1. Introduction


The objectives of the forum were to:

- Promote understanding and engagement with human rights in community sector organisations involved in service delivery to children;
- Explore the experiences of community sector organisations since the implementation of the ‘best interests’ principle in legislation, and the impact of the Convention on the Rights of the Child (CROC) and the Charter; and
- Support practice change in order to embed a human rights culture in policy and practice.

Approximately 70 people attended the forum from a range of community sector organisations. Participants included community sector senior management, staff...
and workers as well as representatives from the Office of the Child Safety Commissioner, State Government agencies and State Government departments.

2. The Victorian Charter of Human Rights & Responsibilities

In January 2008, the Victorian Charter of Human Rights and Responsibilities (‘the Charter’) came into effect as a new mechanism designed to protect the fundamental rights and freedoms of all Victorians.

It aims to protect human rights by requiring that government and other public authorities observe the Charter when making decisions, creating laws, setting policies and providing services.


The report highlighted many situations in which the Charter has been invoked to bring positive change for individuals and communities, however also noted that there is more work to do to ensure it effectively protects the rights of all Victorians.

3. VCOSS and Human Rights

VCOSS has been actively involved in the development and implementation of the Victorian Charter of Human Rights and Responsibilities (the Charter), from conducting consultations around its introduction, to advocacy, training and education of community sector workers and advocates, education and publications. Publications included a preliminary audit and needs analysis of human rights education and training needs for community sector organisations, Audit and Needs Analysis: Human Rights Education and Training Report, a report on the ways in which community sector organisations are using the Charter in policy and practice -
Using the Charter in Policy and Practice Report, and a special, dedicated human rights edition of our social policy journal Just Policy in 2007 to contribute to the debate around using human rights frameworks for social policy development and implementation.
4. The Forum

Welcome and Acknowledgment of Country

Carolyn Atkins, Deputy Director VCOSS

Carolyn Atkins welcomed participants and acknowledged the Wurruudjeri Peoples as the traditional custodians of the land. She then gave a brief explanation of the VCOSS Human Rights project and survey.

Following this, Carolyn introduced James McDougall, Director of the National Children’s Law Foundation (NSW) who facilitated proceedings.

James McDougall has been Director of the National Children’s and Youth Law Centre since January 2005. He was Director of the National Association of Community Legal Centres (from 2001 to 2003); Operations Coordinator for Youth Justice Conferencing for the NSW Government (in 2000) and Manager of the Youth Legal Service WA (from 1994 to 1999). Before then he worked as a lawyer in criminal, industrial and civil law in Adelaide and Perth.

He has also worked as a consultant in child rights and human rights, management, planning and governance in Australia and the Asia Pacific.

Introduction by Chair

James McDougall also acknowledged Country as well as the laws and customs of Indigenous people. He discussed children’s rights and the Convention on the Rights of the Child (the Convention) in the context of international and national laws. He then posed the question:

‘How does the Charter improve the protection and participation of children’?

Following this, James provided an overview of the history of the children’s rights ‘movement’, including the development of the United Nations and drafting of the Convention leading up to Australia’s ratification 1990.

James noted that although Australia’s signing of the Convention was a landmark development, countries such as New Zealand and Canada have adopted policies and practices which place them ahead of Australia in the context of children’s rights. However, given the similarities between the countries in terms of their federal
structures and legal systems, these comparisons give Australia positive case studies from which to further improve its international obligations to protecting and promoting children’s rights.

James noted that in light of the fourth Convention Shadow Report which is due to be released this year, there is still much work to be done. An integral part of this work involves improving Australia’s reporting of the status of children’s rights. Accordingly, this highlights the important role of community sector organisations in monitoring and providing feedback to Government non-government organisations undertaking the reporting around the Shadow Report.

Please see Appendix 1 for notes outlining James’s introductory comments.

**Keynote Presentation - Moira Rayner**

Moira Rayner is a senior and experienced lawyer, particularly in the high-risk area of managing workplace behaviours. Until June 2005 she was Deputy Managing Director of a national employer organisation and managed its Melbourne office. She teaches in the postgraduate discrimination law course as a Senior Fellow at Melbourne University’s Law School. Her postgraduate qualifications in public policy have been put to good use in several statutory offices.

