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1. Executive Summary

The RMIT Youth work team welcomes the opportunity to share this submission with the national human rights consultation committee. We believe that, like all Australians, young people’s human rights need to be better protected.

Especially for young people, human rights are interconnected and interdependent. A progressive notion of human rights is important for young people, including civil and political rights, economic, social, cultural rights as well as environmental and group rights.

Currently, we do not believe these are adequately protected. Numerous examples of human rights violations evidence this, from the existence of status crimes to use of the mosquito.

Therefore, to better protect young people’s human rights we recommend the following:

- That a Charter of Human Rights be implemented in Australia. This charter should be a dialogue based model, similar to that in place in Victoria, but with an enhanced role for the courts to protect human rights and challenge violating legislation.
- That this Charter include civil and political rights at first, and then work towards implementing economic, social and cultural rights and other types of rights. Do we really want to be saying this, should we just call for the whole hog from the outset?
- That a national Children and Young Person’s Ombudsman be introduced.
2. About Us

The authors welcome the opportunity to contribute to the National Consultation on Human Rights, and applaud the decision to engage in this timely process.

RMIT University is one of Australia’s oldest training institutes, and the School of Global Studies, Social Science and Planning is the largest School in the university. We research and teach across a range of disciplines in the humanities and social sciences, and our areas of research cover topics from human rights, community development to political science.

This particular submission was prepared by a group of academics with extensive expertise in social justice, social policy and young people. Collectively, we have published over 100 publications in the area and are acknowledged as one of Australia’s leading training and research centers for transformative, structural, critical, progressive youth work and social policy analysis.

3. Scope of this Submission

We welcome the National Human Rights Consultation and acknowledge the importance of the questions identified in the Terms of Reference namely:

i. Which human rights (including corresponding responsibilities) should be protected?
ii. Are these human rights currently sufficiently protected and promoted?
iii. How could Australia better protect and promote human rights?

While addressing these questions in respect to every member of the Australian community is important, we focus in this submission on young people aged 12 to 25 years of age. We do this primarily because young people – like children – are one of the groups in our community who have their human rights breached or denied so frequently and persistently by prejudicial assumptions, beliefs and practices that it becomes normative, and in too many instances is seen as appropriate and proper.

Recognising young peoples’ human rights matters because when a group of people are denied their human rights other bad consequences typically follow. In other words, denying their rights makes it easier and indeed acceptable to treat those people as if they were less than human. Recognising young people’s human rights also matters because those rights help secure basic needs that like the need to be confident, to enjoy a healthy life and a range of experiences essential to their capacity to learn, to have relative autonomy and to believe in one’s own worth and dignity. In Amartya Sen’s terms these are fundamental capabilities needed if a young person is to develop in all the ways they can.
Recognising young peoples’ human rights has serious implications not only for the well being of every young person, but also necessary if we are to take seriously any claim we make to call ourselves a humane, democratic and civilised society.

4. Protecting Young Peoples’ Human Rights

i. Which human rights (including corresponding responsibilities) should be protected?

Human rights are legal principles designed to promote and protect social goods. Young people are entitled to all of these social goods, and hence, are entitled to have a full range of human rights identified and protected.

There is a strong case to be made for a wide-ranging framework of human rights beginning with ‘first generation’ rights, i.e. civic and political, as well as ‘second generation’ or social, economic and cultural rights. The Convention on the Rights of the Child in particular, outlines the breadth of human rights that are necessary for children and young people if they are to lead full and flourishing lives.

We would also note the importance of ‘third generation’ rights, including environmental, group and women’s rights. Especially for young people, the right to a clean environment and indigenous people’s rights are increasingly important for example, as we begin to tackle issues like global warming and reconciliation.

While we therefore acknowledge that human rights are progressive, interdependent and indivisible – hence young people need to all three generations of human rights, including secure economic, social and cultural rights to enjoy their humanity – we also recognize that civil and political rights are the ‘next frontier’ for young people.

Young people have often been denied their civil and political rights, due to a narrow minded paternalism intent on protecting them form all sorts of harms both real and imagined which begins by treating them as ‘human becomings’ rather than fully fledged, human beings. So while we acknowledge that group, economic, social and cultural rights are critical to enjoying full humanity, we would argue that for young people, civil and political rights are especially important. The right to non-discrimination based on age in of particular importance.
ii. Are these human rights currently sufficiently protected and promoted?

