"IMPROVING OUTCOMES THROUGH HUMAN RIGHTS: CHILDREN AND YOUNG PEOPLE IN OUT OF HOME CARE"

Submission from the Centre for Excellence in Child and Family Welfare to the Inquiry into the Charter of Human Rights and Responsibilities Act 2006 (VIC)
The Centre for Excellence in Child and Family Welfare (the Centre) is the peak body representing 98 community service organisations who work with vulnerable children, young people and their families. This submission draws on their experience and addresses the operations of the Charter of Human Rights and Responsibilities Act 2006 (Vic), (the Charter) with respect to children and young people in out of home care.

It is the view of the Centre that the Charter provides the opportunity for improved outcomes for children and young people in out of home care in a way that previous policy reform has not. It provides the conceptual and practical framework for identifying what new services and arrangements are required for each individual child or young person.

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TERM OF REFERENCE 5.

"What have been the effects of the Charter Act on -

(C). the provision of services, and the performance of other functions, by public authorities."

KEY PRINCIPLES:

- A co-ordinated, whole of government approach to service delivery is required so that children and young people in out of home care receive individualised, tailored, child-centred service.
- Good health and satisfactory educational attainment during childhood and adolescence are necessary prerequisites for the enjoyment of the rights that are protected under the Charter.
- The needs of children and young people in out of home care are a shared responsibility held between various government bodies and community service organisations. The Charter should add value to the functioning of this partnership and improve outcomes for these children and young people.

CHILDREN AND YOUNG PEOPLE IN OUT OF HOME CARE: THEIR OUTCOMES

Children and young people are placed in out of home care after intervention by the state because of substantiated cumulative harm, neglect or abuse. These children and young people experience significantly poorer outcomes than their peers. These poorer outcomes have been extensively researched and established with respect to their developmental progress, educational attainment and their physical and mental health. Adults who were in out of home care also continue to experience poorer levels of health and education levels and are also at greater risk of homelessness and involvement in the criminal justice system.

There are four components of their experience that contribute to poorer outcomes during the course of their life, which can be summarised as follows. The first is the inadequate care that characterised their early years and led to the intervention. The second is the often intrinsically traumatic removal from home. The third is the lack of appropriate resources and supports to deal with their therapeutic needs. The fourth is that in some instances the

1 Ombudsman Victoria Own motion investigation into Child Protection – out of home care. Victorian Government, Australia 2010

2 Ibid.
preparation for independent adult life that children and young people receive is not appropriate or adequate.\textsuperscript{3, 4}

The system has been the object of many reforms, but as a whole, these have been aimed at generalised improvements within the existing regime of services and care options. A detailed solution to this continued problem has been proposed in the submission from the Centre to the Protecting Victoria’s Vulnerable Children Inquiry: \textit{...it's their outcomes that matter}.\textsuperscript{5} It is not the intention of this submission to repeat that material. Instead, the purpose of this submission is to demonstrate the Charter’s central role in promoting the wellbeing of vulnerable children and young people.

By articulating the ideal for each child and young person, the Charter strengthens the conceptual and practical basis for identifying, and locating or creating the specific mix of services that will best address their needs. It emphasises the responsibility to create the specific service response that each child needs, rather than allocate the child to a service within the existing range of options. Such responses are predicated on adequate resources and system flexibility allowing workers to maximise outcomes.

\textit{It is the view of the Centre that the concept of human rights as enshrined in the Charter must play a central role in improving the outcomes of children and young people while they are in out of home care and of adults who have been in out of home care.}

\textbf{THE DEPARTMENT OF HUMAN SERVICES AND THE CHARTER}

The obligations of DHS with respect to children and young people in out of home care have evolved and strengthened because of the Charter.

As an instrument of the state responsible for the statutory care of these children and young people, DHS has always had a moral and legislative responsibility to provide the best possible care for them and to provide the range of supports that will maximise opportunity for a fulfilling adult life. Despite predating the Charter, the Children, Youth and Families Act 2005

\textsuperscript{3} Ibid.


