

8.2.1 In the home - corporeal punishment of children

Children remain the only people in Australia against whom violence may be justified as discipline. Children can be beaten and punished with impunity especially by their parents who have a defence in law to use “reasonable chastisement”. However an increasing number of countries (currently 24) have banned use of corporal punishment, and abolished this defence.

In 2006, the UN Committee on the Rights of the Child, released a “General Comment” reinforcing ‘the right of the child to protection from corporal punishment and other cruel and degrading forms of punishment. (Article 37 of CROC)

Here are some perspectives from children on such punishment drawn from research in ‘*Children’ Perspectives on Physical Punishment*’¹¹

“...if [adults] physical contact with someone, like punching ‘em, it’s against the law...they could go to jail, they could be charged with assault...And that’s exact same for smacking. But...if you’re a kid, and it’s in the house, it’s o.k because they’re your kids...If you are a kid, it doesn’t really matter...because...you barely have any say” (age 9)

“parents should respect their children...not...smack them (age 11)

“Being smacked is like being treated like something very little and not important to the rest of the world” (age 12), p413

“Just because they’re small and they can’t fight back [adults] shouldn’t take advantage of [children] for that reason...they have rights to ...adults are...there to teach children, and if they do it the right way...[it] can be some of the happiest times of your life, but if treated badly it can wreck...your life”

8.2.2 In schools - homophobic bullying

Bullying of students in schools is an issue contributing to school impeding a young person’s right to education and also right to safety. Homophobic bullying is particularly insidious. Here in Australia, suicide rates are 2 or 3 times higher than other victims of bullying.

¹¹ Bernadette Sunders and Chris Goddard, *Children and Society* Vol 22 (2008) pp405- 417

Schools need to provide safe environments for all students. In 2006 the Victorian Government introduced a new safety policy for all government schools “*Safe schools are effective Schools*” which states: “All students including gay, lesbian, bisexual, transgender and intersex students in Victorian government schools, have a right to feel safe at school and be free from bullying (page 14) More recently a new State Education Department policy paper, “Supporting Sexual Diversity in Schools”, calls for comprehensive action by schools and teachers to protect vulnerable gay students.

The paper, says about 10 per cent of students have “same-sex attraction” feelings and most suffer verbal or physical abuse.¹² In Lynne Hillier’s research “*Writing themselves in*” conducted in 1998 and 2005 she noted a positive change that same sex attracted students generally feel safer in school, yet:

- 38% had been treated unfairly on the basis of their sexuality (compare with 29% in 1998)
- 74% of those abused experienced abuse at school

However despite these policies and the anti bullying policies most schools have, sometimes they are not translated into effective practice on the ground in schools.

Some representatives of the State Council for WayOut reported leaving school early due the bullying they received at school. One member shared that he had his hair set alight at school outside the teacher’s room. Although he made a formal report, nothing was ever done to address the homophobic bullying or punish the students responsible.

It’s not o.k to use terms like “abo” and “nigger” in school corridors, it still seems o.k to be called a “faggot” or “poof”.

It is important to note that some schools do have exemplary practices. Bendigo Senior College in Victoria for example takes a very proactive approach to addressing homophobia. At the beginning of Year 11 the whole year had a focus on bullying with a particular unit on homophobia. The teacher said that the school takes any homophobic incident very seriously. And went on to ask “What if one day you find out your best mate is gay - how would you want him to be treated?”

¹² “Push to help gay pupils with new anti-homophobia policy”, Herald Sun cited at <http://www.news.com.au/heraldsun/story/0,21985,25571398-2862,00.html> on 11th June 2009

8.2.3 In out of home care

We applaud the Federal Government for developing the National Framework for protecting Australia's Children 2009 -2020, *Protecting Children is Everybody's Business*, a long term national approach to help protect all Australian children. Yet the report is quite frank about where we have been failing in our protection of children involved in the out of home care system.

One example is the lack of support from transitioning from care for young people leaving care.¹³ Leavers from state care are vulnerable young people who need the same ongoing support effective parents would give their children. *The Child Youth and Families Act (Vic) 2005* refers to State government having responsibility for a young person leaving care until they are 21 years. However, the accepted practice in Victoria at least is that young people leave care - often without a leaving care plan, unaware of their financial and support entitlements, and frequently finding themselves homeless and destitute.

The National Framework recommends that care leavers be better supported and equipped with improved employment and independent living skills and more social and emotional skills while in care, and that the state continue to act as a 'good' parent in the first years after they leave care.¹⁴

Another concern voiced by many Supported Accommodation Assistance Program (SAAP) providers is that child protection services are not catering for the needs of older young people (i.e. 15 to 18 years). There is a sense that unless there are incidents of sexual abuse, welfare authorities do not have a legal obligation to protect this group of young people.

8.2.4 In the community: Young people as victims of crime

Young people experience criminal violence at higher rates than other age groups. While young people constitute 14% of Victoria's population, they represent 26% of all

¹³ This was one of the four key issues identified at the Create Foundation's Inaugural National Youth Advisory Council Summit February 2009. (Also documented in CREATE Foundation Ltd. Report card Transitioning from Care March 2008)

¹⁴ The National Framework for protecting Australia's Children 2009 -2020, *Protecting Children is Everybody's business*, p25.

victims of violent crime.¹⁵ It is the experience of Youthlaw & Frontyard Youth Services that vulnerable & marginalised young people experience higher levels of victimisation than other young people. They are also less likely to report this victimisation to police. At the St Kilda Youth Service 95% of young people entering crisis accommodation have stories of abuse. Very few report it.¹⁶

A Melbourne based research project found that many young people flee violence in the home only to find themselves victims of further abuse on the streets. Almost all homeless males (96%) and three-quarters of homeless females (74%) had been physically hurt since leaving home.¹⁷

8.2.5 In the criminal justice system

There is a lack of uniformity of human rights standards for young offenders and notable gaps in the protection of their rights.

The United Nations Human Rights Committee expressed concern in April this year, at the notable gaps in the protection of children and juveniles in the criminal justice systems in Australia, and that children and juveniles can be detained in adult facilities or held in immigrations detention facilities, where they are sometimes subject to abuse.¹⁸ Other areas of the juvenile criminal justice system that do not adequately protect the rights of children include:

(a) availability of bail;

Lack of accommodation options, especially for homeless young people, sometimes results in a young person being refused bail and remanded. Young people on remand are often accommodated with convicted offenders and/or adult prisoners

This is despite international human rights standards which state that:

- detention of children should be a last resort,

¹⁵ Australian Institute of Family Studies (AIFS) and Crime Prevention Victoria (CPV)(2004) 'Patterns and Precursors of Adolescent Antisocial Behaviour'.

¹⁶ Emma Chrichton, Presentation at *Justice for Young People* forum, 17 September 2008, Melbourne.

¹⁷ Adler (1990) cited in Halstead (1992)

¹⁸ Concluding observations of the Human Rights Committee on ICCPR, CCPR/C/AUS/CO/5, 2 April 2009, para 24 page 8.