Moira Rayner is best known in Victoria as its last Commissioner for Equal Opportunity. She has also been the Acting Deputy Director (Research) of the Australian Institute of Family Studies; a Hearings Commissioner of the Human Rights and Equal Opportunity Commission, and a full-time consultant in the national law firm Dunhill Madden Butler (now Deacons) for more than six years, when she helped establish the firm’s Discrimination Law Practice, and worked with major employers, universities and government departments. In 2000 she became the first Director of the Office of Children’s Rights Commissioner for London, which modelled effective children’s participation in government and is now an integral part of the Greater London Authority, London’s new regional government. She has co-authored several books on governance, human rights, government policy and women and power.

**Introduction**

Moira opened her address by telling a story about a young woman she had seen as a client at Fitzroy legal centre who was removed from her siblings for her ‘best interests’. She discussed the notion that this woman herself was blamed for her life situation and disadvantage. When the woman was a child, her idea of human rights
was the right to family life, however it became the right to compensation after her experience. She has now used Freedom of Information, administrative and common law avenues to pursue her rights. However, if a human rights approach had been adopted when assessing her needs initially, this would have resulted in a more positive and holistic outcome for her.

Moira then discussed the concept of children’s rights generally, with the following key points:

- The ‘embarrassment’ we have in talking about rights, and the opposition to children’s rights in the form of law and order arguments, as well as the conflict between children’s rights and parent’s rights;
- Taking rights seriously can be an ‘uncomfortable experience’ for agencies;
- We need to communicate better with children and with each other about rights;
- Drawing on Yanis Korvac, a pioneer of children’s rights throughout the 1920s who wrote the first version of the Convention sixty years prior to its enactment, she referred to his statement that ‘you must know yourself before you try to know children’;
- The importance of not portraying children as ‘future adults’, but as people in their own right, valuing them as they are and acknowledging we can learn from them;
- Childhood is not ‘preparation’ for life after.

Moira then identified six ‘areas of action’ for community sector organisations to consider and act upon.

**Six areas issues for community sector organisations to address in order to improve children’s rights:**

1. The lack of definition or clarity regarding the rights of children and the effect of proposed plans on children. This must be rectified.
2. The lack of evaluation of policies and practices by children- the United Nations standards are not clear enough and/or checklists are not adequate.
3. The lack of a long-term strategy to protect children’s rights - methods are applied individually without proposing long-term cultural change. Long-term planning must be a part of the strategy.

4. The lack of self criticism and reflection by community sector organisations themselves.

5. The lack of clarity regarding what is/what is not a conflict of interest when protecting the rights of children. For example, when the ‘best interests’ of one child conflicts with others’ in the family, or parent’s rights.

6. The lack of participation by children themselves in processes which affect them. In other countries such as Sweden, children speak the language of rights and there is greater awareness and support of their engagement with rights.

Moira stressed that the only way to effect cultural change in Australia is to implement participation projects and policy that children have rights to access decision-making mechanisms.

**The establishment of the Office of the Children’s Commissioner, London**

Moira then reflected on the establishment of the Office of the Children’s Commissioner in London and her role as the first Children’s Commissioner as a practical example of implementing a human rights framework to actively promote children’s rights. The model was subsequently successfully in London, Scotland and Wales.

Key points outlined by Moira included:

- The Office modelled a children’s participation rights model.
- To develop the Office of the Children’s Commissioner, they consulted with children across the community and surveyed their views and values.
- The children identified issues such as racism, public safety, public transport and adult courtesy as key issues affecting their health and livelihood.
- The Office also explored what worried children, what made them happiest, and the experience of being a child in London.
- The ‘London at their Feet’ Project developed by the Office focussed on the experiences of children as citizens, not simply ‘children’ or young people. The
project involved developing a human rights ‘city’ and games promoting a rights-based approach to children’s lives. The children organised a march in London to protest against corporal punishment.

Moira concluded by urging participants to examine their own perceptions, organisational policies and processes which affect children in order to effectively and inclusively promote children’s rights in their work.

**Facilitated Panel Discussion**

James McDougall introduced the panel members:

**Hugh de Kretser, Executive Officer, Federation of Community Legal Centres (Vic)**

Hugh de Kretser is the Executive Officer of the Federation of Community Legal Centres (Victoria), the peak body for Victoria’s 50 community legal centres. He is also a Commissioner on the Victorian Law Reform Commission, a Director of the Sentencing Advisory Council and a member of the Victorian Government’s Human Rights Leadership Forum. Hugh previously managed the Brimbank Melton Community Legal Centre after starting his career in a corporate law firm.

