10 June 2011

Mr Edward O’Donohue MLC
Chairperson
Scrubiny of Acts and Regulations Committee
Parliament of Victoria

Dear Committee Members

CMY’S SUBMISSION ON THE REVIEW OF THE VICTORIAN CHARTER OF
HUMAN RIGHTS AND RESPONSIBILITIES ACT 2006

The Centre for Multicultural Youth (CMY) is a statewide community-based organisation that
advocates for the needs and rights of young people from refugee and migrant backgrounds.
In supporting young people, CMY combines policy development and direct service delivery
within a community development framework. This approach gives CMY strong connections
with young people and their communities while enabling change on a local, state and
national level.

Young people from culturally and linguistically diverse (CLD) backgrounds make up a sizeable
proportion of Victoria’s young people: 15% of young people aged between 12 and 24 years
were born overseas, and 20% speak a language other than English at home.\(^1\) Victoria’s
newly-arrived refugee population is also essentially young. Over the last five years 30% of
Victoria’s 19,285 humanitarian arrivals were aged between 12 and 24 years at the time of
arrival. A further 30% were younger than 12 years.\(^2\)

CMY welcomes the opportunity to contribute to the review of the Charter of Human Rights
and Responsibilities Act 2006 (Vic) (the Charter).

CMY believes that the Charter has helped to secure and protect human rights in Victoria,
including the rights of Victorian children and young people from refugee and migrant
backgrounds. The Charter provides a safeguard for young people’s rights as the Charter
must be considered whenever law is either created or interpreted and public authorities are
obliged to act in a way that is compatible with rights contained in the Charter (s1(b)).

Human rights laws are often of most importance to those who are most marginalised in
society. The Victorian Charter of Human Rights and Responsibilities is integral to the

\(^1\) Department of Education and Early Childhood Development and the Department of Planning and Community

\(^2\) DIAC settlement reporting facility: see www.immi.gov.au/living-in-australia/delivering-assistance/settlement-
reporting-facility
promotion and protection of the rights of refugee, migrant, newly-arrived, and CLD young people and other marginalised and disempowered groups in Victoria.

"This is a powerful framework for our work." (CMY Reconnect worker)

TERMS OF REFERENCE (TOR)

This submission addresses the following elements of the terms of reference for the review of the Charter:

1. Whether the Charter should include additional human rights (and how they should be protected), including but not limited to, rights under the -
   o International Covenant on Economic, Social and Cultural Rights
   o Convention on the Rights of the Child
2. Whether there should be mandatory regular auditing of public authorities to assess compliance with human rights.
3. The effects of the Charter Act on –
   a. the development and drafting of statutory provisions

(TOR 1) Should the charter include additional human rights under the charter, including but not limited to, rights under the –
(a) International covenant on economic, social and cultural rights
(b) Convention on the rights of the child

INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS

CMY believes that economic, social and cultural rights must be included in the Charter in order for the Charter to be truly relevant and effective for young people from refugee and migrant backgrounds.

We support the submission of the Youth Affairs Council of Victoria (YACVic) with regard to the need for:

"Inclusion of rights modelled on Articles 11, 12, and 13 of the International Covenant on Economic, Social and Cultural Rights in the Victorian Charter:

- **Article 11(1):** The States Parties to the present Covenant recognise the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions.
- **Article 12(1):** The States Parties to the present Covenant recognise the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.
- **Article 13(1):** The States Parties to the present Covenant recognise the right of everyone to education."

Adequate standard of living, including adequate housing

Economic and social rights protect and promote young people’s right to participate in society by guaranteeing the conditions of living necessary for their participation, such as adequate health, housing and education. Access to safe, secure and affordable housing is central to social inclusion.

As recently stated in Mental Health Multicultural Australia’s report Homelessness amongst culturally and linguistically diverse people with a mental illness:

Those who are homeless or indeed vulnerable to homelessness face a multitude of difficulties that largely exclude them from participating in the wider community. Being homeless makes it difficult to maintain employment or education, can have a considerable impact on a person’s health and wellbeing, and can perpetuate intergenerational and other disadvantages.