- children shall be separated from adult detainees (Article 37 CROC), and
- a child in conflict with the law has the right to treatment which promotes their sense of dignity and worth, and reflects the best interests of the child, and takes the child's age into account. (Art 40 CROC)

(b) *public identification of children in criminal proceedings;*

Children's right to privacy is to be respected at all stages of criminal proceedings in order to avoid harm being caused to her or him by undue publicity or by the process of labelling. In principle no information that may lead to the identification of a child offender may be published (Rule 8 Beijing rules) Records of juvenile offenders to be kept strictly confidential and closed to third parties (Rule 21 Beijing)

These standards are supported by section 534 of the *Children, Youth and Families Act 2005 (CYFA)* that provides that publicity of young offenders under the age of 18 years is prohibited without court permission. A person must not publish a report of a proceeding in the court that contains any particulars likely to lead to identification of a child.

However this protection against publicity does not extend to *alleged young offenders being investigated by police*. In Victoria there have been cases where young offenders have been identified prior to their matter proceeding to court, and this has severely breached their right to privacy.

(c) *excessive force by police;*

The use of physical restraint and force on children shall only be in exceptional circumstances and employed only when all other control measures have been exhausted and have failed, and only for the shortest possible time.

Case Study 7: Death of Tyler Cassidy

Tyler was shot dead by three members of Victoria Police on the night of 11 December 2008. He was fifteen years old at the time of his death. Tyler is the youngest person to have been shot dead by Victoria Police and is likely the youngest person shot dead by any Australian police force.

On the night of 11th December 2009 Tyler attended at the shopping centre and the park in a highly distressed state. Approximately 30 minutes prior to this, Tyler's mother, Shani Cassidy, had rung the Northcote Police Station and advised them that Tyler had left her home in a distressed way, provided them a physical description of Tyler including his age and asked the police to bring him home safely.

He is alleged to have stolen two knives from the K-Mart and then moved around the outside perimeter of the shopping centre. A few minutes later he was allegedly confronted and pursued by four members of Victoria Police (two from Northcote and two from Preston police station).

Victoria Police alleged that they unsuccessfully deployed OC Capsicum Spray twice against Tyler. They further alleged that they were then confronted in the vicinity of the skate bowl where one member was 'cornered' thus necessitating the firing of a 'warning shot' and then a further ten shots by three officers. About 5 bullets struck Tyler.

Tyler's death, being a death in custody or 'care' as defined in the Coroners Act (Vic) 1985 ('the Act') is subject to a mandatory coronial investigation and inquest.

8.3 The right to participate

Participation by children and young people in public affairs and policy decision making processes in relation to issues affecting and of relevance to them is fundamental to their enjoyment of human rights.¹⁹ Minors are excluded from participating in society in many ways adults take for granted, and their active participation in the community, in legal and governmental processes does not seem to be appropriately valued and respected.

Young people don't get taken seriously at all. We don't get a fair say. This needs to change. (member of Young Lions, Whitelion)

Our perspectives are not taken into account. Older generations don't have a good enough understanding of the issues that effect us. (member of Young Lions, Whitelion)

¹⁹ See Article 12 of United Nations Convention on the Rights of the Child (CROC) and section 18 of the

8.3.1 Participation in the legal system

Young people are systematically excluded from constructive participation in legal processes affecting them. The 1997 Report by the Australian Law Reform Commission (ALRC) and Human Rights and Equal Opportunity Commission (HREOC) *Seen and Heard: priority for children in legal processes* (ALRC and HREOC 1997) found that there are 'consistent failures' by institutions of the legal system to systemically include and consult with and listen to young people about matters that directly affected them.²⁰

I feel that the system — let me down. I was not listened to properly when I was very young, and had to live in an unsuitable environment for a number of months. Workers did not adequately assess my needs and I was forced to live with my Aunt. I feel that workers need better training and education” (member of Young Lions, Whitelion)

Unfortunately, many of the comprehensive recommendations in this report, designed to give full effect to the right of children to be both seen and heard in the legal process, have not been adopted.

8.3.2 Participation in government processes

Although youth participation is the buzz word in government we are not aware of many examples where disenfranchised young people are meaningfully involved in decision making processes. Often consultation is just lip service or the debate generated is not followed up. Or initiatives like Youth Parliament or State Government's Youth Council do not engage marginalised young people very well.

The Victorian Equal Opportunity and Human Rights Commission conducted a survey in 2008 on Youth Central (the Victorian Government's website for young people). Young people were asked to voice their thoughts and experiences of participating in government processes. Some young people expressed a strong desire to be a part of decision making that directly affected them, as well as wanting to be a part of decision making at a more general community based level. However, a general dissatisfaction was expressed with the mode of 'participation' where young people felt their

Charter of Human Rights and Responsibilities ('the Charter').

²⁰ 'Seen and Heard: priority for children in legal processes' ALRC 84, [1.30]

contribution was sought in relation to an agenda that had already been determined. Some young people reported a sense that they were ticking a “youth participation” box, rather than being active and creative agents of change.

Even if the outcome is not my choice, at least I had a say and provided an opposing voice. I think this is the most important part of having a say. (p118)

8.4 Right to housing

People experiencing homelessness are subject to multiple violations of their rights, including not only the right to adequate housing, but also the right to dignity and respect, the right to freedom from cruel, inhuman or degrading treatment, the right to social security, the right to the highest standard of healthcare, and the right to participation.

The extent of this human rights violation is documented in recent reports including The National Youth Commission’s Inquiry into Homelessness, and the federal Government’s Green and White Papers on Homelessness.

We spoke with many young people whose right to housing has not been adequately protected. All participants viewed the quantity, quality, affordability, safety and cultural appropriateness of public housing in Australia as inadequate or very inadequate. Comments from young people included:

Everyone should have a place to stay – a roof over their head – don’t like not having a place in life.

How’s it emergency housing if you have to wait for 4 years?

At one stage I was pregnant & homeless – told me that I’d have to wait – during the wait I got sick – pneumonia – lost baby, no housing.

Lack of housing – stresses homeless people out, puts at risk – many locked up or getting stabbed.

It’s hard to find somewhere – we looked for ages – we were in a THM [Transitional Housing] – went over the lease, the housing worker was trying to do everything – so many knock-backs.

In country towns the situation is even more critical. Homelessness is reported to be a huge issue in the country town of Seymour in Victoria where there is no crisis accommodation, nowhere for young people to go if they have to leave home, plus

enormous waiting list for housing commission properties. It's almost impossible to get a private rental lease. Some limited transitional housing becomes available only once or twice every six months. In some regional areas housing services offer young person a tent.

Kids come to us for advice regarding where to live, however the system makes it hard for us to help them. (Worker in Seymour)

8.5 Right to adequate standard of living and social security

The right to an adequate standard of living is not expressly protected in Australian law. Some laws, such as those that enable the provision of Centrelink payments, improve people's ability to access an adequate standard of living. However, as has been raised above, many young people still do not have adequate and affordable housing, or access to adequate food.