Unfortunately Australia’s record of protecting and promoting the rights of young people is not something of which we can be proud.

Protection of these human rights matter and especially for young people because so many of their rights are either denied or breached. Young people are routinely denied basic rights. In this submission we specifically identify violations to:

- a) freedom of association, movement and assembly,
- b) the right to participate,
- c) equality before the law
- d) non-discrimination based on age

Young people also experience many other human rights violations affecting their right to freedom of religion or the right to privacy. These violations are pervasive and are supported by ‘common sense’ ideas that are widely shared by many people.

Protecting young people’s human rights provides a powerful opportunity to challenge some deeply held social prejudices and work towards empowering young people as full citizens.

a) Freedom of association, movement and assembly.

Young people are frequently denied access to public spaces thereby breaching their rights to freedom of movement, association and assembly. Across Australia local governments, public institutions and commercial enterprises like shopping malls pass youth curfew regulations and ‘no young people policies’ on properties to keep young people ‘off the streets’ during certain hours or out of certain spaces.

When we marginalise young people from certain spaces, we violate their human rights and contribute further to the new ‘spatial apartheid’ emerging across the globe. All community members, including young people, have the fundamental democratic right to access public space. There are numerous legal instruments that recognise the rights of all people to access public space.

This practice emulates the longstanding denial of the right of free access by indigenous Australian or the exclusion of African American in the USA which prohibited them from being passengers on buses and trains, it excluded them from hotels and other certain areas of cities under the aegis of ‘White Australia’ or Apartheid regulations.
**Case Study 1: Under-age Gig ban.**

In October 2004 the Consumer Affairs Department in Victoria, refused to permit any temporary de-licencing of licensed venues – in effect ‘banning’ underage events from licensed venues, or the vast majority of venues. The ban took place over term break, leaving many young people without any events to enjoy.

The ‘ban’ affected all under-age events in licensed venues in Melbourne’s central business district. This decision was prompted by an assault on a lone security guard outside an under age venue, who had refused entry to some young customers. The discriminatory nature of this response becomes apparent when we observe that bans or closures are not normally imposed after a violent incident at many other events involving football ovals, clubs, pubs etc. Bouncers are, regrettably and preventable, victims of abuse (both verbal and physical) unnecessarily - however it was only when it was at an underage event that a whole client group was ‘banned’. An effective review of staffing procedures at venues was probably a more appropriate approach.

Over 4,500 young people signed an online ‘Save our Scene’ petition demanding gigs be restored to the Central Business District before the ‘ban’ was lifted.

**Case study 2: The Mosquito Teen Repellent.**

The Mosquito is an ultrasonic device, advertised by manufacturers as ‘the solution to the eternal problem of unwanted gatherings of teenagers’, and has either been installed or else it has been proposed that it be installed in locations around Australia, including those owned by public authorities.

The Mosquito, emits a high-pitched sound that can only be heard by people under 20 due to age-related hearing loss. Many young people complain that ‘it hurts their ears’ exercising a coercive effect by directly acting on young people’s bodies.

The Mosquito was designed purely and simply to
physically marginalize young people. Young people are full citizens and have a right to be consumers and to enjoy public space the same as anyone else.

The Mosquito is the latest weapon in a wide-ranging arsenal devised to exclude young people from public spaces. Fast-food outlets and town councils across Australia, for example, are already experimenting with playing adult music in places frequented by young people, classical music in train stations, etc. While it may seem trivial or even entertaining, these developments are deeply troubling and reflect public authorities either action on, or overlooking, prejudicial actions. (ref Yikes)

b) The right to participate

The rights of young people to freedom of movement, speech and assembly are frequently curtailed – and thereby compounding violations of their right to participate in the social, political and cultural life of the community. For example, many politicians, parents and teachers refuse students 'permission' to participate in political activities like protest marches when those activities occur during school hours. In many cases this involves appealing to truancy laws to prohibit young people's participation in these events. Further, many authority figures in Australian society deny young people's capacity to participate in decision making processes that affect them. In combination, young people are treated as marginal members of our community without legitimate social and political voice.

