10 June 2011

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

Dear Sir,

Inquiry into the Charter of Human Rights and Responsibilities Act 2006

Thank you for the opportunity to provide a submission to the inquiry into the Charter of Human Rights and Responsibilities Act 2006.

Save the Children Australia is a member of Save the Children International, the world’s largest independent child rights development organisation, working in more than 120 countries towards a world in which every child attains the right to survival, protection, development and participation.

Save the Children Australia was established in Australia in 1919 as a not-for-profit organisation and has been running child-focused programs since the 1950s. We have offices in every Australian State and Territory including Victoria.

Save the Children strongly supports the inclusion of children’s rights and a remedy and enforcement mechanism in the Charter of Human Rights and Responsibilities Act 2006.

Children’s Rights

1. Children are a vulnerable group who require special safeguards and protection from adults, including Government. The fact that children have little political power or influence over the institutions and laws that govern their lives, means that it is critical that their rights are protected in legislation such as the Charter for Human Rights and Responsibilities Act 2006 (the “Charter”).

2. The United Nations Convention on the Rights of the Child (the “CRC”) recognises a broad range of political, economic, social and cultural rights for children. As a signatory to the CRC, the Federal Government of Australia has an international obligation to ensure that the rights of children and young people in Australia are respected, protected and fulfilled.

3. Despite being a signatory to the CRC since 1990, Australia’s commitments under the CRC have not yet been fully met. In 2005, the Committee on the Rights of Child, the United Nations body responsible for monitoring compliance with the CRC, recommended that Australia should "strengthen its efforts to bring its domestic laws and practice into
conformity with the principles and provisions of the Convention...

4. The Charter recognises some children's rights contained in the CRC including:
   a. non-discrimination (Section 8 of the Charter; Article 2 of the CRC);
   b. right to life (Section 9 of the Charter; Article 6(1) of the CRC);
   c. protection from torture and cruel, inhuman or degrading treatment (Section 10 of
      the Charter; Article 37(a) of the CRC);
   d. privacy and reputation (Section 13 of the Charter; Article 16(1) of the CRC);
   e. freedom of thought, conscience, religion and belief (Section 14 of the Charter;
      Article 14(1) of the CRC);
   f. freedom of expression (Section 15 of the Charter; Article 13 of the CRC);
   g. peaceful assembly and freedom of association (Section 16 of the Charter; Article 15
      of the Charter);
   h. protection of children (Section 17(2) of the Charter; Article 19 of the CRC);
   i. cultural rights (Section 19 of the Charter; Article 30 of the CRC);
   j. right to a fair hearing (Section 24 of the Charter; Article 40(b)(iii) of the CRC);
   k. rights in criminal proceedings (Section 25 of the Charter; Article 40(b) of the CRC;
      and
   l. retrospective criminal laws (Section 27 of the Charter; Article 40(a) of the CRC);

however, other rights are only partially consistent or not included at all.

5. Examples of rights which are only partially consistent with the CRC include:
   a. The best interests of the child – While the best interests of the child is recognised
      in Section 17(2) in relation to the protection of children and Section 24(3) in
      relation to the public nature of court decisions, neither article provides that the
      best interests of the child will be a primary consideration in matters concerning
      that child, as articulated in Article 3(1) of the CRC.

   b. Respect for the views of the child – While Section 18(1) of the Charter provides
      that children have the right to participate in public life, it does not recognise the
      right of children to express their views and be heard in all matters affecting the
      child, as articulated in Article 12 of the CRC.

   c. Detention and Punishment – While Sections 21 and 23 of the Charter recognise
      the right to liberty and security of the person and children in the criminal process,
      neither section provides that the arrest, detention or imprisonment of a child
      should be used only as a measure of last resort and for the shortest appropriate
      period of time, as articulated in Article 37(b).

6. Further, there are numerous rights from the CRC which have not been included in the
   Charter at all including:

   a. The right to development (Article 6(2) of the CRC);

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1 UN Committee on the Rights of the Child, 40th Session, Concluding observations: Australia. (CRC/C/15/Add.268), 20 October 2005, at para. 10.
b. The right to birth registration, a name, nationality, identity and to be cared for by one's parents (Article 7(1) and Article 8 of the CRC);

c. The right not to be separated from one's parents unless it is in the best interests of a child to do so (Article 9 of the CRC);

d. The right to access information and mass media (Article 17 of the CRC);

e. The right to special care for children who cannot be looked after by their own family (Article 20 of the CRC);

f. The right to protection and assistance for refugees (Article 22 of the CRC);

g. The rights of children with disabilities (Article 23 of the CRC);

h. The right to good quality health care (Article 24 of the CRC);

i. The right to social security (Article 25 of the CRC);

j. The right to an adequate standard of living (Article 27 of the CRC);

k. The right to an education (Article 28 of the CRC);

l. The right to leisure and play (Article 31);

m. The right to be protected from labour that is hazardous or might harm a child's health or interfere with his or her education (Article 32 of the CRC);

n. The right to be protected from sexual exploitation and abuse (Article 34 of the CRC);

o. The right to be protected from all forms of exploitation (Article 36); and

p. The right to special help for children who have been neglected, abused or exploited (Article 39 of the CRC).

7. Given the vulnerable nature of children, their lack of influence over laws and institutions, and the fact that the Australian Government has committed to the CRC, it is critical that the rights not covered or only partially covered by the Charter are included in any revision to the Charter. In particular, the provisions relating to the best interests of the child (Article 3 of the CRC), the right to survival and development (Article 6 of the CRC) and the right of the child to express his or her views and be heard (Article 12 of the CRC) should be incorporated fully into the Charter. Along with the principle of non-discrimination (Article 2 of the CRC), these provisions represent the fundamental general principles of children's rights.

8. In addition, pursuant to Section 41(d) of the Charter, a child-friendly version of the Charter should be created and widely distributed to allow children and young people living in Victoria the opportunity to know and understand their rights and responsibilities, as articulated by Article 42 of the CRC.

Remedy and Enforcement Mechanism for the Infringement of Rights

9. Section 29 of the Charter, the effect of a statement of compatibility on Victorian law, should be modified to state that a failure to comply with section 28 does affect the validity, operation or enforcement of an act or any other statutory provision.

10. Similarly, Section 36(5) of the Charter relating to a declaration of inconsistent interpretation should be modified such that the declaration does affect the validity, operation or enforcement of a statutory provision, creates in a person a legal right and gives rise to a civil cause of action.
11. A charter of rights without a mechanism for enforcement or remedy provides neither adequate protection for those whose rights have been infringed, nor deterrence to those who seek to infringe such rights. Victorians should be provided with accessible, just and timely remedies for the infringement of their rights under the Charter and legislation which is incompatible or inconsistent with the Charter should not be enforceable except as provided for under Section 31 of the Charter.

Thank you for the opportunity to provide input into this inquiry. Should you require any further information, please contact Nicole Cardinal by phone 03 9938 2016 or email nicole.cardinal@savethechildren.org.au.

Yours sincerely,

[Signature]

Rupert North
State Manager for Victoria