...you need a roof over your head & money to eat. That's decreased, especially with the financial crisis (young person at Gateway workshop)

*Centrelink doesn't cover it – it's a real struggle
(young person at Gateway workshop)*

For young people needing to live independently, access to sufficient income support is difficult. Research undertaken by welfare organisations such as the Australian Council of Social Services (ACOSS), consistently shows that Youth Allowance recipients live below the poverty line.

At one of the Frontyard workshop's a young woman who receives \$351 a fortnight in Youth Allowance benefits, and pays \$240 a fortnight in rent said:

it doesn't stretch far enough – rent, bills, food, ciggies, Centrelink debt – get pushed into stealing – steal for hunger

The poverty associated with receipt of the Youth Allowance may also impact on a young person's ability to participate in further education and training.

The Committee on Economic, Social and Cultural Rights (22 May 2009) recommended that social security benefits, including youth allowance enable recipients to enjoy and adequate standard of living.²¹

²¹ Concluding Observations of Committee on Economic, Social and Cultural Rights – Australia (22 May

8.6 Right to health care

8.6.1 Access to generalist health services

a. In rural and remote areas

A few young people we consulted raised the issue of lack of access to and resourcing of youth friendly/accessible doctors to general practitioners in rural and remote areas. One student from Tallangatta Secondary College mentioned she lived in a town that doesn't have a full time local GP. They only practice in town one afternoon a week. There are no female doctors in town.

Another young woman from the WayOut group spoke of having to travel one hour to find a health clinic that bulk bills.

B. For homeless young people

Despite most of the homeless young people we spoke to having current physical and mental health needs, many described barriers to health care such as lack of contact details, lack of documentation such as Medicare card, lack of money for services or for transportation to medical facilities.

8.6.2 Access to mental health services

Research suggests that homeless young people in Australia have much higher rates of psychological distress and psychiatric disorders than young people in more stable living situations.²² One young woman we spoke to told us how her state of homelessness triggered a mental health episode.

Yet young people experiencing homelessness are less likely to have access to the resources required to seek treatment for mental illness. Homeless young people are often focused on seeking stable accommodation and support, and may not access another service for treatment until their mental illness becomes critical.

In rural areas there are a limited number of generalist mental health services, let alone services for young people. This is problematic, as young people are not getting

2009) paragraph 20

²² Council to Homeless Persons and Orygen Youth Health 2005

services that are targeted to their particular needs as young people. Many young people will not access an adult mental health services as they feel intimidated..

8.7 The right to education

During our consultations we heard many experiences of young people disengaged from school and not enjoying their right to education.

to get to uni, to get a good job - which, if realized, then enables people to participate – (if you can't write/speak well, you won't be listened to). People (who are disadvantaged) need to be supported to access and obtain education. There needs to be equality of opportunity in terms of accessing Education. (participant of Frontyard workshop)

A community worker in Seymour reflected;

“Coming from an indigenous perspective a major concern would be keeping young kids engaged in school”

The Assistant Principal of a secondary college in Seymour reflected:

“once students have gone down the bad attendance path it's hard to get them to re-engage. It's hard to change their attitude because of the culture that they associate with. We need some general support on these issues.

Unfortunately there are limited supports and no sustained alternative for young people who can't conform to the mainstream education system. Current processes make it hard for young people to re-engage in education, and there are not many options of alternate education available, especially in country regions.

Other barriers to the right to education raised in the consultations included:

- rising costs of education and training e.g. voluntary fees at schools, the increasing expense of text books etc..., and
- For newly arrived young people the six months of ESL training offered is insufficient and sets them back in terms of their ability to reach full potential in education.

8.8 Right to privacy

Privacy legislation that currently exists at a state and federal level predominantly relates to personal information only. The right to privacy remains largely unprotected in Australia's domestic laws. There is no general recognition of the right to privacy in Australian law, either at common law or in legislation.

A report from the Australian Law Reform Commission Privacy Review in 2008 recommended some 295 changes to privacy laws and practice and identified ten key areas of concern, including children and young people.²³

The right to privacy is particularly relevant to young people who use health or other social services, who are having housing difficulties or have been charged with and convicted of criminal offences. Major areas of concern with respect to the right to privacy include:

(a) The use of closed circuit television cameras (CCTV) by both public authorities and private organisations is increasing. The use of CCTV in public places raises significant privacy issues and impacts disproportionately on homeless people, young people and other groups reliant on public space.

(b) Police 'stop and search' powers are overly broad and inadequately regulated, resulting in disproportionate interferences with the right to privacy (see section 9.1 above).

c) Police releasing information about a young offender's case and findings of 'guilt without conviction'. Also there have been incidents of police sharing information (e.g. with Department of Immigration and Multicultural Affairs (DIMA) regarding client's who have had dealings with police which may have involved being cautioned or warned, but there were no formal charges or conviction.

d) Young people living in country towns are fearful that local medical practitioners will breach their privacy. A worker from Goulbourn Valley Primary Care Partnership in Shepparton shared that young people are hesitant to ask for assistance when it comes to contraceptive health matters such as buying condoms. Another worker from Seymour mentioned that young woman who suspect they are pregnant are afraid to go to the local doctor.

²³ ALRC Privacy Review, p 48. *Australia's Homeless Youth*, above n 21, p. 285.

8.9 Freedom of movement and assembly

The right to freedom of movement and assembly imposes positive obligations on the government to take steps to ensure people are not unduly restricted by other people or government bodies, and also to refrain from interfering with these rights.

8.9.1 However many laws and practices curtail these rights, such as commonplace “move on” powers exercised by police and security guards. These laws and practices have the effect of preventing young people from moving through, remaining in, gathering and “*hanging out*” in areas of public space. Move on powers have a negative impact on young people because young people feel more alienated and unjustly excluded from public space and this leads to an escalation of conflict between police and young people²⁴.

Young people told us many experiences of being moved on by security guards at shopping complexes, even though they just congregating in a safe, popular accessible space. In a suburban outer metropolitan shopping centre owned by Westfield the proprietor’s policy is that young people can only be in groups of 3-4 otherwise the security guard can move them on.

“no one moves groups of elderly people on”
(member of youth leadership course , City of Whittlesea)

Young people also reported harassment by the police, being asked to move on, often without any reason, except that the young person was congregating with friends in a public space.

I was moved along for sleeping in public... (participant of Frontyard workshop)

Cops come and tell us to move on when we are just hanging out.
(young person attending workshop in Braybrook)

There always seems to be some bullshit reason ‘we’ve had a report of blah blah blah so move on’. (young person attending workshop in Braybrook)

8.9.2 Public transport is the main mode of transport for young homeless people and essential for access to homelessness services and networks that support young homeless people during these crisis periods. But due to their low incomes many young homeless people can’t afford to buy a ticket, even the half fare concession

²⁴ In particular New South Wales Ombudsman, *Policing Public Safety*, 1999 and Paul Spooner, ‘Moving in the Wrong Direction: An Analysis of Police Move-on Powers in Queensland’ (2001).

price, at the time of travel. They often travel without a ticket and many are apprehended and fine for travelling without a ticket by ticket inspectors.