Australia demonstrates perfectly the global tendency of industrialised nations to 'rest on their laurels' when it comes to participatory rights, “because in terms of social and economic development (we are) so far ahead” (Ludbrook 2000, 113), that we overlook the call to implement participatory rights to the full. However, this attitude denies the active citizenship of young Australian people.

Case study 3: Students Participating in Protests.

The decision by the Commonwealth government to participate in the invasion of Iraq sparked one of Australia's largest protests in modern times. Many young people sought to add their voice to this protest. On March 3rd, 2003 a large student protest attracted a number of high school students. The NSW Premier's Office issued a notice that it was not appropriate for school children to be protesting in school hours (http://www.abc.net.au/worldtoday/stories/s799082.htm).
Again on September 5th, 2007 a series of children’s anti-Bush protests were organised to coincide with a meeting of APEC members in Sydney. Over 1,500 mostly high school students attended the rally across the country. The NSW Police Commission announced a blitz on truancy and suggested that police would work to identify students present and notify their parents and school, and the Department of Education said that students who attended the protest would be subject to school’s disciplinary procedures. Students at Trinity Catholic College in NSW were told that they would be expelled if they attended the legal protest. (http://www.thewest.com.au/aapstory.aspx?StoryName=415903).

Case study 4: PM says don’t include young people in a discussion that directly affects them.

In the furore that erupted following the publication of a Bill Henson photographic portrait of a naked child, Prime Minister Rudd urged the press and public not to speak to children or young people in the dialogue, as they were not capable of understanding the issues involved in the debate, or worse that they were simply being manipulated by unscrupulous adults. Despite the debate directly affecting children and young people, the head of the Australian government urged that they be excluded from participating. REF

c) The right to equality before the law

Young people often do not enjoy their rights in the legal arena. Status crimes, administrative injustices and discriminatory use of discretionary police powers all work against young peoples’ rights.

Case study 5: Mandatory Sentencing

Beginning in the late 1980s and early 1990s the Northern Territory and Western Australia governments enacted mandatory sentencing legislation that targeted young people in response to populist law and order campaigns to address ‘rising crime rates’. This legislation was deeply inimical to the rights of young indigenous people and the legislation remains in force in Western Australia.
In one tragic case, this led to the sentencing of a 15 year old indigenous boy for stealing pens and paint. The boy was found hanged at Darwin’s Don Dale Juvenile Detention Centre on day 23 of his 28 day jail term. He had been locked in his room for refusing to take out some garbage bins.

Removing judicial discretion in sentencing and allowing young people to suffer under the popular ‘tough on crime’ rhetoric violates young people’s right to a fair trial.

Case study 6: Status crimes.

A host of status crimes exist in Australia for young people; that is, legal acts are criminalised when committed by a young person.

In Victoria, under the Volatile Substances Act, Police can lawfully apprehend and relocate a young person without that young person having committed an offence other than being out at night or for other ‘offences’ such as carrying paraphernalia that can be used to chrome (ie., plastic bag, spray can).

Many youth curfews have been enacted across the country – making young people’s presence in public places illegal. These include the Northbridge Curfew, xxx, xxx, xxx. Evidence has shown…

Under the Graffiti Prevention Act 2008, it is illegal to sell an aerosol spray can to an under 18, unless they can meet stringent requirement of ‘work related’ proof. Enshrined to curb a rising graffiti problem, there was no evidence to suggest that graffiti was committed by under 18 year old.

Case study 7: Young people’s involvement in the legal system.

The 1997 Report by the Australian Law Reform Commission (ALRC) and Human Rights and Equal Opportunity Commission (HREOC) Seen and Heard: priority for children in legal processes found that children and young people are systematically excluded from too many legal processes. Many of the recommendations for change have not been adopted.

d) The right to non-discrimination based on age

In spite of state and federal legislation banning age-based discrimination young people continue to be routinely subjected to various kinds of normal social and economic injustice grounded in age-based discrimination.

Case study 8: The Junior Wage.
Under the Fair Pay Commission, Australian workers under 21 are subject to a ‘junior wage’. The ‘junior wage’ sets workers rates of pay as a percentage of the full award pay for their industry. This ensures that some young people do not receive equal pay for equal work. Table one shows the fraction of adult wages that young workers are entitled to by age. This age-based discrimination has been made lawful by explicit legislative means in 2001 by legislation exclusively applied to those under 21 years of age, while all other age groups are protected from such discriminatory practices. Even if there is an economic justification for the junior wage, which we strongly contest, this justification needs to be explored while acknowledging that young peoples’ human rights are being curtailed through the practice.