**Dr Virginia Dods, Senior Project Officer, Office of the Child Safety Commissioner**

Virginia completed a Bachelor of Behavioural Science (BBSc (Hons)) degree at La Trobe University in 1988 and then commenced with the Australian Federal Police (AFP) in Canberra under the Graduate Administrative Assistant (GAA) program in 1989. This was followed by a return to Melbourne to commence the Masters in Forensic Psychology course at Monash University in 1990 and then employment as an AFP officer in 1991. Virginia commenced a decade of work in Child Protection in the Western Metropolitan Region of Melbourne, and undertook a Doctorate in Forensic Psychology, until becoming the Sexual Assault Program and Policy adviser at DHS in 2002. A brief period on secondment to the Department of Justice in 2004 to manage the Family Violence Prevention Pilot projects in Brimbank and Shepparton for the VCCAV (Victorian Community Council Against Violence) followed. Virginia began with the Office of the Child Safety Commissioner (OCSC) shortly after its establishment in 2005. Virginia is currently employed as a Senior Policy Adviser in the Promotions and Policy team, covering the portfolios of sexual assault, family violence and CALD community issues amongst others.

**Sue Hackney, Coordinator, Way Out Rural Victorian Youth & Sexual Diversity Project.**

Sue has been working as Coordinator of the Way Out, Rural Victorian Youth & Sexual Diversity Project since its commenced in 2002. The project focuses on raising awareness about the needs of same sex attracted and gender questioning young people and the nature and effects of discrimination in rural and regional communities. The work ranges from broad community development initiatives to work with organisations, schools, groups and individuals.
Prior to this role, Sue has worked for approximately 20 years in universities, government and community organizations in the areas of equal opportunity/human rights training, advocacy, policy development and complaint handling. She has a Bachelor of Social Work and has undertaken further studies in fields such as mediation and narrative therapy and is currently doing a Masters in Public Health.

**Lauren Oliver, Internal Consultant- Youth Empowerment & Participation, Berry Street.**

Lauren joined Berry Street in 2007 in the role of Internal Consultant - Youth Empowerment & Participation, a new role developed to focus on building a framework for meaningful youth participation and consultation across the organisation and to build the capacity of Berry Street to provide effective services to adolescents in the Child Protection System. Lauren has worked with at risk young people internationally since 1995. Volunteer placements in India, Ethiopia and Guatemala as well as a role in the supported housing sector in the UK have enabled her to develop a breadth of experience when it comes to understanding the diverse needs of marginalised young people.

In addition Lauren has held roles in the corporate community brokerage sector with a focus on enabling corporate organisations to work with community organisations to better the opportunities available to disenfranchised young people in Melbourne and Sydney. Most recently, prior to her role at Berry Street, Lauren was the Founding Director of Fifteen Foundation Australia, the Australian version of the charity developed by Jamie Oliver in the UK to support disadvantaged young people to turn their lives around through intensive Chef training in a high-end restaurant (Fifteen Melbourne).

**CONCLUSION**

Chief Executive Officer of the CECFW, Lynette Buoy provided a closing summary, drawing on her early professional experiences in relation to recognising and respecting the voice of children.

Participants reported feeling reenergised and inspired by the forum to implement or further strengthen a rights-based approach in their work with children.
**APPENDIX 1**

**Notes**

**The History of Children’s Rights - James McDougall**

- The founder of Save the Children, Eglington Gebb, was the first person to change conceptions and thinking about children’s rights. This was followed by developments such as the League of Nations and the United Nations (UN).
- Throughout the 1980s, UN consultations were initiated and involved a 10 year process of developing the text of the Convention regarding children’s experience.
- The majority of countries (including Australia) signed up quickly- Australian ratified in 1990.
- The only two remaining nations yet to sign the Convention are the US and Somalia.
- The Convention provides a type of regulatory framework for countries to abide by and for gauging the protection of children.
- It also requires governments to report on the status of rights, however unfortunately this is not necessarily effective given governments report on their own activity.

**International context**

Australia’s ratification of the Convention therefore places Victoria and the Charter in a broader international context. However, despite some developments in Australia, there are also some very good practices adopted overseas which we can learn from. Examples include NZ and Canada, both which have similar federal systems and development issues regarding their Indigenous populations, for example. In many ways these countries are ahead of Australia in relation to the protection and promotion of children’s rights.

