10 June 2011
CSCF/11/614

Mr Edward O’Donohue, MLC
Chairperson
Scrutiny of Acts and Regulations Committee
Parliament House
Spring Street
EAST MELBOURNE 3002

Dear Mr O’Donohue

I am pleased to provide this submission to the Inquiry Into the Charter of Human Rights and Responsibilities by the Scrutiny of Acts and Regulations Committee. The Child Wellbeing and Safety Act 2005 provides the legislative mandate for my office which includes promoting the safety and wellbeing of all children in Victoria, with special responsibility for those very vulnerable children who are known to child protection services. As the Child Safety Commissioner I have a privileged perspective on the lives of many children in Victoria and the way in which government services respond to the needs of children. I am a supporter of the Charter of Human Rights and Responsibilities (“Victorian Charter”) but believe it needs to be strengthened to better support the rights of children.

Most parents prioritise the wellbeing of their children above all else. The importance we as a community place on the wellbeing of children should be reflected in all levels of decision-making by government and government funded services. The experience of my office has been that this does not always occur. The challenge is to develop systems and a culture of service provision that ensures all services prioritise children and work collaboratively in their best interests. Stronger recognition of the rights of children in the Victorian Charter would provide the scaffolding on which this whole of government child focus could be promoted.

Central to any consideration of the human rights of children is the responsibility of government to listen to the voice of children. My office undertakes a range of activities to ensure we are listening to children and to encourage others to do the same. Much of this work does not specifically ask children about their views on human rights but instead provides them with a means by which they can express what is important to them. Even so, the issues often identified by children, particularly very vulnerable children, fit well within a human rights framework. For example the As I See It project supported by my office gave children who had experienced out of home care the opportunity to express what was important to them. The photos and statements by the children in this project reflect their desire to experience those things which many of us
would see as fundamental in the life of any child, for example, children said:

"I want you to hear and know that even though a lot of bad things have happened to me, I'm still a human being, someone's son and brother and nephew. I want to be treated like a normal kid and there is hope."

"I took a photo of my door because it was the only thing that I had in foster care that I could call my own. Behind the door was my sanctuary, the only place that I felt safe when everything went wrong."

"Even as a teenage girl, I'm a small girl at heart who just needs comfort through the rough times."

"I didn't have a voice, I screamed out and no one could help me. I was scared."

The current Victorian Charter provides limited explicit recognition of the rights of children. Section 17 of the Charter of Human Rights and Responsibilities Act 2006 provides that families are entitled to "be protected by society and the State" and every child is entitled to "such protection as is in his or her best interests and is needed by him or her by reason of being a child". Other provisions include special recognition of the vulnerability of children in criminal processes.

Overall I believe that the implementation of the Victorian Charter has generated an increased recognition of the rights of children but more needs to be done by government agencies to accept responsibility for ensuring children's fundamental human rights are respected. This is particularly true for the most vulnerable children in our community for whom a degree of 'positive discrimination' or 'special protection' is required. To achieve this objective, the rights described in the United Nations Convention on the Rights of the Child (UNCROC) should be considered for inclusion into the Victorian Charter. I have noted below three examples of rights from the UNCROC which would be well suited to inclusion into the Victorian Charter.

Health

The UNCROC includes a number of provisions relevant to health including article 24 which recognises the right of children to "the enjoyment of the highest attainable standard of health" and article 39 which provides that "all appropriate measures" should be taken to promote the physical and psychological recovery of children from all forms of neglect and abuse. Inquiries and consultations undertaken by my Office have demonstrated that the health needs of many of the children who come to the attention of child protection services have not been adequately assessed or addressed. Ensuring better health outcomes goes beyond the capacity of child protection or one government agency. Expanding the Victorian Charter to recognise the health rights of children, particularly those who have experienced abuse or neglect, would be an important step to promoting better health outcomes for these children.

Disability

Article 23 of the UNCROC provides that children with a disability are entitled to "enjoy a full and decent life, in conditions which ensure dignity, promote self-reliance and facilitate the child's active participation in the community." The reality
for too many children with disabilities is that they are not able to fully enjoy these rights. For example, evidence given in the course of the Productivity Commission’s Inquiry Into Disability Care and Support included examples of children with disabilities whose enjoyment of life was limited by a lack of high quality services and supports. For example one parent noted:

It’s the mentality that you think that, as a parent with a child with a disability, you are imposing if you ask for help. You never get the Impression that it’s your right to get the service . . . (P48)

Incorporating a right based on article 23 of the UNCROC into the Victorian Charter would help to further the rights of children with disabilities and would encourage all those who provide government services to consider how they might better support children with disabilities to fully participate in the life of the community.