<table>
<thead>
<tr>
<th>Age in years</th>
<th>Lowest Award</th>
<th>Highest Award</th>
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<tbody>
<tr>
<td>Under 16</td>
<td>30%</td>
<td>70</td>
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<tr>
<td>16</td>
<td>37.5</td>
<td>80</td>
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<td>17</td>
<td>45</td>
<td>90</td>
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<tr>
<td>18</td>
<td>55</td>
<td>90</td>
</tr>
<tr>
<td>19</td>
<td>72.5</td>
<td>90</td>
</tr>
<tr>
<td>20</td>
<td>85</td>
<td>95%</td>
</tr>
</tbody>
</table>

Figure one: The per cent of ‘adult’ award wages that young workers are entitled to across various awards by age. Under one award, under 16 year olds are entitled to only 30 per cent of the adult pay.

Case study 9: Corporeal Punishment

Children can be beaten and punished with impunity especially by their parents. We see occasional attempts to engage in law reform on this issue to recognise the physical assaults on young people that many parents call ‘discipline’ or ‘traditional values’ as criminal assault. Apart from what governments do, many children and young people continue to be beaten and punished with impunity. Proposals to make physical assaults on children a crime that some adults persist in calling their ‘right to discipline’ are still liable to provoke community outrage. Too many adults can still make recourse to the saying ‘Spare the rod and spoil the child’.

We note that many of these kinds of prejudicial beliefs and discriminatory conduct targeting young people are justified by appealing to the special status of young people as to why we need to treat them differently and why paternalism is justifiable. This point merits some additional discussion.
Duty of Care and Developmental Rights

The notion that we should prevent young people from doing certain things which if necessary breach their human rights, relies on the idea that parents and adults generally need to exercise a ‘duty of care’ or guardianship. This entails claims that parents or guardians know what is in the young person’s interest better than the young person themselves. The premise operating here is that guardians are duty bound to ensure the young person’s interest is served even if that means not obtaining their consent or overriding their wishes. Those advocating the guardianship or duty of care tend to favour the curtailment or prohibition of activities that a young person can engage in. This is justified by claims young people need protection because they are unable to make good judgments themselves because they do not have the intellectual, moral or social competence to determine what is in their own best interest.

In this way duty of care or guardianship arguments can be confused with the popular idea that young people ought to be prohibited from doing X because they are inherently troublesome as well as incompetent (i.e., morally, socially, physically under-developed). In other words, given their innately unruly character and relative incompetence, young people cannot be trusted to know what is in their best interest and to act accordingly. Guardians on the other hand do. They are said to be more knowledgeable and more experienced and therefore know better what is in the interest of the young person than the young person themselves. For this reason guardians have a duty to exercise authority by making decisions for the young person. (One problem with this, as recent revelations of systemic abuse reveal, is that we can no longer assume an accord exists between the interest of the young person and the interests of those responsible for their care and welfare).

This perspective produces policies that restrict or exclude young people from activities deemed inappropriate or dangerous such as drinking alcohol or making decisions about matters like the kind of education they want, the kind of government they would like governing their country or state, or the even parent they want to live with after a marriage break-up. In the UK this argument went so far as produce school policies prohibiting students from playing of marbles and ‘conkers’ in the playground (http://news.bbc.co.uk/1/hi/uk/7637605.stm). Guardianship arguments in social contexts now characterized by politics of fear in which the ‘youth at risk’ discourse runs rampant, we see young people swaddled and prevented from engaging in various activities in the name of ‘safety’ and ‘their best interest’ that paradoxically thwarts opportunities for development in its various forms. This in conjunction with various problem setting activities in which young people are framed as dangerous, knife wielding threatening ferals as a prelude to punitive policy and law making has seen the steady extension of governance over the lives of young people in ways that not only reflect a disturbing fear of young people or ephebiphobia, but which also work to inhibit opportunities for young people to learn from mistakes and exercise good judgment.
Another perspective starts from a different place. It begins with an idea about the rights of young people specifically about developmental rights. It refers to ideas about the ability to develop and learn through experience. Indeed, one basic human right is to develop to the full and experience basic attributes and enjoyments that are part of being human. And as John Finnis (1980:205) explains, this also matters because rights talk is a way of articulating the requirements of justice - that is what we owe to each other. For proponents developmental rights educational opportunities of various kinds are critical because they facilitate the growth of a young person by building their knowledge, skills and confidence. This idea is encapsulated in the concept of ‘evolving capacity' enshrined in the international human rights framework, through the Convention on the Rights of the Child.