\textsuperscript{5} Ibid.
(Vic), calls on a general awareness of the rights of children to inform the Best Interests Principles.\textsuperscript{6}

This moral obligation and general awareness of rights acquires a specific, legal dimension under the Charter. Section 17 of the Charter is based on the principle that families are the basic unit of society.\textsuperscript{7} It is widely accepted that section 17 establishes the right of every child to whatever protection is in his or her best interests, and is needed by him or her by reason of being a child.\textsuperscript{8} In other words the Charter confers on the government the legal responsibility to meet the immediate need for care as well as to provide the emotional, social, educational and health supports a child and young person would normally receive from their family in preparation for adulthood. DHS has acknowledged the scope and force of its responsibilities under section 17 of the Charter to the Ombudsman.\textsuperscript{9}

DHS has also ensured that the community sector is clear about the direct relationship of its work with the provisions of the Charter. In 2009, materials were published to introduce the Best Interest Principles to the community sector, spelling out clearly the basis for these principles in the Victorian Charter of Rights and Responsibilities.\textsuperscript{10}

\begin{quote}
It is the view of the Centre that the Charter has played an important role in creating the policy context for planning and seeking a service response tailored to the needs of each individual child and young person in out of home care.
\end{quote}

COMMUNITY SERVICE ORGANISATIONS AND THE CHARTER

Community Service Organisations (CSO's) are aware of their status as public authorities under the Charter and their resulting obligations. The requirements of the Charter form a chapter of the information kit distributed to all CSO's, and as part of their service agreements they are required to demonstrate that they have incorporated its provisions into


\textsuperscript{8} Ibid.


their service delivery. As a result, consultations with our members have demonstrated a high level of awareness of the existence of the Charter and its links with the Convention on the Rights of the Child. On the whole, members who were surveyed for this submission expressed support for the existence of the Charter and its focus on the outcomes for children and young people in out of home care.

As well as awareness of the existence of the Charter, there is the question of whether and how the Charter has been used. A small number of member organisations have incorporated the provisions of the Charter as a resource in their internal planning and policy documents.

Although member organisations have embraced the implications of the policy documents described above, no members report needing to alter their own practice with individual children or young people. Instead, member organisations value the Charter as a further articulation of their ideals.

Similarly, member organisations report not having raised concerns based on the provisions of the Charter. This is possibly due to two factors: the short time that the Charter has been fully operational; and a lack of an accessible mechanism for doing so.

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\text{It is the view of the Centre that there is strong support throughout the Community Services Sector for the continuation of the Charter.}
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\text{It is also the view of the Centre that the significance of the Charter lies in its potential to highlight resourcing requirements, system pressures and real needs.}
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\text{Finally, it is the view of the Centre that there is an continuous need for community education regarding the embedding the Charter, and the rights and responsibilities it enshrines.}
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\[12\] Internal survey of members.

\[13\] Ibid.
YOUNG PEOPLE IN OUT OF HOME CARE AND THE OPERATIONS OF THE CHARTER

Despite the existence of the favourable policy and attitudinal context on the part of DHS and the community sector, the Centre believes that the current situation for children and young people falls far short of the fulfilment of the vision provided by the Charter.

It is the view of the Centre that there remain critical shortcomings within the current out of home care system. The demand for places far exceeds the supply, and related to this is the limited range of placement options available for young people. There is a large unmet need for therapeutic care. Kinship care receives resources and support far below the level it requires. There is no support or encouragement for placing siblings together. Too many children and young people are not in culturally appropriate placements — of particular concern with respect to Aboriginal children and young people. Too many young people leave state care at 18 without adequate planning or preparation. These problems have been extensively documented in the Centre’s submission to the Protecting Victoria’s Vulnerable Children Inquiry.¹⁴

Appropriate placement

The Ombudsman has documented the strain on the overall out of home care system.¹⁵ The many dimensions to this problem are all the result of long term strain on resources. As a consequence, there are still limited types of placements available, and limited actual places within those types of placement. This is particularly significant for children of indigenous or culturally diverse backgrounds.

This means that for some children and young people, the choice of care that is provided to them is determined according to what is available within current resourcing constraints, rather than being driven by their best interests, as is their right under section 17 of the Charter.

Therapeutic care

The Ombudsman’s report also documents increasing levels of complexity in the factors that accompany the removal of many children and young people from their parents’ home, and a


corresponding increase in the numbers of young people requiring therapeutic care packages.\textsuperscript{16} Such packages should comprise among other things, targeted education programs and specialist emotional support. The provision of these therapeutic elements to supplement care has been found to greatly increase the mental health of these young people in both the immediate and long term. The Ombudsman’s report also documents the current shortfall in the numbers of such packages funded by DHS, relative to the numbers of children who need them.\textsuperscript{17}

Again, this reflects that instead of receiving the type and level of care that meets their immediate and long term needs, many children and young people receive only what is currently available, representing a failure to provide for their best interests.

