



CREATE Foundation submission: National Human Rights Charter consultation

15 June 2009

The CREATE Foundation (CREATE) is a national organisation working with children and young people in out of home care and those who have had a care experience. CREATE submits that the rights of children and young people in care and who have been in care need to be better protected than they are at present. This can be assisted through a national human rights charter which would reinforce in domestic law the UN Convention on the Rights of the Child to which Australia is a State Party.

Many other international agreements would also be strengthened by the enactment of a Charter and this would benefit all Australians, not only children and young people in out of home care.

CREATE's Vision

All children and young people with a care experience have the opportunity to reach their full potential

Our Mission

Creating a better life for children and young people in care

CREATE does this through:

- **Connecting** children and young people to each other, CREATE and their Community.
- **Empowering** children and young people to build self-confidence, self-esteem, and skills that enable them to have a voice and be heard.
- **Changing** the care system, in consultation with children and young people, through advocacy to improve policies, practices and services, and increase community awareness.

Legal context

The rights of children and young people in the out of home care system would be argued by some to be adequately protected by the state child protection Acts:

- *Children and Young People Act 1999 (ACT)*
- *Children and Young Persons (Care and Protection) Act 1998 (NSW)*
- *Care and Protection of Children Act 2007 (NT)*
- *Child Protection Act 1999 (Qld)*
- *Children's Protection Act 1993 (SA)*
- *Children, Young Persons and their Families Act 1997 (Tas)*
- *Children, Youth and Families Act 2005 (Vic)*
- *Children and Community Services Act 2004 (WA)*

These Acts generally provide in their principles for:

- children's and young people participation in decision making in accordance with the capacity and desire of the child or young person to participate
- the importance of birth families bringing up children
- intervention to remove children from birth families being carried out only when absolutely necessary and with due process
- contact with family and identity to be maintained as far as possible and
- placement of Aboriginal and Torres Strait Islander children and young people to be made in accordance with the Aboriginal Child Placement Principles, which include placement with Indigenous family, kin or carers as far as possible.

Some, but not all, Acts provide for the development of a Charter of Rights of Child in Care. Many of the Charters or the rights contained in such charters are not legally enforceable, as they are not statutory, and are only moral rights often qualified by considerations of responsibility, capacity, and tempered by adult decisions and adult frameworks, constrained by resources and practicalities.

It appears that the Queensland Charter may be the only one with the wording included in the statute and conferring legally enforceable rights. The South Australian Charter has been issued by the Children's Guardian, not the statutory department. The NSW and Victorian Acts provide for Charters to be developed by certain dates. The Tasmanian and WA Charters are recent developments and yet have to be widely promulgated. There do not seem to be Charters of Rights provided for in the ACT or Northern Territory legislation, although a Charter has been in development in the ACT for some time.

CREATE staff and Young Consultants have been consulted during the development of most, if not all, the Charters and we do appreciate that they are important guides to inform practice. If all people working in the child protection system did follow their respective Charters then the situation would be improved for many children and young people.

Herein lies the problem.

- Principles are not binding
- Principles are not always reflected in substantive provisions of the various child protection Acts

- Practice does not always follow the principles
- Charters are not widely known by children and young people
- Children and young people feel quite powerless to enforce any rights they may have, whether moral or legal.

One of CREATE's Core Principles is "Participation is the cornerstone of best practice". We have put this principle into practice over the 16 years of our existence by talking and engaging directly with children and young people. We publish reports of major consultations and research and provide governments with confidential reports on specific topics.

During discussions with children and young people in care or who have had a care experience, CREATE has found that they invariably report:

- They have little say in what happens to them
- They want more of a say
- They have limited support to maintain contact with people who are important to them
- They need to know their identity and their story
- They have poor planning and support during the years when they are transitioning from care to independent living.

CREATE is not able to comment in detail on the relative merits of different forms of a National Human Rights Charter. We can say with confidence that the children and young people we work with would support a Charter that confirms that they do have rights and assists them to be able to expect those rights to be upheld by all people who work with and for them.

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