It is difficult, if not impossible, for young homeless people to pay these fines, which overtime escalate with non-payment. As a homeless young person asked:

If you can't afford \$2.20 for a ticket how to afford \$250 for a fine (Frontyard workshop)

It is one of the most common and frequently committed offences young homeless people.²⁵ Yet for many it is a crime essential to survival, or else they have restricted access and movement to essential services, or community networks.²⁶

you're told to find work by Centrelink– it's a Catch 22 – how can you look for work if you can't afford tickets – either you risk a fine or no job (participant at Gateway workshop)

Homeless youth surveyed by Youthlaw in 2007 had an average of \$973.00 in outstanding fines each. Public transport fines lead to a downward spiral that may contribute to cyclical or long-term homelessness.

Case Study 8: Public transport fines and homeless young people

Mark has been homeless since 2005. He left home as a teenager because he was the victim of violence. Since then he has been living between a youth refuge and rooming house which he pays for with Youth Allowance, his only source of income. Mark wants to make changes to his life and find stable accommodation. Case workers at Melbourne City Mission have been impressed with Mark, noting that he has attended all scheduled appointments on time and demonstrated a genuine desire to change his situation. Because Mark moves around a lot, between the youth refuge and the rooming house, and to and from appointments with case workers, he has received many public transport fines for travelling without a valid ticket. To date, Mark has had 16 fines dismissed on the basis of special circumstances. He still has 20 fines outstanding, totally more than \$3,500. It is likely that these fines too will be dismissed on the basis of special circumstances but not until after a great deal of work and resource expenditure by case workers at Youthlaw, the DOT, and the courts.

²⁵ *Australia's Homeless Youth*, above n 21, p. 285.

²⁶ *Ibid*, p. 283.

8.10 Right to fair conditions of employment

Youthlaw's legal practice experience is that young people in the workplace are highly vulnerable to exploitation and unfair treatment, and have specific concern around junior wages.

Although there are laws to protect young people rights in the workplace they are generally not asserted by young people or enforced by relevant authorities. And even if young people do know their rights and assert them they feel they risk being sacked.

Groups consulted, discussed how vulnerable young people are in today's employment market. Most employers will readily employ 16 year olds, many of whom have no knowledge of their work rights. Many are paid under award rates, don't get paid standard entitlement and not given pay increase for extra duties. They are often on casual contracts they feel they don't have any recourse.

"Because I'm 16 I feel like I am getting worked to the bone because they don't have to pay me as much." (participant at workshop at ACE, Shepparton)

"They pay you shit money, work you to the bone, and when you turn 18 and they have to pay higher wages you lose your job." (participant at workshop at ACE, Shepparton)

8.11 Right to Information

Recognising the important function performed by the mass media, the government is obliged to ensure that children and young people have access to information and material from a diversity of national and international sources, especially those aimed at the promotion of their social, spiritual and moral well-being and physical and mental health. (Article 17 of CROC)

The Federal Government's recent decision to expand broadband has left out small rural and remote towns like Tallangatta with a population of less than 1000. This is despite the fact that access to the internet is described by the students at Tallangatta Secondary College, as being really poor in the area.

Can't get broadband, wireless is really slow, satellite is really expensive.

Part E – Question 3:

How can Australia better protect & promote human rights?

9. Introduction

9.1 Youthlaw considers a federal Human Rights Act to be an essential component of effective human rights protection. Many young people we have spoken with also think it's a good idea, and ask:

“If the National Human Rights Charter is going to happen we all feel it is a good idea, but we will have to wait and see what will become of it all. Is it just all talk?” (member of Young Lions, Whitelion)

Why wouldn't we have a law protecting our human rights? What is wrong with such a law? (student at Tallangatta Secondary College)

9.2 Apart from bringing Australia in line with other democratic nations, it will facilitate better outcomes for young people across the country. Although the full operation of the Charter is only relatively recent there is growing evidence of cultural change in Victoria under the Act. We give some examples from our law reform project work.

9.3 In order for children and young people to have their rights fully protected key elements of the Act would include:

- an accessible free standing cause of action so that you can go to Court if their rights are violated; and
- mechanisms of accountability placed on Government, namely the introduction of an independent national Commissioner for Children and Young People.

9.4 Youthlaw and the groups of young people we consulted do not consider that the introduction of a Human Rights Act, of itself, would sufficiently ensure full and proper human rights protection in Australia. Any legislative change must be accompanied by non-legislative initiatives and measures that promote the realisation of peoples' rights:

- human rights education in for community, schools;
- training for those working with young people;
- mechanism to promote youth participation in legal and government processes, and
- introduction of a national child rights policy framework with budgetary allocations that enable the effective implementation of the rights of children and young people.

10. A Human Rights Act

"I was surprised to hear that we did not have Human Rights Legislation already".

- 10.1** A Human Rights Act should ensure that the human rights of all persons in Australia are protected. In addition to enshrining peoples' rights in law and more fully implementing Australia's international obligations, a Human Rights Act would also:
- Provide a clear statement of people's rights and minimum human rights standards
 - Promote dignity and respect for all, but especially minority groups
 - Protect all people, especially those more marginalised, from human rights violations by government and its agencies
 - Impose responsibilities on government and public authorities to respect, protect and fulfil human rights
 - Ensure that governments are held responsible and accountable for human rights breaches
 - Ensure that effective remedies are available for breaches of human rights
 - Educate people about human rights
 - Help create a culture of respect for human rights

Recommendation 1:

The Commonwealth Government should introduce a Human Rights Act

10.2 Victorian experience of a human rights law

We would like to share some examples from Victoria where human rights legislation has led to better outcomes for young people. Youthlaw is aware of a growing body of case studies from Victoria of how human rights are being used to change, not only the culture of government action and decision making in issues that affect children and young people, but also the approach of young people and their advocates.

10.2.1 Promoting Cultural Change

Under the Victorian Charter VEOHRC has the responsibility to examine the operation of the charter, including its interaction with other laws and the common law. The VEOHRC's 2008 annual report on the operation of the Victorian Charter records some of that change within government.²⁷

²⁷ Emerging Change: The report on the operation of the Victorian Charter 2008 (VEOHRC) <http://www.humanrightscommission.vic.gov.au/publications/annual%20reports/2008charterreport.asp>

In the report's section on furthering the protection of human rights: the four year review of the Charter Operation - it examines the human rights of children and young people, with a particular focus on their right to participate in decision making.

The Commission surveyed Victorian Government departments and agencies about their level of engagement with children and young people in terms of encouraging their right to participation in decision making. State government agencies and local government reported a wide range of initiatives and endeavors to engage with young people and seek their input on particular issues.

Some of the reports received demonstrated openness to adopting sustained strategies and frameworks that aim to improve participation of children and young people. The Department of Transport (DOT) indicated:

For general services that the portfolio delivers and manages, more work could be done to increase the levels of participation of children and young people. There is capacity for the portfolio to look at the position of young people within the task of addressing mass transport needs. Following on from DOT's restructure this year steps are being taken to enhance DOT's stakeholder engagement and DOT will reflect on the participation of children and young people as part of the process. (p127)

We also note Victoria Police's Child and Youth Strategy 2009 -2013: which provides Victoria Police *with a framework to enhance organisational understanding of:*

"issues impacting on young people and to develop a better understanding of how we can effectively deal with them..."