Children in out-of-home care

The Secretary to the Department of Human Services is empowered through the Children, Youth and Families Act 2005 to arrange for care for those children who are unable to live at home, often because of abuse or neglect. The Secretary has endorsed a Charter for Children in Out-of-home Care (copy attached) which was developed through consultations with children in which we were privileged to participate. The Charter for Children in Out-of-home Care includes a range of rights such as the right to be safe, to be allowed to be a child, to be treated with respect, to have contact with family, to have fun and to be provided with the best possible education.

I am confident that the Charter for Children in Out-of-home Care has had an impact on the way services are delivered to children in the out-of-home care sector. Much of this positive impact stems from the fact that it has encouraged more conversations between children and the adults who care for them about the areas covered by the charter. What is now required is for a broader range of adults from diverse service systems to join in this conversation. For example, the traumatic life experiences of many of these children mean that they require special supports and assistance if they are to succeed in school. The provision of such support requires commitment and collaboration between child protection services, the Department of Education and Early Childhood Development and indeed the whole school community. Broader recognition of the responsibility of all government services to support these very vulnerable children could be enhanced by including this responsibility within the Victorian Charter. In particular by including a right similar to article 20 of the UNCROC which provides that “A child temporarily or permanently deprived of his or her family environment, or in whose own best interests cannot be allowed to remain in that environment, shall be entitled to special protection and assistance provided by the State.”

The consultations and inquiries undertaken by my Office have highlighted the need for more services to accept responsibility for protecting the best interests of all children and work collaboratively with other service systems to meet the needs of children. This is particularly important for the most vulnerable children in our community. Expanding the rights included within the Victorian Charter to expressly
include rights such as those identified above will not by itself solve all of the challenges experienced by children. The Charter does not of itself create services or compel diverse agencies to work more collaboratively. It would however require more agencies to consider more carefully the impact of their actions on children, particularly those children who are most vulnerable, to listen more carefully to what children are saying and to place the best interests of children at the centre of decision-making. It would be an important statement by government that all of us have to take seriously our shared responsibility for ensuring that all children have a decent childhood.

I would be very pleased to provide you with any further information you may require and look forward to learning more about your work on this Inquiry.

Yours sincerely

Bernie Geary OAM
Child Safety Commissioner
As a child or young person in care I need:

- to be safe and feel safe
- to stay healthy and well and go to a doctor, dentist or other professional for help when I need to
- to be allowed to be a child and be treated with respect
- if I am an Aboriginal child, to feel proud and strong in my own culture
- to have a say and be heard
- to be provided with information
- to tell someone if I am unhappy
- to know information about me will only be shared in order to help people look after me
- to have a worker who is there for me
- to keep in contact with my family, friends and people and places that matter to me
- careful thought being given to where I will live so I will have a home that feels like a home
- to have fun and do activities that I enjoy
- to be able to take part in family traditions and be able to learn about and be involved with cultural and religious groups that are important to me
- to be provided with the best possible education and training
- to be able to develop life skills and grow up to become the best person I can
- help in preparing myself to leave care and support after I leave care.

Charter for Children in Out-of-home Care

A charter lists the rights and privileges people have. We all have rights, and as members of the community, we need to respect each other's rights.

This charter has been especially prepared for children who can't live with their parents and are in out-of-home care. It lists what you can expect from all those people who look after you and work with you when you are in care. All these people need to make sure that the things they do for you and the things they allow you to do, keep you safe and well. Being safe and well are the most important rights, so they have been put first. It means that if there is a clash between you being safe and well and another right, your safety and wellbeing always comes first.

These are your rights.
## What do these rights mean?