Young people from culturally and linguistically diverse backgrounds are at greater risk of homelessness than other young people. The right to adequate housing is particularly integral to ensuring that newly arrived young people settle well in Victoria.

Young people from refugee backgrounds are six to ten times more likely to be at risk of homelessness than Australian-born young people. An inability to access appropriate, safe and affordable housing is one of the most significant problems they encounter in Victoria; if they are not supported appropriately, then this places them at a high risk of homelessness and forms a substantive barrier to successful settlement.

Social exclusion, including economic hardship, combined with the variables of the refugee experience, place refugees at extreme risk of remaining in a cycle of chronic homelessness. CMY has previously argued, in our paper Finding Home in Victoria: Refugee and migrant young people who are homeless or at risk of homelessness:

[Newly-arrived young people] ... have limited knowledge of and connections to the housing sector, are unsure who to ask, and know few people who can provide stable accommodation. ... Many housing and support agencies do not take into account the unfamiliarity of young people from refugee and migrant backgrounds with Australian systems—both conceptually and practically. Young people from refugee and migrant backgrounds typically have very little or no substantive knowledge of the complex housing and broader service systems (e.g. advocating for housing needs, leases, tenancy rights) as there is often no equivalent in their countries of origin. They have to negotiate the labyrinthine housing system with little cultural and practical ...

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4 Centre for Multicultural Youth (2011) Finding Home in Victoria: Refugee and migrant young people who are homeless or at risk of homelessness CMY, Melbourne, p. 17.
5 Multicultural Mental Health Australia and Victorian Transcultural Psychiatric Unit (2011) Homelessness amongst culturally and linguistically diverse people with a mental illness, Multicultural Mental Health Australia, p. 10.
7 Centre for Multicultural Youth (2011: 6).

knowledge of how this system works. This is a system where currently, the onus is on young people to find their way and learn how to instigate or navigate it.

Housing and support services tend to put young people of refugee and migrant backgrounds in the ‘too-hard basket’. This may be due to cultural competency issues, but also to the very real obstacles they meet when trying to find accommodation for these young people. Knowing they will have to deal with active discrimination from boarding houses, transitional housing and real estate agents, and given their limited resources, they opt to place those who are more readily accepted and will be easier to find accommodation for.

Incorporating a right to an adequate standard of living – that explicitly covers housing – will ensure that public authorities who work or provide services within the housing and homelessness support system will have to take more proactive action to respond to the housing and homelessness support needs of newly-arrived and other CLD young people. Public authorities would have to act compatibly with and give proper consideration to the rights of all Victorians to adequate housing when initiating and implementing their policies, programs and practices.

Enjoyment of the highest attainable standard of physical and mental health

The right to health, both physical and mental, is fundamental to the ability to exercise all other human rights.

Young people of migrant and refugee backgrounds often experience barriers to accessing appropriate health services (such as language difficulties, cultural insensitivity of services, or lack of awareness by young people of what services are available.) Access to health services is of particular concern for young people from refugee backgrounds, given that “newly arrived refugees are reported to have higher rates of long term physical and psychological problems when compared to other migrants.” Anecdotal evidence indicates that young people from migrant and refugee backgrounds have very low usage of mental health services in particular.

Major barriers to the uptake of mental health services amongst CLD people include:

- language, lack of information regarding services, communication, stigma, inappropriate use or lack of appropriate interpreters, and cultural differences between clients and clinicians (Australian Government, 2004; McDonald & Steel, 1997; St Vincents Mental Health Service & Craze Lateral Solutions, 2005). ... Additionally, it has been noted that people from CALD backgrounds are often

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10 Multicultural Mental Health Australia and Victorian Transcultural Psychiatric Unit (2011: 20).

unaware of the range of services and supports available and very frequently misunderstood how these services.11

As Multicultural Mental Health Australia found in its recent report “it is widely acknowledged that there is a need for services to become more adept at working with people from a CALD background by adopting culturally competent practices”.12 Incorporating a right to the highest attainable standard of health in the Charter would put a proactive duty on public authorities that work within the health sector to become more culturally-responsive in order to give proper consideration to and act compatibly with the right all Victorians to the highest attainable standard of physical and mental health, including those who are newly-arrived or from CLD backgrounds.

