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Scrutiny of Acts and Regulations Committee
Parliament of Victoria
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10 June 2011

To the Scrutiny of Acts and Regulations Committee

Submission to the Review of the
Charter of Human Rights and Responsibilities Act

Thank you for the opportunity to respond to the Review of the Victorian Charter of Human Rights and Responsibilities Act 2006 (the Charter).

MacKillop Family Services (MacKillop) is a leading provider of services for children, young people and their families in Victoria and New South Wales. MacKillop was founded in 1997 by the Sisters of Mercy, the Christian Brothers and the Sisters of St Joseph and the programs we deliver include home based and residential care for children in the child protection system, disability services, youth support, education and training, family support and support to women and men who, as children, were in the care of our founding agencies.

MacKillop is a non-government public authority and our work is underpinned by a fundamental commitment to justice for our clients. MacKillop supports the Charter and it is MacKillop's view that it goes some way to ensuring the rights of Victorians in their contact with public authorities. However, we have some concerns about the accessibility of the Charter to all Victorians, and in particular, the ability of disadvantaged individuals to use the Charter, should they need to. These are outlined in the following pages.

Yours sincerely,

Micaela Cronin
Chief Executive Officer
MacKillop Family Services
Submission to the
Review of the Charter of Human Rights and Responsibilities Act

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MacKillop Family Service’s responses to the Terms of Reference

1. The matters referred to in section 44(2) of the Charter

a. Should the Charter include additional human rights?

It is MacKillop Family Service’s (MacKillop) view that the Charter should be amended to expressly make reference to the Convention on the Rights of the Child (CROC), the Convention on the Rights of People with a Disability (CRPD) and the Convention for the Elimination of all forms of Discrimination Against Women (CEDAW).

Principles from these Conventions are already contained or referred to in other pieces of State and Commonwealth legislation. Bringing these Conventions under a single instrument, the Charter, would consolidate these rights and put beyond doubt their importance as principles to guide decision making and activities of public authorities.

An example is the range of instruments which contain reference to children’s rights. Article 3(1) of CROC requires that: “in all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.”

Article 3(1) is reflected in the Charter (s 17(2)), the Victorian Children, Youth and Families Act 2005 (CYFA) and in the Commonwealth Family Law Act 1975 (FLA). In addition, broader principles from CROC are included in the Charter for Children in Out-of-Home Care (OOHC Charter). While the principles in the CYFA, the FLA and the OOHC Charter are all drawn from CROC, they can all be interpreted differently. In addition, two are legislation while one is a voluntary “code”. This can be confusing, especially for the children and young people these instruments are supposed to protect.

If the Charter were to include references to the originating documents, for example CROC, CRPD and CEDAW, MacKillop is of the view that it would:

1. Put beyond doubt their relevance in the context of the work of public authorities such as MacKillop,
2. Provide a touchstone for all the other instruments in which these principles are used (for example the CYFA, FLA and the OOHC Charter),
3. Clarify the ways to seek recourse if a child’s rights are breached, and

b. Should a right to self-determination be included?

The right to self-determination is predicated on a number of other principles being in place, including the ability to exercise free, prior and informed consent about the issues that impact on an individual’s life. The concept of self-determination is often used in reference to Indigenous communities, including Indigenous Australians. Without diluting its importance as a principle in the lives of Indigenous Australians, MacKillop is of the view that it is also relevant for young people and people with a disability.

MacKillop submits that the Charter is inaccessible to young people, especially those who are leaving care. This includes Indigenous young people and young people who have a disability. These groups are amongst the most disadvantaged in Victoria and, as such, lack the education, financial resources and knowledge of their civil rights to achieve meaningful self-determination.

If the right to self-determination were to be included, the OOHC system would need to be enhanced to ensure that children in care and especially young people leaving care are educated and resourced to be able to make informed decisions about the issues affecting their lives.
MacKillop is of the view that the Charter requires better promotion amongst the groups which would benefit most. This requires a meaningful and targeted community education campaign about the Charter.

c. Should auditing of public authorities be made mandatory?

MacKillop acknowledges that many public authorities (including non-government organisations such as MacKillop) are required to deliver a standard of services that are determined externally. Public authorities are also required to audit and report against those standards.

Auditing against the Charter should be done by consolidating the existing standards, any accreditation requirements and the Charter principles, rather than placing an additional layer of compliance reporting on non-government agencies, many of which already struggle under the burden of regulation.

2. The effects of the Charter on the provision of services, and the performance of other functions, by public authorities

The work of MacKillop is undertaken from a rights-based perspective. The Charter informs and reinforces the ways MacKillop works with vulnerable and disadvantaged children, young people and families.

Many of the people we work with, however, are unaware of their rights under the Charter. The Charter is not well known amongst our client groups. As such, it is unlikely that they would assert their rights or seek recourse through the Charter. As noted above, the Charter is an important instrument, but needs to be promoted amongst those who would benefit most from it.

3. The overall costs and benefits of the Charter

MacKillop supports the Charter as a benefit to the Victorian community, including to disadvantaged groups.

4. Options for reform or improvement of the regime for protecting and upholding rights and responsibilities in Victoria

We were unable to identify any situation in which a MacKillop service user had used or referred to the Charter in seeking to have their rights recognised. As stated previously, we are of the view that this is because the content, meaning and purpose of the Charter is not well known.

The Charter is effectively inaccessible to the most vulnerable members of the community. Improvement of the regime for protecting and upholding rights and responsibilities in Victoria requires, as a first step, the promotion of the Charter with people who would benefit most, and in language that is easy to understand and non-legalistic. Examples of this include the OOHC Charter and the child friendly version of the CROC (available at www.unicef.org) both of which have been written with their target group in mind.

MacKillop is pleased to be able to provide this submission to the Review and would be happy to discuss any of these points further.

Yours sincerely,

Micaela Cronin
Chief Executive Officer
MacKillop Family Services