**The Convention Shadow Report**

- The 4th Convention report will be launched shortly following the previous report released in June 2009. Unfortunately, many believe that the reporting was poor during this process- this makes contributions from the NGO sector more important.
- The National Children’s and Youth Law Centre will draft a report outlining the failures of government actions regarding the Convention, but will also highlight positive outcomes and initiatives.

**Victoria**
James noted that Victoria is a ‘showcase’ state in terms of children’s rights. It has created greater awareness and dialogue regarding children’s rights when compared to other States.

Panel Discussion

Panel members were asked to comment on:

1. **Whether the Charter and CROC has impacted on the daily work and policies of their organisations; and**

2. **If the Charter and CROC have had an impact on their work, provide an example of how this was achieved and what effect it had on their organisations and clients.**

* Please see Appendix 2 for summary notes of the panel discussion.

James facilitated questions from the floor.

1. **Question: There is a significant lack of funding for independent children’s lawyers in the Family and Children’s Courts - it appears there has been a significant reduction in funding in recent years and why has this occurred?**

   - **Hugh:** this is not a political decision, simply another example of difficulty in prioritising where to direct minimal funding. CLCs need more funding and resources to do more child protection work (rather than estates and wills etc).

   - **Moira:** need firm standards of rights and an ethic of respect for the rights of the child as valid - can use ‘best interests’ principle in this context.

   - **James:** the need for children’s voices to be heard in family disputes is frequently raised by children at the Centre. Policy makers are now being forced to consider this.

2. **Question: Intellectually and physically disabled children are having to endure lengthy school bus trips in many areas as they are unable to attend ‘conventional’ schools. The participant commented that the parent’s right to choose the school for the child appears to be prioritised over the child’s view and/or wishes.**

   - **Virginia:** in terms of finding appropriate and ‘conventional’ schools for disabled children to attend, the new Equal Opportunity Legislation coming into effect in 2011 will state that the school must take into account
reasonable adjustments which can be made to accommodate the disabled child.
- Complaints can be made to the Human Rights Commission or VEORC from 1 August 2011 by representative groups in order to address systemic discrimination.
- There will be no individual cases taken on; these must be conciliated and go straight to VCAT.

Hugh: There is a possibility a Disability Commissioner will be introduced. This is currently under consultation.

Other ways to improve the human rights of children

- need a human rights curriculum in schools.
- More pre-service training for workers—advocates themselves must be better trained.

3. Question: Could the panel please comment on the significance of the use of TECHNOLOGY in protecting and promoting children’s rights.

Lauren

- Technology is key in enabling children to explore rights.
- Raises the right to participation and right to family life (i.e., contact with family and connection).
- However, the connections which are made possible through technology also can connect them to harmful connections and networks—this is the conflict and difficult for CSOs to manage. However, shouldn’t prevent children having the right to access technology.
- Issue of children and the use of technology is assisting children’s development into adulthood.
- ‘Be Net Wise’ project in partnership with Office of the Child Safety Commissioner and Centre for Excellence. There is conflict between monitoring the computer use of children, but also giving them the right to engage with it and encourage, educate, allow networking and support them.
- Techno

Sue-

- The use of MySpace and Facebook is a huge support mechanism for SSAYP—this is uniting and consciousness raising.

Hugh:
- Encouraged participants and CSOs to be actively engaged in the review and to lobby for ESC rights to health, education and housing to be included in the Charter, as they are vitally important to all Victorians including children.
Appendix 2

Panel members were asked to comment on:

1. Whether the Charter and CROC has impacted on the daily work and policies of their organisations; and

2. If the Charter and CROC have had an impact on their work, provide an example of how this was achieved and what effect it had on their organisations and clients.

Lauren Oliver

- There are examples of how they are currently improving practice, but this hasn’t necessarily been achieved as yet.
- Berry Street helps children who ‘slip through the gaps’.
- Have developed the Out of Home Care Charter, which interprets the 16 rights of the Charter in the context of Out of Home care and gives practical examples and relevant rights for both carers and children.
- Berry Street has also developed resources which explain the OHC Charter for workers and children. These include card games and DVDs which adapt to the age level of children.
- One of the central issues is how the Charter fits into real life in a system where decisions are made ‘for’ and ‘about’ children.
- Noted the fear of consequences in the sector and among workers of telling children about their histories in care and what’s happened to them. However-James noted that children are unbelievably good at adapting/dealing with this sort of information.

