



JESUIT SOCIAL SERVICES POLICY UNIT

SUBMISSION

Protecting the human rights of the most disadvantaged

**Jesuit Social Services submission to
National Human Rights Consultation**

June 2009

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Executive Summary

Jesuit Social Services welcomes the opportunity to make a submission to the National Human Rights Consultation. We believe an in-depth examination of Australia's human situation, including how we could better protect rights, is long overdue and congratulate the federal government for initiating and supporting the process.

Jesuit Social Services works to build a just society by advocating for social change and promoting the health and well being of disadvantaged young people, families and the community.

Jesuit Social Services agrees more needs to be done to protect human rights for all Australians, but particularly for the significant minority of people who face marginalisation due to their educational, economic, cultural and/or health situations. Our service has its origins in work with disadvantaged young people involved with the youth and adult justice system in Victoria and now operates nationally. We submit the following recommendations to the National Human Rights Consultation:

Recommendation 1

That the National Human Rights Consultation supports the adoption of a national human rights act including economic, social and cultural as well as civil and political rights.

Recommendation 2

That the National Human Rights Consultation supports amending the enabling act and budget of the Australian Human Rights Commission so that it has the power to:

- Examine and report on any existing or proposed Commonwealth, state or territory legislation that is incompatible with the act.
- Investigate potential human rights infringements of the act and enforce compliance with its decisions.
- Act as a source of advice to government, public service, and statutory authorities covered by the human rights act.
- Report annually to the federal parliament on the operation of the human rights act.
- Conduct research and initiate its own inquiries on human rights issues,
- Undertake educational and outreach efforts and facilitate community discussion on human rights issues.

Recommendation 3

That the National Human Rights Consultation examines alternative dispute resolution processes as a key part of the process for complaints made under a human rights act.

Recommendation 4

That funding for community legal centres and legal aid be increased to enable these services to continue to provide access to justice for the disadvantaged.

Recommendation 5

That human rights education is made part of the curriculum for all primary and secondary school students and that all pre-service and in-service teachers receive human rights education and training.

1. Introduction

Jesuit Social Services welcomes the opportunity to make a submission to the National Human Rights Consultation. We believe an in-depth examination of Australia's human rights situation, including how we could better protect rights, is long overdue and congratulate the federal government for initiating and supporting the process.

The following submission is divided into two sections:

1. A brief snap shot of the human rights situation in Australia through the prism of the work undertaken by Jesuit Social Services.
2. Recommendations for how Australian could better protect and promote human rights and responsibilities.

Jesuit Social Services works to build a just society by advocating for social change and promoting the health and wellbeing of disadvantaged people, families and communities. Our service has its origins in work with disadvantaged young people involved with the youth and adult justice system in Victoria. Our services presently include:

- **Brosnan Youth Services:** Supporting young people and adults in the justice and youth justice system, and assisting them to make a successful transition from custody back into the community.
- **Gateway:** Providing pathways to education, training and employment for young people with complex and multiple problems associated with mental health, substance abuse and homelessness.
- **Connexions:** Delivering intensive support and counseling for young people with mental health, substance and alcohol abuse problems.
- **Communities Together:** Working with people, including the African Australian and Vietnamese communities, on public housing estates across metropolitan Melbourne.
- **Support After Suicide:** A bereavement support program developed specifically for those bereaved by suicide.

In addition to this, we have recently commenced community development activities in the area of Mount Druitt, Western Sydney.¹

These activities involve our staff relating to a range of Commonwealth and state government departments and services providers.

One main focus is on high risk young people with complex and multiple problems and needs, who are isolated from mainstream employment and education services. Many come from families experiencing inter-generational disadvantage and

¹ More information on these and other Jesuit Social Services' programs can be found at www.jss.org.au

unemployment and are themselves at risk of long term economic and social marginalisation.

An illustration of the depth of disadvantage experienced by some of the young people we work with is the case of Sam. Due to problems with his mothers drug use, he was removed from his mothers care from the age of one until he was seven years old. During this time he was sexually abused. By the time he was 14, he had experienced violence, periods of homelessness, problems at school and his first recorded criminal offence.²

Our approach to working with people experiencing disadvantage includes a commitment to understanding and appreciating each individual person in his or her totality. Rather than thinking about support from the perspective of separate issue 'silos' e.g. mental health, disability, drug and alcohol misuse, employment, housing, health, criminal justice etc. we work in partnership with people to build a 'whole-of-life' approach to the way support is provided.

Respect for the value, dignity and human rights of each person is the fundamental philosophical and practical starting point of these efforts.