The framework identifies a process to engage with young people and internal and external stakeholders to identify and inform policing practice.

10.2.2 Making government and public authorities consider human rights

Under the *Charter* all public authorities, under section 38, are obliged to act compatibly with rights protected by the *Charter*. In the first instance the *Charter* must be considered when making laws and policies, and in the second instance they must be considered when public authorities implement the local laws on a daily basis.²⁸

²⁸ Victoria Local Governance Association (VLGA) pilot project called 'Human Rights Matters Locally'. With a number of local councils, VLGA are developing tools to assist local government to implement the Charter.

Case study 9: Proposed move on powers in local Councils

In August 2008 the City of Greater Bendigo considered and rejected a proposal to introduce a ‘move on and stay away’ provision in local laws to deal with antisocial behaviour. Councillor Wayne Gregson cited evidence from Queensland and Western Australia that showed the laws ended up targeting “exclusively if unwittingly marginalised groups like the homeless and indigenous who are least able to pay infringement notices”.²⁹

Local media reported that the council rejected the local law on human rights grounds and noted that the council’s report on its review of local laws stated that “considering the Human Rights Charter, a person had the right to be in a public place”.³⁰

Then in November 2008, Frankston City Council proposed an amendment to local law that would give new broad powers to police enabling them to direct a person to leave a public place and not return for up to 24 hours. The council’s proposal is in response to a perceived increase in anti-social behaviours in and around Frankston City.

Youthlaw, in collaboration with Peninsula Community Legal Centre [PCLC] and YACVic submitted a response to Frankston City Council’s proposal, opposing the introduction of move-on powers on grounds that it is likely to infringe a number of young people’s rights protected by the Victorian *Charter of Human Rights and Responsibilities 2006 (Vic)* (“the Charter”), including *freedom from discrimination, right to participate in public affairs* (section 18), *freedom of movement* (section 12), and *right to peaceful assembly and freedom of association* (section 16). The submission was informed by what young people from Frankston had said in informal focus groups and via an online survey run by Youthlaw prior to the submission being completed.

10.2.3 Make government and public authorities more accountable for potential breaches and rights violations.

The Victorian Charter has set an environment where laws and policies are scrutinized and reviewed to ensure they comply with human rights obligations.³¹ Each bill presented, the Minister responsible must prepare a written Statement of Compatibility

²⁹ “Move-on powers rejected”, Bendigo Advertiser, 22/08/2008, p7.

³⁰ “Traders push to move trouble makers on”, Bendigo Weekly, 20/06/2008, p9

³¹ *Charter* s.20

indicating whether the bill is consistent with human rights, and if not, the statement must indicate *how* it is inconsistent and explain the nature and extent of any incompatibility. Additionally, all legislation including subordinate legislation introduced to parliament must be considered by a bipartisan Scrutiny of Acts and Regulations Committee (SARC) for the purpose of reporting whether the legislation is incompatible with human rights.³² In 2011 the Victorian Attorney General must consider and report on appropriate causes of action and remedies for breaches of the *Charter*, together with additional human rights to be included in the Charter.³³

Case study 10: Monitoring of Graffiti Prevention Act

The Graffiti Prevention Act (Vic) 2007 increases police search powers and introduces a new offence of possession of a prescribed graffiti implement which fundamentally conflicts with the fundamental principal of innocent until proven guilty.

Not fair with the graffiti law – you’re guilty then you have to prove that you’re innocent – it’s round the wrong way (participant of Gateway workshop)

In April 2009 Youthlaw hosted a forum to review the first year of the implementation of the laws and its impact on young people and its effectiveness in reducing graffiti incidence.

A number of young people reported to Youthlaw, in the lead up to the forum, that they were caught in possession of graffiti implements on their way to a range of legitimate activities such as graffiti programs, legal graffiti walls, painting personal canvasses.

Young people who try and do the right thing but still get in trouble when doing, for example, legal walls (without permits) get dejected and think everyone is against them; they begin to wonder why should they bother doing the right thing. (Adrian Doyle - Yarra Youth Services Graffiti Program)

In relation to the increased search powers without warrant, many young people between the ages of 14 and 18 years reported being stopped by the police up to 3 or 4 times in the past, sometimes more.

These impacts on young people raises the question whether aspects of the law amount to an unreasonable limitation of *Charter* rights, disproportionate to the aim of reducing incidents of graffiti and improving social amenity, and if there are less

³² *Charter* s30

³³ *Charter* ss 44(a)(i)(ii)

restrictive and more effective means available to achieve this i.e. more legal graffiti programs.³⁴

Forum participants wanted to continue to monitor the Act and lobby against elements of the Act that infringe on young people's human rights, and continue to advocate for fair and proportionate laws that are consistent with the principles of the Charter.

Case study 11: Record age of people searched without a warrant

The Charter provides an additional advocacy tool to try and ensure laws are implemented in an accountable and transparent way.

In August 2008 Youthlaw wrote to Victoria's *Minister for Police and Emergency Services to Bob Cameron raising our concerns* that the search without warrant powers (in section 13 of the *Graffiti Prevention Act*) may lead to excessive and inappropriate searches of young people.

We brought to the Minister's attention that although the Act requires details of all searches conducted without warrant to be recorded by police (section 16) it does not specify that police must record the age of the person searched. We expressed our concern that the absence of this information will effectively result in the government being unable to monitor searches in relation to young people.

The Minister wrote back in letter dated 25th August confirming 'that this information is important to enable an informed judgement to be made as to any impact the search power may have on young people'

10.2.4 Advocacy tool for young people

Young people participating in Youthlaw's REAL Rights Project give unique perspectives of how they have experienced the law, their human rights issues, and also how they have used human rights to advocate for change. The project highlights the great potential to promote a culture of positive and respectful decision making by all arms of government where policy and law reform processes are informed by young people's voices and experiences.

³⁴ Section 7 of the *Charter*, rights may be subject to limitations that: Have a legitimate and compelling aim, are proportionate to that aim; and restrict the right as little as reasonably possible.

Case study 12: Young people and Police

The Inaugural Australasian Human Rights & Policing Conference in December 2008 provided a platform for young people to reflect on their experiences with Victoria Police and present their ideas for how to improve relations. In the lead up to the conference Youthlaw and Frontyard Youth Services held consultations with young people which revealed young people's concerns about inequitable access to public space, the impact of stereotyping young people, the misuse of police discretion & how police engage with young people at the first point of contact – whether on the street or in the station.

Two of the young people who have experienced homelessness were supported to present their perspectives and ideas at the conference workshop. These included:

- *not speak down to us, rather talk to us as equals*
- *Keep everything we tell them confidential*
- *Listen to both sides of a story (both old v young)*
- *[Not] stereotype young people*
- *make sure you feel safe and secure*
- *The young women encouraged police to ensure the presence of female officers to minimise intimidation*
- *A more transparent complaints process – that is less complex, bureaucratic*

Following on from the conference members of Victoria Police approached Frontyard Youth Services in 2008 about establishing forums for improved dialogue between police & at-risk young people. Youthlaw & Frontyard agreed to host a series of focus groups with young people receiving services. Ideas being discussed and explored include designing a safe meeting place for young people and police and professional development training for police officers driven by young people.