Rather than accept that developmental rights compete with or oppose guardianship or a duty of care options, I suggest both positions are compatible. Both have a place in guiding decisions about what we think about and do in respect to young people.

Clearly most adults appreciate that they have a duty of care to young people and that young people have developmental rights that ought to respected in practical ways. Where there is disagreement is in how this is best done.

One way to begin working this out is to acknowledge that while a duty of care involves protecting a young person that does not by itself provide the grounds for denying young people's developmental rights. In other words, because a person might be – or might be considered - less able does mean they should not exercise their rights. Moreover, denying young people their right to development can harm a young person and the community. Being denied the opportunity to learn from experience means they are without the chance to develop. What being less experienced, less well-resourced, etc means is that others have an obligation to support young people in ways that enable them to enjoy their rights and in particular their developmental rights. Recognising this takes us some way towards seeing how a duty of care and developmental rights can be complementary.

Proponents of developmental rights say they are obligated to provide supported access to certain activities so young people can have experience and learn from it. Such experiences they argue play a critical role in helping young people build a repertoire of skills, knowledge and experiences from which young people can later draw on to make to the right thing and make good judgments – like how to vote responsibly, how to handle money or how to drive safely. On this last point, research confirms that inexperience is the primary contributing risk factor in serious car crashes (Senserrick and Haworth n.d., see also Ferguson et.al, 2007, pp. 137-145, Shope 2007, pp. 165-175). Policy makers who recognise the significance of this risk factor and the role of developmental rights, will sensibly promote initiatives provide for experience. By these and other
means adults make it possible for young people to get the practical skills and knowledge that helps them to overcome bad errors in judgement, and to develop a repertoire of skills and experience to make good decisions and to know how to act accordingly.

This suggests that developmental rights can be given effect to and are entirely compatible with a duty of care, and how both are necessary for good and effective policies, practices and relations with young people.

We argue there is value in acknowledging the moral status of young people as human beings with full human rights entitlements. As mentioned earlier, getting to this point is not such a simple task because it means recognizing and successfully challenging prejudices that young people are different, incomplete and for those reasons should not exercise basic rights. (ie., They are not intellectually, morally socially able, or they are too small, too inexperienced etc).

Recognizing how a group might be different is not a problem. However, using that difference to deny their human rights is. In other words, because a person is smaller, less able, less experienced etc does not make it right for others to override their basic entitlements. Indeed given our fiduciary duty towards young people such differences obligate older people to act in ways that help secure their rights. This is a duty of care.

Just policy entails recognising prejudices that inform our thinking and being able to distinguish between those prejudices and what is actually happening. Part of that recognition entails seeing how young people are in fact sometimes at risk or troubled, but also realizing that that is not because they naturally that way, but rather because they simply have not had the experience or opportunity to developed the skills and judgment which engagement in those activities and experiences supply.

Just and effective policies and practice also means thinking about the fact that many of those who restrain young people in oppressive ways - wittingly or otherwise - have an interest in preserving the way things are. Some people who for example make daily decisions for young people about their interest without consulting them find it hard to see how they are doing wrong. They may also find it difficult to envisage how else they might act in their professional practice and personal lives. In this way, anyone who works or lives with young people is an interested party. It is something that makes the task of developing an awareness about popular prejudices more of a challenge.

A duty of care entails both an interest in as well as a responsibility to help young people realize their development rights and gain the relevant skills and knowledge. This entails recognizing how programs that expose young people in supported ways to particular experiences have value because participants enjoy the activity and develop proficiencies. Indeed prohibiting young people
from engaging in certain activities can be counter productive because they then lose opportunities to develop good judgment and intuition and yet the quality of our intuition is critical for good decision-making.