The following submission reflects the views of our staff and the participants; people with direct experience of where Australia's human rights protections fail or are incomplete.

"The whole idea of rights is vital. There is a need for people to think about rights rather than entitlements, this is essential to a decent society. This includes the concept that rights apply to people we do not necessarily like."

Staff member, Communities Together

Jesuit Social Services agrees that more needs to be done to protect human rights for all Australians, but particularly for the significant minority of the population who face marginalisation due to their educational, economic, cultural and/or health situations. These people are often described as having fallen through the cracks in society, whether through a lack of services or because the services on offer are not appropriate to their complex circumstances and problems. They include many of the people we work with on a daily basis.

It is our experience that many of these people do not perceive that they have 'rights', either because they have never experienced them in reality or they lack the practical means to realise and enforce them or are alienated from these structures.

"I think many of our clients see themselves as part of a group of outcasts. They feel the victim of discrimination and stigma, like they are up against a lot. If you ask them what their human rights are, I am not sure whether they would be able to articulate them. They would say that I am at fault. I am the flawed person."

Staff member, Connexions

² 'Sam's depth of disadvantaged: A youth justice case study', is contained in *A bridge that leads the way to many other bridges*, Jesuit Social Services submission to the Parliament of Victoria Drugs and Crime Prevention Committee Inquiry into Strategies to Prevent High Volume Offending by Young People, October 2008, <http://www.jss.org.au/content/view/69/101/>

Those who do conceptualise themselves as having rights often do not express them as such.

“Human rights are such a broad topic. It is far too big for me to talk about. For me it is more a matter of whether I am being fairly treated.”

Peter, a young male participant³

Poverty as a term does not appear in any of the international human rights instruments, and it is only recently that people in Australia and internationally started to think about poverty and social isolation as violations of their basic human rights.⁴

For Jesuit Social Services, human rights are a major part of answering the question: what needs to be changed to ensure the people we work with have greater life choices and can participate in the community they live in?

An important part of improved human rights protection has to be the adoption of a national human rights act, which includes both economic, social and cultural rights, as well as the more traditionally accepted civil and political rights.

In addition to this, a greater effort to educate people about their rights and create more accessible avenues and mechanisms through which people, including those without a high level of formal education or legal understanding, can pursue them.

Greater protection of human rights, particularly for the marginalised and poor, is vital given the trends towards privatised social service provision and rapidly changing economic, political and social and technological relationships in our society.

They are also essential if the government is to make headway on the ambitious equity and social inclusion agenda it has set for itself.

2. A snap shot of the human rights situation in Australia

It is untrue to say Australians have no protection of their human rights, especially by the standards of many countries, where extreme poverty, political oppression and civil strife lead to widespread abuses.

“Compared to life in other countries it [the protection of human rights in Australia] is better than adequate, the protection of human rights is very good.”

Staff member, Communities Together

These protections include constitutional guarantees to trial by jury, freedom of religion and separation of powers, common or judge made law, and vital legislative or protections such as the *Racial Discrimination Act 1975*, the *Sex Discrimination Act 1984*, the *Disability Discrimination Act 1992*, and the *Human Rights and Equal Opportunity Commission Act 1986*. There are also a number of laws to protect aspects of human rights at the Commonwealth, state and territory level.

A central component of our human rights architecture is the Australian Human Rights Commission (AHRC), formerly known as the Human Rights and Equal Opportunity Commission, established in 1986, charged with promoting respect for human rights

³ The names of Jesuit Social Services' clients interviewed as part of the research for this submission have been changed to protect their confidentiality

⁴ 'Addressing Poverty as a Violation of Human Rights in the Australian Context', Diane Otto, *Just Policy*, VCOSS, Number 31, December 2003

in Australia. It develops human rights education, advises the government on human rights issues and conducts research. It also oversees Australia's international obligations which, with the noticeable exception of the *International Covenant on Economic, Social and Cultural Rights* are scheduled in its act of parliament.

But despite the high standard of living achieved for many and the fact that we have much to be proud of in the area of political freedoms, Australia faces serious human rights challenges. These relate not just to well known cases such as Cornelia Rau and Mamdouh Habib. Significant sections of our community continue to have their fundamental rights denied on a sustained and systematic basis, including Indigenous people, asylum seekers and the poor. It is the reality of these people that must be the litmus test for human rights protection in Australia.

"We live in a society that suspends rights when it is convenient. We are apathetic about our rights. We are happy to see them suspended for certain groups, Indigenous people, people suspected of being terrorists, asylum seekers, if it suits us."

Staff member, Communities Together

"I would agree that by international standards we may be well advanced [in terms of human rights protection] but there are significant problems. The question is how we want to treat those in the community, who may be disadvantaged, those in the community whose rights are not protected."