Case study 13: Youth Disability Advocacy Service (YDAS)

Youthlaw has been supporting a working group of current students and recent graduates affected by this issue of funding for attendant care services in higher education, who are developing advocacy strategies using the Charter as an advocacy tool. The working group is in the process of developing a survey which seeks to clarify how many students are affected by the discrepancies in Attendant Care funding. The working group will use the data from the survey to inform the development of any submissions, letters & presentations to education networks and/or relevant ministers.

11. Key elements of a Human Rights Act

11.1 Whose rights should be protected?

A Human Rights Act should not distinguish between the rights of citizens and non-citizens.

Recommendation 2:

A Human Rights Act should protect all human persons in Australian territory and subject to its jurisdiction.

11.2 Which human rights should be protected by a Human Rights Act?

Youthlaw recommends that the Federal government develop and implement a Human Rights Act incorporating all civil and political rights and freedoms, all economic, social and cultural rights and freedoms and the rights contained in the CROC, as specific to children and young people.

All of Australia's human rights obligations under international human rights law should be incorporated and protected under Australia's domestic law. In particular there should be unequivocal protection for children and young people against discrimination to ensure equal treatment of young people wherever they live and whatever their background.

A strong message coming from young people in our workshops was the need for specific provisions that guarantee children and young people the right to participation, and have their views taken into account in accordance with their age and level of maturity.

Have all the basic rights for everyone, but also have other rights that specifically target the different age groups and circumstances. (member of Young Lions, Whitelion)

Recommendation 3:

A Human Rights Act should protect and promotes all civil, political, economic, social and cultural rights human rights, and specific children's rights contained in CROC.

11.3 Who should be obliged to protect rights?

Government and public authorities performing *functions of a public nature* on behalf of the State should be obliged to protect rights. The Victorian Charter binds government in its dealings with the community by defining government and its component parts as

being 'public authorities'. The Victorian *Charter* (section 38(1)) provides that public authorities must act compatibility with the human rights contained in the *Charter and Convention*. 'Public authority' is defined in section 4 of the *Charter* to include government agencies and departments, statutory authorities, the Victoria Police, and local councils, and extends to bind private entities and community sector organisations where they are performing *functions of a public nature* on behalf of the State.³⁵

There was some discussion amongst workshop participants about the human rights obligations of corporations, and non government agencies. Youthlaw supports a provision similar to that in the ACT Human Rights Act which allows entities that are not public authorities under that Act to opt-in to the obligations on public authorities (I.e. obligations to give proper consideration to human rights and to act in accordance with human rights) The opt-in procedure came into force on 1 January 2009 and is intended to promote a meaningful dialogue within the community about human rights, engender cultural change by developing a rights-consciousness in the ACT and to recognise the contribution of the private sector to the well-being of society.

Recommendation 4:

Government and public authorities performing *functions of a public nature* on behalf of the State should be obliged to protect rights, whilst entities that are not public authorities under that Act to be encouraged to opt-in to the obligations.

11.4 What should happen if an individual's rights are breached?

A Human Rights Act should provide for:

- a freestanding, independent cause of action for breaches of rights which is accessible and appropriate to all in the community, including children and young people; and
- mechanisms to ensure systemic breaches of human rights are identified and addressed.

11.4.1 Independent cause of action

Ultimately, human rights in the Act need to be enforceable within the courts in order for children and young people to have their rights fully protected. A legally enforceable Charter was recommended in the *Seen and Heard* report.³⁶ Unlike the Victorian

³⁵ *Charter* s4(c)

³⁶ Australian Law Reform Commission and Human Rights and Equal Opportunity Commission, report

Charter a breach of rights without any other proceedings instituted, should allow the individual child or young person to bring a *new* cause of action.

A full range of judicial and non-judicial remedies should be available for breaches of all civil, political, economic, social and cultural rights, including all such remedies as are just and appropriate.

Any mechanisms of enforcement in relation to breaches of human rights need to be accessible and appropriate to, and have a timely outcome for, children and young people and need to ensure that children and young people can fully participate in enforcement processes and proceedings. Young people do not easily make complaints or seek redress because these are processes that take time and young people may not have adequate information or legal assistance

While the Commonwealth Ombudsman has developed flexible complaints procedures which make it marginally easier for children and young people to access and understand and use complaints procedures, no specific entry points or procedures for children have been established.

Recommendation 5

A Human Rights Act should provide for a freestanding, independent cause of action for breaches of rights which is accessible and appropriate to all in the community, including children and young people.

11.4.2 Systemic complaints

Mechanisms to address systemic breaches of the Act also need to be part of the enforcement framework. Systemic review mechanisms should be independent from government.

Need to be independent ...So that way you know that the person you are talking to won't go run his mouth of to the Cop. (participant of workshop in Braybrook)

You don't want to go after cops legally – they make your life a living hell (participant of Gateway workshop)

No. 84, "Seen and Heard: priority for children in the legal process" recommendation 164, p431, "The Charter should create a legally enforceable obligation on the part of the relevant .

This independent review body could take a number of forms.

Need to bring in a rights inspector –like a health inspector (participant of Gateway workshop)

There should be an auditor that checks Government actions re: homelessness and human rights issues. (participant of Frontyard workshop)

Have youth Advocates who'll go into schools – check on how students are being treated (participant of workshop in City of Whittlesea)

We believe it would be good to also have an independent body/ person that young people can go to with a human rights problem and be supported and have the process explained, streamline and simplified. (State Council representatives of Way Out)

Encompassing these ideas, Youthlaw calls for an independent Commissioner for Children and Young People (or Human Rights Ombudsman for Children and Young people), responsible for doing the following:

- Focusing on the rights, interests and well being of children and young people to ensure their voices are not lost in a more general discussion about human rights.
- Giving children and young people the opportunity to participate and have a role in developing, implementing and reviewing the Human Rights Act.
- Having a watching brief for all individual complaints about breach of human rights;
- Providing a written report to Parliament which outlines all complaints under the Act and highlights issues which appear to be systemic (this requirement should be in legislation);
- Carrying out on his / her own motion investigations related to rights, to determine whether systemic issues exist;
- Monitoring, auditing and reviewing the systems, policies and practices of government departments and service providers that affect children and advising government of necessary changes to government department processes and policies to ensure that actions and resources allocations comply with the Act;
- Investigating significant complaints and possible systemic failings in relation to a child;
- Proactive monitoring and auditing services provided to children by the government agencies and public authorities;

Such a position has been in place in countries like Norway for several decades. In Norway the Children's Ombudsman is a statutory position, fully funded by the Norwegian government with a legislative mandate to investigate complaints brought by children and young people. The evidence is that the Office of the Children's Ombudsman pursues complaints vigorously and transparently and that it has done a lot to make children and young people a far more visible part of the civic life of Norway. It has probably helped the work of the Children's Ombudsman that Norway has also legislated to make the United Nations Convention on the Rights of the Child a part of Norway's domestic statutes

Additionally, the Australian Human Rights Commission should be resourced to establish a specialist children's rights unit to undertake broad national systemic advocacy on behalf of children.