Connection with siblings

At present, the system is not resourced at the level required to ensure that siblings are placed together.\textsuperscript{18} International research has shown that being separated from siblings is a significant source of further trauma for these children and young people, particularly as the limited range of placements often results in siblings being separated by large distances, making the maintenance of relationships very difficult.

It is the view of the Centre that this enforced weakening of sibling relationships represents a breach of the right of these children and young people to the full protection of their family life.

Kinship Care

Despite the increasing proportion of children and young people being cared for by members of their extended families, this form of care is resourced at a lower level than is mainstream foster care. Providers of this form of care receive minimal training and financial support, resulting in severe strain on themselves and their existing children. Given that this form of care is being used at an increasing rate, the system has a duty to ensure that it receives commensurate level of attention to ensure that the children and young people in this care have their needs met.

\textsuperscript{16} Ibid.

\textsuperscript{17} Ibid.

To the extent that the lack of support for this care places a burden on these carers and their existing family members, it can be seen as representing a threat to the rights of all members of that family.

**Leaving Care**

Under current policy, the state ceases its responsibility for young people in out of home care on their 18th birthday. To assist with a smooth transition to adulthood, it has been a policy that all these young people have a leaving care plan. This is meant to detail goals across seven dimensions, towards which carers, DHS and other community services direct their efforts in preparation for the young person's end of care. Despite this requirement, nearly half all care leavers do not have such a plan when they leave. It must be acknowledged that the proportion of young people with a leaving care plan in Victoria is marginally higher than the national average.

The poorer health, education and developmental outcomes that young people experience while in care means that they approach their 18th birthday more vulnerable than their peers. The marked difference between the complete absence of support available to these young people after their 18th birthday, and the extensive support that many other young people require from their parents until well into their twenties, heightens the inequality experienced by young adults who have recently left care.

There is a comprehensive body of research that demonstrates that intensive support needs to be provided to these young people in order for them to grow into stable healthy adults, particularly in the areas of mental health, housing education and employment.

The absence of leaving care plans for nearly half these young people represents a failure of DHS to meet their obligation under section 17 to provide these young people with a level of education and foster the development of their personality at a level that will enable them to enjoy the right to participate in the life of their society.

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20 Ibid.

21 Ibid.

22 Centre for Excellence in Child and Family Welfare...it's their outcomes that matter. Retrieved 12 May 2011 <http://www.cfecfw.asn.au>

It is the view of the Centre that these represent continuing breaches of the rights of this group of vulnerable Victorians, making it necessary for the Charter to be amended to allow for avenues through which individuals can pursue their rights.

It is also the view of the Centre that the most accessible and least adversarial method by which this could occur would be for the Victorian Equal Opportunity and Human Rights Commission to be empowered to receive, investigate and conciliate complaints from children and young people who are in or have been in out of home care concerning possible breaches of their rights.

CONCLUSION

The persistent poor outcomes for children and young people in out of home care do not constitute an argument for the discontinuation of the Charter. Instead they reflect the short period of time during which the Charter has been fully operational.

Added to the short lifetime of the Charter is the complexity and scale of the problems within the current out of home care system. It cannot be assumed that time alone will be sufficient to ensure that the Charter leads to genuine improvement in the outcomes of children and young people in out of home care. Instead, it will be necessary to continue to embed the concept of rights in the policies and practices of the community services sector.

The task of creating services tailored to the needs of each child and young person will require a flexible and responsive service system. It will depend on mechanisms to identify instances where current services or practices have not met the needs of an individual and where a new approach is called for. It will then be possible to identify the appropriate response, and for it to be implemented quickly and smoothly. All stages of this process require collaboration between government, community service organisations, family members and the children and young people themselves.

For these reasons, the Centre recommends:

1. That funding be allocated for continuous community education regarding the existence of the Charter, the rights and responsibilities it enshrines and the mechanisms and processes it creates for protecting rights and meeting obligations.
2. That, within the current system, the Victorian Equal Opportunity and Human Rights Commission be empowered to receive, investigate and conciliate complaints from individuals, including children and young people who are in or have been in out of home care concerning possible breaches of their rights.
BIBLIOGRAPHY


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