Staff member, Gateway

Taken from the perspective of the disadvantaged, our human rights protections, if they are aware of them at all, are arbitrary, expensive and inconsistently applied across Commonwealth, state and territory jurisdictions. Other problems include:

- No minimum, comprehensive legislative standard or statement of rights operating to provide minimum protection across state, territory and Commonwealth jurisdictions.
- Many basic rights are not specified in law and, hence, are unprotected, and many of our current protections can be easily removed, as was graphically illustrated by the Howard Government's Indigenous policies, aspects of which remain in force today.
- While Australia is a signatory to international human rights conventions, there is no comprehensive implementation of these obligations in domestic law and they are not domestically enforceable.
- There is onus on parliamentarians, government departments and service providers at the Commonwealth, state and territory level (with the exception of Victoria and the Australian Capital Territory, where human rights acts are in place), to take human rights considerations into account when making laws and policy or providing services.
- There is a low level of human rights literacy in the Australian community.

What follows are observations, by no means exhaustive, about some of the human rights problems faced by the people Jesuit Social Services works with, and their impact on them in terms of being able to participate in society and access what many of us consider the basic elements of a normal life.

The right to take part in public life

Article 25 International Covenant on Civil and Political Rights

“Dignity and respect are huge issues for the people we [Jesuit Social Services] work with. The last thing that is taken from a lot of the people who come here is their sense of being able to determine their own future or own decisions. It cripples them, makes them apathetic. This also spreads into their social expectations. They start to feel that they must be looked after and controlled.”

Staff member, Gateway

Much of our public discourse is prefaced on being an open and inclusive society. As part of this, we often talk about the right to take part in the community without being discriminated against, whether it is voting, engaging in public debate or standing for public office.⁵

Many barriers stand in the way of the right to take part in public life, such as lack of a fixed address or education. But more fundamental, is the lack of self-respect and dignity that occurs as a result of a person experiencing significant and sustained disadvantage. Such life experiences might include prolonged exposure to a regimented lifestyle while in incarceration or on medication, or long-term unemployment. This right can also be undermined by having to deal with complex and multiple health problems, such as mental health and/or substance or alcohol abuse, a situation further compounded by inadequate or inappropriate responses from health and welfare service providers.

“We work with young people who have co-existing mental health and drug or alcohol problems, a group largely ignored by society. This discrimination can include the way they are treated in the health and welfare system. A lot of our clients are excluded from services because their needs are too complex or their behaviors are too challenging. They often end up with us because other services refuse to work with them. Sometimes they will end up in prison because there is no where else to go.”

Staff member, Connexions

At a recent meeting of participants involved in Jesuit Social Services' community development work in the Mount Druitt area of Western Sydney, a number of basic issues related to the right to take part in public life were raised, including:

- Government meetings or consultations taking place at times or places not accessible to a broad cross section of the community concerned, or without consideration of childcare needs.
- Decision makers involved in local service provision not listening to residents' needs.
- Residents wanting more accessible and timely information from government at different levels.
- Public servants at the local level getting more timely information from their own departments so that they know what is going on and can pass information to the community.

⁵ Fact Sheet: Right of Political Participation, Human rights Law Centre, <http://www.hrlrc.org.au/>

As one participant at the meeting put it:

“People who are confident and speak up are blocked and treated as pains when they speak up and are assertive.”

Local community member, Mt Druitt

Cultural rights, including freedom from discrimination

Article 27 and 26 of the International Covenant on Civil and Political Rights

Discrimination is a key cause of social exclusion. While governments at the Commonwealth, state and territory level have enacted laws to prevent discrimination on the basis of race, age, sex and disability, many groups remain vulnerable.

One of these groups, which Jesuit Social Services works with, is the African Australian community.

Some members of this group are excluded from taking advantage of public services. For example, the Muslim religion of many African Australians prohibits women from using services, such as swimming pools and gyms, at the same time as men once they reach puberty. We have been involved in helping to establish women’s only times for some such services.

This discrimination also takes more explicit forms.

“You hear a lot about the general abuse of woman who wear the hajib. It can be a matter of snide remarks to full on abuse. I am also aware of instances of African Australian women being ruled out of getting a job because they are perceived as someone who would scare the customers away, or at least that is the excuse that the employer has made.”

Staff member, Communities Together

The right to freedom of movement

Article 25, International Covenant on Civil and Political Rights

Many laws in Australia curtail the right to freedom of movement.