Recommendation 6

An independent National Commissioner for Children and Young People should be established.

Recommendation 7

The Australian Human Rights Commission be resourced to establish a specialist children's rights unit to undertake broad national systemic advocacy on behalf of children.

11.5 What sort of limits should a government be able to place on human rights?

Consistent with international human rights law, the Act should provide that certain rights are absolute. These rights should include the right to be free from torture and other cruel, inhuman or degrading treatment or punishment, and the right to be recognised as a person before the law.

No blanket exceptions should be permissible (i.e. right to discriminate on grounds of religion) in anti discrimination legislation. Rather the government needs to engage in a limitation test as found in section 7 of Victorian Charter which sets out that rights may be subject to limitations that:

- Have a legitimate and compelling aim;
- Are proportionate to that aim; and
- Restrict the right as little as reasonably possible.

Recommendation 8

Certain rights should remain absolute, while other rights under the Act should only be limited by government where government has satisfied a reasonable limitation test such as that set out in the Victorian Charter.

11.6 What should be included in a preamble to any Human Rights Act?

Based on our consultations Youthlaw would like to suggest the following preamble:

This Act sets out and ensures protection of the human rights that are essential for all people to live with dignity and participate fully and equally in our community.

Recommendation 9

The preamble to the Human Rights Act could include:

This Act sets out and ensures protection of the human rights that are essential for all people to live with dignity and participate fully and equally in our community.

12. Other measures necessary to ensure an effective Human Rights Act

Youthlaw submits various additional complementary measures are essential to the effective implementation and operation of a federal Human Rights Act.

These include:

1. Public education campaigns on human rights
2. Human rights education embedded in school curriculum
3. Human rights training for government agencies and public authorities
4. Mechanism to promote youth participation in legal and government processes
5. A national child right policy framework

12.1 Public Education Campaign

12.1.1 Once a Human Rights Act has been created, to ensure its efficacy, including that it is well known and complied with, we recommend that it be made accessible to all children and young people as well as their families, including being provided with a youth friendly and accessible copy of the Act³⁷. A brilliant example of this is the Victorian Government's Charter for Children and Young People in Out of Home Care.³⁸

Not everyone comes from an educated background where they know their rights (participant at Gateway workshop)

Everyone knows their right to silence, but they don't know about their civil rights (participant at workshop at Inner Southern Community Health Service)

Just being able to easily access our 'Australian' rights... Where to go for information on rights? An easily accessible document — for everyone — that informs everyone of his or her rights. (participant at YACVic workshop)

12.1.2 The link between human rights education and the promotion of a culture of protection of and respect for human rights are well acknowledged, both internationally³⁹ and within Australia. The federal government has itself stated that it 'believes that education and awareness about human rights are the most meaningful ways to promote greater respect for the value of human rights and reduce breaches of human rights within Australia.'⁴⁰

A federal act won't work if people don't know about it, and know about their rights protected by it. (Student at Tallangatta Secondary College)

Helps to socialise if you understand that everyone's equal & needs respect (participant at Gateway workshop)

12.1.3 It is important that a public education campaign is appropriately resourced. In Victoria, there is a significant, but ad hoc and under resourced, educative campaign. The Commission has an education unit running a wide range of human rights workshops

³⁷ Australian Law Reform Commission and Human Rights and Equal Opportunity Commission, report No. 84, "Seen and Heard: priority for children in the legal process" recommendation 165, page 432

³⁸ See http://www.cyf.vic.gov.au/_data/assets/pdf_file/0009/96066/charter_for_children_in_out-of-home_care.pdf sited 11 June 2009

³⁹ See e.g. UN Human Rights Commission Resolution 2004/71

that inform Victorians including schools, private sector, community organisations etc about Victoria's human rights charter.

Further community education takes place in an ad hoc way by a range of community organisations including community legal centres. For example Youthlaw has been running the REAL Rights project for young people and the Eastern Community Legal service has developed a play Fred's Fair Play to help educate children and families about human rights.

Local governments also play an important role in community education and local human rights initiatives. There are some good examples in Victoria including local government areas (e.g. City of Hume) which has a local "Human Rights Charter".

12.1.4 A group of young people Youthlaw met with are currently developing a human rights project (auspiced by ISCHS and funded by Office of Youth) which aims to raise community awareness of and promote human rights through talks in local schools, at local community festivals and youth events, advertising materials and murals and videos interviewing students about what they think of human rights.

Other young people we spoke to especially those at Frontyard Youth Services had ideas how such a public education campaign could be promoted. A Frontyard participant suggested that there should be a national media and advertising campaign to promote awareness of human rights and homelessness issues. There needs to a focus in mainstream media so people know the issues. There needs to be government advertisements on television with bold, confronting statements, on issues people relate personally, *like the family violence ad – that hit home – I noticed that...*

Advertisements relevant for young people are needed on radio, in commercials, children's programs, in school curriculum, in bus shelters etc.

Recommendation 10

The Human Rights Act be complimented by a well resourced public education campaign that is accessible to all children and young people as well as their families.

12.2 Human rights education embedded in school curriculum

12.2.1 Youthlaw advocates for greater emphasis of human rights education as a core component of school syllabuses in every schools across state and territory of

⁴⁰ Australian Nation Plan of Action, UN World Human Rights Programme

Australia. Under international law, Australia has a duty to commit to ensuring that all primary and secondary school students receive education about human rights. This duty is set out in several conventions, including article 29 of CROC.

There should be a subject in school – like life skills – teach you how to protect yourself – to be safe (participant from Gateway workshop)

School-based education curricula about human rights should be developed, including materials and professional development of teaching staff, throughout all levels of education and training, including early years, kindergarten, primary, secondary, and TAFE colleges. A culture of human rights would be nurtured through school-based education on human rights in a localised context throughout childhood and adolescence.

In April 2009 the draft Early Years Learning Framework marks a new approach to early childhood education, with the goal will be to "promote children's civic participation and nurture socially responsible citizens for a future world."

12.2.2 Human rights education in schools is of an ad hoc nature

My school which has students from a large range of backgrounds teaches about human rights, and students rights in the school i.e. not to be bullied. It would be great to have more of this type of education and maybe even for our parents to learn about human rights.

(member of Youth Leadership Course, City of Whittlesea workshop)

However, a survey of Melbourne state secondary school teachers about the nature and extent of human rights education in their schools found that: the limited amount of human rights education occurring in Melbourne schools is not because of any legal imperative, but rather because there are teachers who feel strongly that students should learn about human rights, and [the teachers] strive to provide human rights education notwithstanding the numerous impediments.⁴¹

This research goes onto suggest the impediments are:

- (a) the absence of clear directives from government and school administrators, and lack of legislative mandate, to support human rights education as a priority area;
- (b) a lack of government-produced teaching materials relating to human rights

⁴¹ Dr Paula Gerber, 'From Convention to Classroom: The Long Road to Human Rights Education', in Newell and Offord (eds), *Activating Human Rights in Education: Exploration, Innovation and Transformation* (2008), p 31.

education, forcing teachers to rely on materials produced by non-government organisations which teachers view as more radical and therefore less appropriate for the classroom; and
(c) an overcrowded curriculum.