<table>
<thead>
<tr>
<th>Right</th>
<th>Explanation</th>
</tr>
</thead>
<tbody>
<tr>
<td>To be safe and feel safe</td>
<td>'Safe' means no one can abuse or hurt me. Where I live must be safe and not dangerous. I also need to feel safe, so there shouldn’t be people or things around me that scare me.</td>
</tr>
<tr>
<td>To stay healthy and well and go to a doctor, dentist or other professional for help when I need to</td>
<td>I need to be given the things that will help my body and mind stay healthy and well, like being able to go to a doctor, dentist or other professional when I need to and having healthy food.</td>
</tr>
<tr>
<td>To be allowed to be a child and be treated with respect</td>
<td>This means I need to be treated according to my age and not be expected to act older or understand things that are too hard for me. Being treated with respect means accepting me for who I am, treating me fairly and not discriminating against me for any reason (this includes not treating me badly because I am in care).</td>
</tr>
<tr>
<td>If I am an Aboriginal child, to feel proud and strong in my own culture</td>
<td>This means that my carers and workers will: • Understand, respect and value my own Aboriginal culture • Help me feel good about my own Aboriginal culture • Help me stay connected to my culture in all parts of my life.</td>
</tr>
<tr>
<td>To have a say and be heard</td>
<td>This means having a say and being listened to about all things that affect me, like where I will live and where I will go to school. If I need help to have a say, someone will represent me wherever decisions are being made about me, like in court or in a meeting.</td>
</tr>
<tr>
<td>To be provided with information</td>
<td>Information is very important because without it I won’t know who I am and won’t be able to have a proper say about things that affect me. Examples of information I need are my life story, my history and my family’s history, the choices I have and where I can go if I have a problem.</td>
</tr>
<tr>
<td>To tell someone if I am unhappy</td>
<td>If my rights aren’t met, or if I am unhappy about something that has happened to me in care, I can make a complaint to someone who will sort it out.</td>
</tr>
<tr>
<td>To know information about me will only be shared in order to help people look after me</td>
<td>Information about me can’t be given to just anyone—it can only be given to people who need to have that information—so they can look after me and care for me.</td>
</tr>
<tr>
<td>To have a worker who is there for me</td>
<td>This means having a worker whose job it is to make sure I get the things I need, plan things for me, do things for me, and make sure things that are important to me are not forgotten, like my family and culture.</td>
</tr>
<tr>
<td>To keep in contact with my family, friends and people and places that matter to me</td>
<td>This means all members of my family, like brothers and sisters and grandparents, and friends from before I came into care and friends that I made when in care. People who matter are people who may not be related but are still very important, like a carer I used to live with or a teacher that I really liked. Places that matter might be places that are special, like an old school I used to go to or somewhere that is special to my family, community or culture.</td>
</tr>
<tr>
<td>Careful thought being given to where I will live</td>
<td>My home will only feel like a home if: • carers and workers think about my needs and things like my family, culture and community when making decisions about where I will live • It is a place where I feel I belong, where I am cared for, where I have my own space and my things are safe • I am not moved around too much without good reason.</td>
</tr>
<tr>
<td>To have fun and do activities that I enjoy</td>
<td>There are lots of things I have to do but I also have to be able to do things that I enjoy like play a sport or learn an instrument. What it depends on what I like doing and what I am interested in.</td>
</tr>
<tr>
<td>To be able to take part in family traditions and learn about and be involved with cultural and religious groups that are important to me</td>
<td>This can include things like learning the language my family and community speak, going to special events, being able to follow the rules of my religion, and wherever possible visiting traditional lands and places that are sacred and special to my culture or religion.</td>
</tr>
<tr>
<td>To be provided with the best possible education and training</td>
<td>The best possible education means going to a school that meets my needs and getting help so I can do the best I can at school. The best possible training is training that will help me achieve what I want and will help me to get a job or to do other training or learning.</td>
</tr>
<tr>
<td>To be able to develop life skills and grow up to be the best person I can</td>
<td>Life skills means being able to learn from my mistakes, how to get along with people, how to live as an adult, and how to make good decisions about my future and be responsible for my actions.</td>
</tr>
<tr>
<td>Help in preparing myself to leave care and support after I leave care</td>
<td>I have the right to a &quot;leaving care plan&quot;, which is a plan that makes sure I get support to prepare myself for leaving care and support once I have left care. The sort of support I might need is being taught how to cook and budget and being given some money to help me move out of care; the sort of help kids not in care got from their parents when they move out of home.</td>
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*Endorsed by the Secretary of the Department of Human Services Victoria, Australia*