The right to education

The current Victorian education system disadvantages young people with interrupted education, for example, those from refugee backgrounds. After 6-12 months of initial English language classes, newly-arrived young people are placed into class in a year level according to their age (e.g. Year 11 for 16 year olds), rather than according to their level of education or ability. There is a lack of support for the transition from English Language Schools/Centres into mainstream schools and/or into training13. Placing young people in year levels that exceed their ability, due to interrupted education and English language difficulties, increases the risk of disengagement from the education system and of failure.

Many of the young people CMY works with, and their families, are facing language barriers, and often severely interrupted education. In CMY’s case work with refugee young people at a local high school, we find that many of the families are without adequate financial and social resources to support the young people to participate successfully in their education. Many families need extra assistance to secure grants for textbooks, and often do not have the knowledge of education and training systems to help their children negotiate adequate career choices. Finding space and time to study at home can be difficult in crowded living environments where young people are sometimes required to look after their younger siblings and earn an income in addition to studying.

The level of assistance required to support young people from refugee and migrant backgrounds in education is far greater than that required for Australian born young people and their families. However, stabilising the young person in education is often one of the most effective strategies to stabilise the family unit, as pressure on families to support young people in education is a major contributing factor to young people leaving home.

Incorporating a specific right to education in the Charter would ensure that this right is meaningful to newly-arrived young people and other CLD young people. It would place a duty on education providers to put in place the systems, processes and practices required to adequately support newly-arrived young people and other CLD young people so that their right to education is relevant and effective.

12 Ibid. citing Alimant & Ann, 2008; Homelessness Australia 2007; Multicultural Mental Health Australia, 2010b; and Wadziky, 2001.

CONVENTION ON THE RIGHTS OF THE CHILD

CMY endorses YACVic’s submission:

that a number of additional human rights under the Convention on the Rights of the Child should be included in the Victorian Charter, especially those relating to the participation rights of children and young people (Article 12), the health of children and young people (Article 24), children and young people’s rights to an adequate standard of living (Article 27), and the right to education (Article 28).

The necessity to incorporate rights to health, an adequate standard of living (including housing) and education in the Charter have been discussed above.

Article 12 of the UN Convention on the Rights of the Child, to which Australia is a signatory, articulates the right of children and young people to participate in matters affecting them:

- **Article 12(1):** States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child;
- **Article 12(2):** For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.

As the Office for Youth and YACVic have previously noted:

“for any democratic society, it is important that all members have the opportunities to participate in the decision-making processes that affect them and their communities”. When young people are able to meaningfully participate in governmental, community, and school processes, young people “make invaluable contributions to communities and are empowered themselves when they participate.”

We support YOUTHlaw’s submission that section 18 of the Charter (which provides for a general right of Victorians ‘to participate in the conduct of public affairs’) does not go far enough to protect the right of children and young people to participate in the decision-making processes that affect them.

*The specific inclusion of a child’s/young person’s rights to participate in all decision-making impacting on them would in our assessment make the Charter more effective and inclusive.*

Young people surveyed as part of VEOHRC’s 2008 Charter report said that they felt as though they only sometimes had a chance to have a say or be involved in things that happen

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15 YOUTHlaw’s submission to the Scrutiny of Acts and Regulations Committee, p 6.

in their local community, and hardly ever had a chance at state government level. Civic participation can be even more difficult for young people from refugee or migrant backgrounds, who may be unfamiliar with participatory opportunities and processes in Australia. Barriers are compounded for those from non-English speaking countries.