Specific and creative initiatives, which are relevant and interesting for a diversity of children and young people, including multilingual and accessible formats for education, need to be developed with children and young people who are going to use them. Youthlaw's work highlights the need for targeted education material and programs and we would be happy to work with Government on this issue.

Recommendation 11

School-based human rights education curricula should be developed, including materials and professional development for teaching staff, throughout all levels of education including early years, kindergarten, primary, secondary, and TAFE colleges.

12.3 Human rights training for services supporting young people

Services delivered and contracted by government departments in relation to children and young people to whom a Human Rights Act will apply obviously need to provide services in accordance with the rights protected by the Act. Accordingly, as is recommended by the Human Rights Committee, the Australia Government should adopt a comprehensive plan of action for human rights education including training programs for public officials, teachers, judges, lawyers, and police officers on the rights protected.⁴²

Police need better training. Police need to treat everyone better, but particularly they need to treat disadvantaged groups better. (participant of Frontyard workshop)

People who train to be social workers or youth workers need to understand what it's like – stay in a refuge, live in our shit for a day – at least they'll have a taste – will understand (participant of Frontyard workshop)

Recommendation 12

Government should adopt a comprehensive plan of action for human rights education including training programs for public officials, teachers, judges, lawyers, community workers and police officers on the rights protected.

⁴² See para 27 p.8 ICCPR Concluding obs

12.4 Participation of young people in legal and government processes

Upholding children's right to participate in decisions that affect them is fundamental to their enjoyment of other human rights and a key signal of valuing and supporting children and young people generally. This is particularly relevant in judicial proceedings in care and protection, youth justice and family court matters, and in child protection and out of home care services. We need to genuinely "value" and "respect" their involvement in democratic processes and decision making processes

12.4.1 Participation in legal processes

Earlier we referred to the *Seen and Heard* report. After 12 years the recommendations, many of which still have currency today are largely unimplemented.

Recommendation 13

Government to call a review of the report by the AHRC and ALRC and wherever relevant implement recommendations of the 1997 Report *Seen and Heard: priority for children in legal processes*

12.4.2 Participation in government processes

Government needs to involve young people at the earliest point of the process and listen to the silenced voices of the marginalised young people, and convey to them what ultimately happens to their contribution.

A range of ideas were put forward by the young people we spoke with including:

- youth representatives in all levels of government;
- a youth ambassador for every municipality;
- *Make youth part of the process at every stage of policy development – especially from the beginning.* (member of Youth Leadership Course, City of Whittlesea workshop)
- *There needs to be regular consultations involving diverse groups representing a cross section of the community and government (young, old, black, white, straight, gay) sitting down to talk – identifying issues and linking together to address.* (participant of Frontyard workshop)
- *Government policy seems to be to make consultation happen a lot so they appear to be listening but sometimes we would like to see more follow up and at least see where our contributions are taken.* (member of Youth Leadership

Course, City of Whittlesea workshop)

- *The government needs to live in our shoes – need to hear what’s going on – live on the streets (participant of Frontyard workshop [reiterated by the whole group])*

A National Commissioner for Children and Young people could play an important role in enhancing the democratic participation and representation of young people.⁴³ We endorse United Nation Youth Association’s (UNYA) submission that the Commissioner’s roles would be the remit to involve young people as closely as possible in decision-making at various levels. This would involve working with the Australian Youth Forum (AYF) in:

- organising local and national forums for young people;
- establishing serious youth advisory groups to consider policy and practice in governance and legal issues affecting young people;
- supporting the creation of youth places in the governing structures of institutions that significantly affect young people, such as curriculum development authorities.

Recommendation 14

The role of a National Commissioner for Children and Young People would also involve young people as closely as possible in decision-making at various levels.

12.5 Child rights policy framework

Youthlaw endorses the recommendation of the National Children and Youthlaw Legal Centre (NCYLC) that government should develop a clear national policy framework based on the international framework set out CROC. This framework will be supported by legislative, administrative and policy measures, resources including appropriate budgetary allocations that implement the rights of children in Australia. The framework will include evaluation, monitoring and reporting – to the Australian and international community and to children themselves.

With regard to budgetary allocation we have heard suggestions for:

⁴³ *Protecting Children is Everybody’s business*, National Framework for protecting Australia’s Children 2009 -2020, Explorations of role for a National Child Commissioner, a role which would support participation of children, p16.

- additional local programs to support at risk and disadvantaged students and encourage their continued participation in school that take into account special considerations for rural areas, and needs to allow for holistic, long term (generational) planning and development. (Assistant Principal, Seymour)
- a range of legal, accommodation and support options to reduce the incidence of homelessness.⁴⁴
- more community legal centres and diversionary programs for country regions of Victoria.

Recommendation 15

Government should develop a national policy framework, based on the framework set out CROC, and supported by legislative, administrative and policy measures, resources including appropriate budgetary allocations.

⁴⁴ Green Paper on Homelessness, p. 66.

13. Summary of Recommendations

- 1: The Commonwealth Government should introduce a Human Rights Act.
- 2: A Human Rights Act should protect all human persons in Australian territory and subject to its jurisdiction.
- 3: Human Rights Act should protect and promotes all civil, political, economic, social and cultural rights human rights, and specific children's rights contained in the UN CROC.
- 4: Government and public authorities performing *functions of a public nature* on behalf of the State should be obliged to protect rights, whilst entities that are not public authorities under that Act be encouraged to opt-in to the obligations.
- 5: A Human Rights Act should provide for a freestanding, independent cause of action for breaches of rights which is accessible and appropriate to all in the community, including children and young people.
- 6: An independent National Commissioner for Children and Young People should be established.
- 7: The Australian Human Rights Commission be resourced to establish a specialist children's rights unit to undertake broad national systemic advocacy on behalf of children.
- 8: Certain rights in the Act should remain absolute, while other rights should only be limited by government where government has satisfied a reasonable limitation test like the Victorian Charter.
- 9: The preamble to the Human Rights Act could include: *This Act sets out and ensures protection of the human rights that are essential for all people to live with dignity and participate fully and equally in our community.*
- 10: The Human Rights Act to be complimented by a well resourced public education campaign, accessible to all children, young people, and families.
- 11: School-based human rights education curricula should be developed, including materials and professional development of teaching staff, throughout all levels of education and training, including early years, kindergarten, primary, secondary, and TAFE colleges.
- 12: Government should adopt a comprehensive plan of action for human rights education including training programs for public officials, teachers, judges, lawyers, and police officers on the rights protected.
- 13: Government to call a review of the report by the AHRC and ALRC and wherever relevant implement recommendations of the 1997 Report *Seen and Heard: priority for children in legal processes*
- 14: The role of a National Commissioner for Children & Young People would also involve young people in decision-making at various levels.
- 15: Government develop a national policy framework, based on CROC, supported by legislative, administrative, policy measures, & appropriate budgetary allocations.