One example familiar to Jesuit social Services involves the Victorian anti-graffiti laws passed in early 2008. This gives police wide ranging powers to impose on the spot fines or to search anyone over 14 years of age on or near public transport for implements which might be used to graffiti, even if police only suspect a person has committed or is about to commit an offence.

“Many of the young people we work with get searched on a regular basis because of this law. They may buy a spray can or a marker and take them home on the train, and get searched by the police or transit police, regardless of their circumstances or whether or not they desire to graffiti. There is an assumption of guilt before anything else happens. Under the law these people can be searched if they are within 50 meters of a public transport facility, in the Melbourne CBD that can be anywhere.”

Staff member, Gateway

“The graffiti law has got things totally around the wrong way. You’re guilty until proven innocent not the other way around.”

Reg, a young male program participant

The right to freedom of movement is also limited by 'move on' powers introduced in some states in public places, under which people may be fined, charged and arrested for failing to heed a directive to move on. Informal move on powers are also regularly enforced at local malls and shopping centres against so-called 'undesirable elements'

"Move along. You get told that all the time. If you are standing in front of a supermarket the security people really target you if you are young or look different. If you have a skateboard, they also target you. That's just the way it is and it's not fair."
Peter, a young male program participant

The right to work

Article 6, the International Covenant of Economic, Social and Cultural Rights

Australians like to stress that everyone has the right to participate in employment. This right is seen by many, including Jesuit Social Services, as a fundamental means of escaping disadvantage, whether through the provision of income, social connections or confidence. Not having a job deprives people of a lifestyle options and position in our society. It stigmatises them as poor.

"One of the most fundamental rights is the right to employment. This is really about the right to contribute as an active member to society. It is about belonging and not belonging. Long term unemployment is totally debilitating. In some of the families we work with, which have experienced three generations of unemployment, there is not the expectation or understanding in the family of long term employment. I have talked with kids, whose dad might be in and out of prison, they do not expect to succeed at school, and they find it impossible to see their future as anything other than being in jail. They simply cannot see anything else."

Staff member, Communities Together

Many barriers stand in the way of disadvantaged people accessing their right to work, including lack of education and skills, health problems or low level social and communication skills resulting from a mental illness.

Sometimes, it can be as simple as the way someone looks or lack of transport.

"I find it hard to get a job because I have tattoos and look a little different to other people. Some of my friends can't get jobs because they have criminal records. Sometimes it feels as though people just look at us as pieces of shit. I know when I am being treated badly, when I walk into a shop to apply for a job and the owner looks at me strangely."

Samantha, young female program participant

"You have to get a job but how do you get to the interview if you cannot afford a ticket. You just have to take the risk. Ticket inspectors won't take this as an excuse. If I could afford a ticket I would buy one but I can't."

John, young male program participant

Language skills are a major problem, particularly for the recently arrived. Although newly arrived migrants are allocated some language tuition as part of their resettlement services, this is not always delivered in an appropriate or flexible manner, particularly with migrants who may be illiterate in their own language, let alone English.

“Another problem is that many English language students have no child care. That comes up time and time again, so a lot of women cannot learn English because there is not adequate care for their children. Others complete their course but don’t learn because they have no one to practise with. They just sit at home.”

Staff member, Communities Together

Protection from torture and cruel, inhuman or degrading treatment or punishment

Article 7, International Covenant on Civil and Political Rights

Human Treatment when deprived of liberty

Article 10, International Covenant on Civil and Political Rights

Conditions in Australia’s prisons have been discussed by many of the submissions to the National Human Rights Consultation. They also attracted criticism during a recent United Nations Human Rights Committee review of the state of human rights in Australia. Some of the issues raised during the review, included overcrowding, poor access to health care, inadequate treatment of prisoners with mental health issues and the high rate of incarceration of Indigenous people in our prisons. Indigenous people are up to 13 times more likely to be imprisoned than non-Indigenous people. Indigenous juveniles are 23 times more likely to be detained than non-Indigenous.⁶

One human rights infringement of particular concern to Jesuit Social Services in its work with young people in the justice system is the lack of compulsory ‘dual tracking’ in youth remand. This leaves many young men and women remanded in custody in adult prisons. Article 10 (2) of the *International Covenant on Civil and Political Rights* states that “*accused juvenile persons shall be separated from adults and brought as speedily as possible for adjudication*”. Article 10 (3) states, “*Juvenile offenders shall be segregated from adults and accorded treatment appropriate to their age and legal status.*”

A recent example of how this basic right continues to be denied in Australia was the case of a 13 year-old Indigenous boy who spent five days in an adult police lock up in remote Western Australia, after being charged with car theft, because there was nowhere else to put him.⁷

Even in Victoria, where dual tracking of juvenile offenders does take place, a significant proportion of 18-20 years olds are remanded to adult prisons. According to the most recent Department of Corrections figures, there are 139 18-20 year olds in Victoria’s prisons, 60 of whom are unsentenced.⁸ Anecdotal information from Brosnan Youth Services staff also points to people spending longer periods on remand.