If we refuse young people opportunities to build a range of experiences and chances to reflect on what works and what does not, then we deny them opportunities to develop their capacity for good judgment. In other words, young people also change in what they can do and what they know they can do because of what their community allows them to do. As Harre observed, while some groups have certain rights and obligations to display their competences, others, regardless of their state of knowledge and ability are forbidden to make use of them (1986 p.294). Or as Berger (1971, p.179) suggested, speaking specifically of children, “our laws are a reflection of our attitudes towards children: attitudes which basically regard children as possessions. Laws will only be changed when attitudes change and attitudes will only change when there are enough children who have been given their freedom to make an impact on public opinion”.

The construction of ‘troubled’ young people and how human rights could challenge this.

The conditions for producing docile bodies subject to the power and whims of adult authority figures have been historically created through an amalgam of regulatory mechanisms and narratives about ‘the adolescent’. In this way the ‘lost generation’ becomes a tragic metaphor not only representing the realities of harm and neglect but also for abuses that occur when potent power is accorded to some over vulnerable others. These long-standing presumptions have for too long sanctioned an absence of respect which in turn has in some instances systematic enabled cultures of abuse and maltreatment of young people, in the guise of ‘welfare’ at the hands of their ‘carers’.

For many young people the identity of adolescent both as ‘troubled’ and ‘trouble-maker’, as fledging citizen makes it difficult for many to defend themselves. This is because as adolescent many young people lack basic socio-legal entitlements and practical resources to protect themselves. The formation of such identities means that many young people experience themselves as the property of another, as subordinate, inferior, incapable of making decisions, and not always able to question or resist adult authority. Historically, this scenario also applied to many women: the internalization of repressive sexist discourses made it difficult for them to defend themselves against assault.

Added to this is the reality that young people are always a numerical and moral minority making the prospect of challenge or redress of the status quo difficult. This is even more difficult given the
popularity of a framework of utilitarian values committed to the view that the good or welfare of a community is defined by ensuring ‘the greatest happiness for the greatest number’.

Legally enshrining human rights can produce important practical and ethical consequences. Amongst other things it can be used to re-shape the social identities and legal status of young people in ways that genuinely respect their human status and so are authentically protective of them.

iii. How could Australia better protect and promote human rights?

Australia is the last major western democratic state without a bill of rights, and we think this needs to change. Australia can better protect and promote human rights in general and the rights of children and young people specifically, first; by introducing a Charter of Human Rights and Responsibilities Bill which identifies and protects a minimum number of civic and political rights and secondly; has an agreed on time frame for considering the introduction of a larger number of social economic and cultural rights into an amendment.

As a minimum the Commonwealth government should emulate the A.C.T. and Victorian governments and introduce and pass a national Charter of Rights and Responsibilities. As a minimum such a Charter should identify a range of basic civil and political rights, including the following 20 human rights:

- Freedom from forced work
- Freedom of movement
- Freedom of thought, conscience religion and belief
- Freedom of expression
- Peaceful assembly and freedom of association
- Property rights
- Right to liberty and security of person
- Right to fair hearing and criminal proceedings
- To right to ask questions about what it right and the nature of good and to act ways that are aligned to answers to those questions
- Right to knowledge, and to learn
- Right to play, recreation and work
- Right to a healthy life and meaningful social relations
- Protection of families and children
- Cultural rights including the right to pursue truth, philosophical, spiritual or religious questions
- Recognition and equality before the law
- Entitlement to participate in public life (including voting)
- Prohibition of torture and cruel, inhuman or degrading treatment
- Protection of privacy and reputation
- Humane treatment when deprived of liberty
- Appropriate treatment of children and young people in criminal processes.

Again as a minimal legal framework the enactment of such a Charter would establish a legally binding obligation on all employees both of Australian governments and of publicly funded organizations (designated ‘public authorities’) who carry out work for or supply services on behalf of government, to acknowledge and give effect to these rights in their daily work.

It is recommended that this Charter be unlike those enacted in Victoria and the A.C.T however, to work by combining the familiar dialogue model focussed on persuasion, the value of publicity and education with a role for the courts in enforcing the Charter Act by way of sanctions or penalties.