Other projects:

- YacVic Code of Practice also developed with a human rights framework- this shifted focus from a regulatory one to a human rights based concept.
- ‘Who Am I’ project- a book which tells children what they were like when they were younger and more personal details- this moves focus away from the ‘logistical’ and ‘clinical’ information and in terms of the Charter ties into the right to access information about themselves.

Virginia Dods

- The Charter for OHC was developed with the CREATE foundation prior to the Charter taking effect and was a tangible example of what children wanted.
- The Charter focuses on a child’s right to participation.
Examples of projects:

- ‘As I see it’ Photo Exhibition which expressed the views of children regarding what it’s like to live in care.

- ‘Be Heard’ project in conjunction with CREATE in the Southern Metro and Hume regions- children were asked whether they believed their situation and experience was in line with CROC. Following this project, two reports were produced- one for children (pictures/simplified language) and another ‘official’ version- surprisingly, the children’s version has been far more popular.

Despite not being a ‘dispute resolution’ body, in recent years the Children’s Commissioner has received many complaints re: children in care and children’s rights- most are complaints relating to the ‘best interests’ of the child not being applied in practice (ie- disabled children and long school bus rides).

Sue Hackney

- She struggles to find examples of good practice in the areas of Same Sex Attracted Young People (SSAYP) in terms of the Charter due to fears, phobias and discrimination which are so prevalent.
- There are around 63,000 SSAYP in Victoria- a significant number which is disproportionately over-represented in juvenile justice and homelessness statistics.
- These young people and children are particularly vulnerable at school- particularly private schools, but also when they come home and face difficulties ‘coming out’. Therefore, the usual sources of support for these people is workers.
- Three quarters of the abuse occurs at school and bullying procedures are rarely effective.
- Noted that there are a range of value judgments and standards which apply to SSAYP but not straight young people.

Way Out was the first organisation to cover rural Australia and works on the basis of a gay/straight alliance. It has produced numerous stickers, DVDs and merchandise (designed by SSAYP) to proactively address issues of discrimination and violence. They also set up a Rural Youth Council which takes on projects for SSAYP.

The fact that the issue of sexuality is private makes it a fundamental human rights issue.

James McDougall
Talking about rights makes us more aware of inadequate existing mechanisms and legal structures.

**Hugh de Kretser**

**Law Reform Commission Report- Child Protection in Victoria**

- As a Commissioner at the Victorian Law Reform Commission (VLRC), noted that the VLRC Child Protection enquiry report was released on 5 October 2010.
- The LRC Child Protection Report focussed on the *participation rights* of children in the process. It has made a recommendation re: Article 12 of CROC being implemented regarding children being represented in proceedings in the Children’s Court 100% of the time.
- The Charter, despite not always producing obvious ‘tangible’ or legal outcomes has increased the awareness of many issues.
- The Charter has given us more tools to uphold human rights- strengthen legal cases, even if it is not a cause of action in its own right.
- *Police* are also far more keen to show that they are observing the Charter, for example, when searching people. Again, this doesn’t change the outcome, but changes the process and forces people to consider a human rights compliant approach.

**Stop and Search Powers (Vic)**

- The Federation’s ‘Stop and Search’ powers work has noted the disproportionate use of these powers on young men. The UK experience shows that black men are also ten times more likely to be searched.
- Although the Charter did not stop these powers being introduced, it affected the process.
- Rather than focussing on the outcome of Charter related cases or issues, it is also important to look at the way it alters the process. In this case, the process was affected by the Charter as parliament was forced to consider, discuss and debate the legislation being introduced using a human rights framework.

Noted the difficult decisions people are forced to make when directing limited funding.

**FCLC’s work**

- The FCLC has developed a ‘kit’ for community legal centres to guide them regarding the Charter, and provides case studies and examples to address
particular situations (for example, how to address the issues of a mentally ill client within a human rights based approach). In situations like these, the Charter can be very helpful.

i. Conclusion

The Chief Executive Officer of the Centre, Lynette Buoy thanked James McDougall and panel members. Participants then continued discussions over lunch.