



Australian Government

Australian Institute of Family Studies
National Child Protection Clearinghouse

Submission on:

Development of a Charter of Rights for children and young people in care: A discussion paper

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1. How do you think the Charter will benefit children and young people in care?

The Charter is only likely to benefit children and young people in care if it is linked to specific mechanisms for implementation – and importantly, is able to be monitored, and results of this monitoring publicly reported.

The ability of the Charter to meet these aims will depend on the degree to which the Advocate for Children in Care is not only able to be independent, but also is able to access information, appropriate records, and—where necessary—the children and young people themselves in order to effectively monitor the implementation of the Charter – and ability to call the Department to account.

An annual report that describes progress and compliance against the Charter that is tabled to Parliament annually would be an important mechanism for transparency and ensuring the efficacy of the Charter for ensuring positive outcomes for children and young people.

2. Do you think it is appropriate to include the responsibilities of (a) children; and (b) the service system (including the Department, the CSOs, and carers) into the Charter of Rights?

3. How should this be done?

(a) Children

The context of framing mutual obligations exposes children to the risk that if they are perceived to have not met their ‘responsibilities’, that this may nullify their rights. We support the notion of communicating to children and young people expectations of their responsibilities; however, we do not support this being done as part of a Charter of Rights. A Charter of Rights is a powerful tool, and its capacity to deliver on its protection of children’s rights will be diminished if rights are explicitly linked to obligations.

Children and young people are a vulnerable group, with complex problems and needs. They are a group who have already had their rights to safety and freedom from violence violated. Within this context, it is an unreasonable additional burden to expect such vulnerable children to be able to meet obligations that might be placed on them. Given the disadvantages they have experienced, many of them may have difficulty in consistently fulfilling any obligations that are articulated. A Charter of Rights is focused on ensuring the rights of children and young people. In order to focus on their welfare and wellbeing, and any inclusion of explicit responsibilities within the same document may set vulnerable young people up to fail, which would run counter to the intention of the document.

(b) The service system (including the Department, the CSOs, and carers)

We consider the responsibilities of the service system (including the Department, the CSOs, carers, and other relevant Government Departments, such as Education and Health) should be explicitly referred to in the Charter of Rights. These should be linked to specific mechanisms for ensuring that the rights of young people are protected. In order to make the Charter accessible to children and young people, this may need to be expressed in broad, general terms, with supporting documentation describing explicitly the mechanisms for ensuring compliance with these service system responsibilities. Such supporting documentation should be linked to the compliance reporting mechanism we have suggested (in response to Question 1 above).

4. How do you think the Charter can best address the particular issues encountered by Aboriginal children who come into out-of-home care?

To be placed in accordance with the Aboriginal Child Placement Principle is a right of Indigenous children coming into care, and should be explicitly included in the Charter of Rights. Cultural maintenance plans should be mandatory for all Indigenous children being placed all forms of out-of-home care, including kinship care. Cultural maintenance plans should include issues such as:

- family preservation;
- family reunification;
- connection with extended family/community from the various cultural groupings from which the child originates; and
- ensuring access to Indigenous placement support workers and appropriate Indigenous support services.

5. How can the Charter appropriately address the requirements of children who have special needs (for example, children with a disability and children from culturally diverse backgrounds)?

All children should have the right to a culturally appropriate placement. Cultural maintenance plans that are flexible and include cultural issues in “life domains” such as health, education, culture, religion and sexuality for all children (as outlined above in relation to Indigenous children) would provide a platform for ensuring the special needs of these children and young people can be addressed. We are not suggesting culturally appropriate placements can only be achieved through cultural matching between carer and the child or young person, but rather that appropriate assessment and training standards for carers and case planning can ensure that diversity is recognised and valued. Appropriate assessment and training for carers and ‘cultural maintenance plans’ (or equivalent) provide a mechanism for building the capacity within existing or future placements to meet the diverse cultural needs of young people in care.

In order to meet other special needs of children (e.g., those with a disability, mental health issue, or other special need), developmentally appropriate plans need to be made. The Charter of Rights should make mention of the right for children and young people in care to have such needs recognised and addressed as part of their care plan.

The Charter needs to acknowledge the potential conflict of values between the young person's birth family or community, and the personal values of the carers. In such circumstances, it is important for assessment criteria and training for carers to address the capacity to value and respect diversity.

6. How do you think the Charter can most effectively accommodate the different developmental stages of children?

The Charter should acknowledge that children and young people in care have the right to “developmentally appropriate” as opposed to “age-appropriate” care. This recognises the fact that young people's needs may be best understood and responded to according to their developmental status, rather than their chronological age, and that the needs of children and the rights that should be available to them may change as they develop. For example, the rights of a 15-year old to be mentored and supported in moving towards autonomy) are different to those of a 5-year old, who have the right to be free of such responsibilities and to enjoy a carefree environment.

7. & 8. What core rights to do you think need to be included in the Charter? Do you think there are any rights that should not be included in the Charter?

The document identifies a number of rights that are consistently addressed in existing examples of Charters in other jurisdictions (on p. 13 of the discussion paper). These should all be included in a Victorian Charter. We also consider it appropriate to include those rights identified as sometimes being addressed in other charters (on p. 14), with two exceptions. There are two about which we have some concerns:

a. “refuse/consent to medical treatment”

We consider that such a right should be included in a modified form that reflects the rights of children and young people to be consulted, and their views taken into consideration in a developmentally appropriate way.

b. “not to be placed with adults if incarcerated”

We consider that this right should be included in a modified form that does not restrict the capacity for infants to be reunified with an incarcerated parent if the safety and wellbeing of the child can be assured; in other words, restrictions to being placed with an incarcerated adult should be restricted to adult carers other than the child's parents (e.g., could read: “not to be placed with adult **carers** if incarcerated”).

9. Any further comments about the rights that might be included in the Charter?

Two rights that should be added are:

- a. documents, artefacts and processes to preserve and celebrate personal history (e.g., photos, school reports, and other achievements); and
- b. the right to have personal identity valued and respected, including religious, cultural, ethnic, sexual and gender identity. An important element of this right would include access to developmentally appropriate sex education (given that many schools see parents as being primarily responsible for such education), and support for developmentally appropriate expression of sexual identity and sexuality, but recognising some young people's particular vulnerability to sexual exploitation.