Such a Charter would promote the principles which define a democratic and decent society that respects the rule of law, and valued ideas like human dignity, equality, freedom and respect.

The 'dialogue model' has been glossed as meaning that the national government both encourages and promotes dialogue about human rights between all the institutions of government – the Parliament, the courts and the executive.

Moreover, such a Charter would require governments to assess the existing array of statutory provisions represented by current laws and regulations to be assessed over a reasonable time as being ‘compatible’ with the Charter and where not being amended. It would also ensure that human rights are taken into account when developing new rights and policies. That is, it would be expected that all new laws and regulations be assessed for their ‘compliance’ with the Charter. For example this would require relevant Parliaments and legislative bodies to prepare statements of compatibility with human rights in respect of all Bills introduced into such bodies and enable relevant committees of scrutiny to report on such compatibility. We would submit that when laws and regulations can be interpreted in a number of ways, including ways that respect human rights, then the Charter would expect that the interpretation that takes into account human rights is to be preferred.

Consideration needs to be given to one closely related matter namely the way age based prejudice has been used to routinely seek exemptions form the Victorian Charter when governments wish to
breach the human rights of young people so as to protect them from some imagined problem. This means inter alia that (i) there ought to be no means whereby a relevant Parliamentary body can make an override declaration which says that an Act is lawful even if it has one or more provisions which are incompatible with the Charter; (ii) there ought to be no normal use of exclusions or exemptions from the Charter such as is currently available and used extensively in Victoria or the ACT a practice which embeds prejudicial assumptions, beliefs and practices (which affront basic human rights) in law. (To put this more plainly, unless a truly exceptional case exists which requires that some kind of deeply prejudicial policy, law or regulation is to be preferred to legislation which protects the rights identified in the Charter Act than no legal exceptions be allowed).

Finally such a Charter would as with other Commonwealth legislation confer jurisdiction on the High Court to declare that a given statutory provision cannot be interpreted consistently with a specified Charter human right, and requiring the relevant Minister/Department to amend the legislation.

Recognising this goes to the matter of ensuring compliance. There are two weaknesses in existing legislation and the practices of tribunals set up to promote non-discriminatory behaviour (such as is offered by equal opportunity and anti-discrimination boards) is that they allow too many exemptions to organizations thereby legalising discrimination and rely on the agreement on the part of those being complained about to allow a complaint to be heard. It would be an advance on this framework to ensure that the promotion of rights has more teeth. This e.g., could be secured by enabling the High Court to strike down legislation which is in conflict with Charter Rights. Likewise young citizens like all citizens should have the right to pursue legal action when they believe that they are being denied any of the rights specified in the Charter by virtue of actions taken by governments.

There is also a case for establishing an independent, national human rights ombudsman for children and young people. Such a position has been in place in countries like Norway for several decades. In Norway the Children’s Ombuds is a statutory position fully funded by the Norwegian government with a legislative mandate to investigate complaints brought by children and young people. The evidence is that the Office of the Children’s Ombuds pursues complaints vigorously and transparently and that it has done a lot to make children and young people a far more visible part of the civic life of Norway. It has probably helped the work of the Children’s Ombuds that Norway has also legislated to make the United Nations Convention on the Rights of the Child a part of Norway’s domestic statutes

5. Recommendations
1) That the Commonwealth Government introduce a Charter of Rights and Responsibilities Act for Australia that identifies a full array of civil and political rights, and a clear deadline for carrying out a review to establish a range of social, cultural and economic rights.

2) This Charter should be based on a dialogue model, but that in addition the legislation specify a role for the courts in enforcing the Charter Act by way of appropriate sanctions or penalties for breaches of rights.

3) That an independent, national human rights ombudsman for children and young people be explored.

**6. Conclusions**

Human rights protections are extremely important for young people, and have the capacity to reshape the problematic place of young people in Australian society. However numerous case studies evidence that young people do not always enjoy their human rights, and often the state is the key violator of these rights.

Therefore, we recommend that a Charter of Rights be introduced. The Charter should protect civil and political rights, and eventually economic, social and cultural rights too. This Charter needs to incorporate a dialogue approach but with a greater role for courts. We also recommend an independent ombudsman for children and young peoples’ rights. (AND THAT THEY EMPLOY RYS).