A study commissioned by the National Youth Affairs Research Scheme that researched participation approaches on the part of young people aged 12-25 years from diverse backgrounds – Indigenous, CALD, low SES, disability, and out-of-home care – found that there had not been widespread involvement of young people from those backgrounds in decision-making processes in government, schools and communities, despite official support for their involvement. Research further shows that young people who were not born in Australia are less likely to participate in civic engagement (e.g. writing letters to the editor, contacting MPs, taking part in protests etc) than Australian-born young people. The latter result is particularly strong if English was not the main language spoken at home. Another survey reported that CALD children/young people were less likely than to report that there were chances for young people to decide things like class activities and rules; and least likely to say that they can help decide when activities are provided or how they are run in their neighbourhoods.

We submit that the right to participation for children and young people must be included in the Victorian Charter, in line with Article 12 of CROC, to protect and enhance the right of young people from diverse backgrounds to participate in matters and decision-making processes that affect them.

**(TOR 3) Whether there should be mandatory regular auditing of public authorities to assess compliance with human rights.**

CMY supports Youthlaw’s submission to the Scrutiny of Acts and Regulations Committee recommendation which states:

*Recommendation 4 – That the Charter include provisions for mandatory regular auditing of public authorities, to be overseen by an independent body such as the Victorian Equal Opportunity and Human Rights Commission, with assistance from the Office of the Child Safety Commissioner or a Victorian Commissioner for Children and Young People on issues relating to children and young people.*

Without auditing there is no guarantee that the organisations and agencies are complying with the rights contained in the Charter.

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18 Ibid.
20 Youthlaw’s submission to the Scrutiny of Acts and Regulations Committee, p 3, recommendation number 4.

(TOR 5) The effects of the Charter Act on –
(a) the development and drafting of statutory provisions

The Control of Weapons Amendment Act 2010 allows the search (including strip search) by police of any young person within an unplanned designation area without a parent, guardian or an independent person being present, if this is not practicable (i.e. if it will take the police too long to get them there). The government admitted that the legislation was incompatible with the right to privacy (section 13) and the right to protect children in their best interests (section 17(2)) contained in the Charter.

In its 2009 Summary Report on the operation of the Charter of Human Rights and Responsibilities, VEOHRC commented that:

"The statement of incompatibility lacked the necessary detail and level of explanation required by the Charter. In matters such as these, where a proposed scheme is likely to impose serious restrictions on human rights, the government should conduct extensive community consultation. Where such a scheme is enacted, the government should undertake close and transparent monitoring of its operation and impact."21

That this process occurs will be particularly important in relation to the Baillieu Government’s current proposal around minimum sentencing for Recklessly Causing Serious Injury and Intentionally Causing Serious Injury. The proposal of two and four year mandatory minimum sentencing for young people and adults respectively for these offences, where they include what the Government has termed ‘gross violence’, appears to directly contravene a number of human rights including the right to protection children in their best interests (section 17(2) of the Charter). Whether or not this legislation is passed and the specifics of any legislation passed will be an interesting test case in relation to the operation of the charter.

CMY supports Youthlaw’s recommendation:

"That the Charter’s Statement of Compatibility or Incompatibility are required to be thorough, on point and informed by international jurisprudence (Recommendation 5)"

CMY’S RECOMMENDATIONS

RECOMMENDATION ONE: That the Charter include economic, social and cultural rights, as detailed under the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the Convention on the Rights of the Child (CRC), particularly:

• The right to an adequate standard of living, including adequate food, clothing and housing (Article 11(1) ICESCR and Article 27 CRC).


• The right to enjoyment of the highest attainable standard of physical and mental health (Article 12(1) ICESCR and Article 24 CROC).

• The right to education (Article 13(1) ICESCR and Article 28 CROC).

• The right of children and young people to participate in decision-making about matters that affect them (Article 12 CROC).

RECOMMENDATION TWO: That the Charter include provisions for mandatory regular auditing of public authorities, to be overseen by an independent body such as the Victorian Equal Opportunity and Human Rights Commission, with assistance from the Office of the Child Safety Commissioner or a Victorian Commissioner for Children and Young People on issues relating to children and young people.

RECOMMENDATION THREE: That the Charter’s Statement of Compatibility or Incompatibility are required to be thorough, on point and informed by international jurisprudence.

If you have any questions about this submission please do not hesitate to contact me on the details below.

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