Jesuit Social Services recently started to examine the question of why these young people are remanded in adult correctional facilities, given they are able to access juvenile detention facilities until the age of 21. Our preliminary research suggests a number of causal factors, themselves the product of violations of basic rights.

⁶ *Overcoming Indigenous Disadvantage: Key Indicators 2007*, Steering Committee for the review of Government Service Provision, 2007

⁷ Aboriginal boy, 13, held in police lockup for five days, *The Australian*, June 9 2009

⁸ *Statistical Profile of the Victorian Prison System 2003-04 and 2007-08*

These include a lack of support structures, such as housing, and significant time delays to access drug and alcohol support services. It can take several days to get an appointment with a drug or alcohol counsellor and up to several months to get a place in a rehabilitation centre. These delays allow someone with a serious drug or alcohol problem to quickly slip back into the patterns of behavior that got them into trouble in the first place, leaving magistrates with the perception they have no alternative but to remand a young people accused of a crime.

“To get bail you need an address. To get an address you need to be in the community. How does that work for someone on remand?”

Staff member, Brosnan Youth Services

“I have a young client who is on remand in a Victorian prison, he won’t get bailed because he has a significant criminal history and his case is probably not going to be heard until next year. He is sitting in a lock up and he might be innocent, he says he is innocent. He’s just sitting around waiting. He has got an intellectual disability and he is very vulnerable because of his age.”

Staff member, Connexions

The right to housing

Article 11, International Covenant of Economic, Social and Cultural Rights

The right to adequate and appropriate housing is a fundamental issue for Jesuit Social Services – whether it is trying to assist someone to successfully exit the justice system, providing space and support to a young person overcoming abuse or mental illness, or helping someone find a job.

The right to adequate housing is not expressly protected anywhere in Australian law and Jesuit Social Services is aware of numerous instances where it is violated.

“I have worked with a number of clients whose human rights have been violated in respect to housing. They can’t get emergency housing and have to sleep rough as a result or they have been inappropriately housed in unsafe conditions.”

Staff member, Gateway

“If you don’t have a place to live nothing else works out. My friends and I were looking for a house and we got knocked back time and time again because of the way we looked and because we were young. Finally, we got a house because a friend’s mum met with the agent.”

Samantha, young female program participant

Obviously, the tight real estate market and the resulting contraction in terms of available rental accommodation have significant implications in terms of reducing the amount of available housing especially for people on low incomes.

“Trying to pay the rents a lot of people ask on Youth Allowance is impossible. Besides, putting Centrelink on an application for rental housing is the kiss of death.”

John, young male program participant

“There is a lot of adequate housing around if you can afford three hundred dollars a week, if you can afford a mortgage. There is no adequate model of housing around for people who live on a very low income, or are unemployed and have a substance abuse problem.”

Staff member, Connexions

The only alternative to homelessness for many young people are rooming houses. There has been a growth in rooming house-style accommodation run for a 'for profit' basis by operators who take on rental properties and then sub-lease individual rooms. Some rooms often have more than one tenant, and Jesuit Social Services is aware of 'hot bedding', a practice when more than one person shares the same bed but sleep at different times. Many of these rooming houses are not legally registered, have poor amenities, and are dangerous. As highlighted by recent newspaper articles, these for profit rooming houses are a totally unsuitable housing option for vulnerable young people.⁹

"We had a kid living in one of these rooming houses in the outer suburbs. It was a dreadful situation. This kid should not have been living there. The place was filthy and stank, there was no kitchen, and lots of the other tenants had extensive criminal records. It was a long way from employment opportunities and public transport. How can you wake up in the morning and look at what you will do with your life when you live in conditions like this?"

Staff member, Connexions

Another option for many low-income families is accommodation on public housing estates.

"To get here [in a public housing estate], is arduous. You have to go on a public housing waiting list. Most people are waiting six months, some up to a few years. Once you get it, then there is the question of whether it is sufficient or appropriate. On one level everyone here does have housing but is it appropriate?"

Staff member, Communities Together

These estates are overcrowded, with the number of unofficial residents much higher than the official figure.

"I know one Sudanese family living seven in a house and the mother has been sleeping on the floor for two years because there is not enough room. There is a lot of overcrowding, seven people in a two bed room house."

Staff member, Communities Together

The right to the highest attainable standard of physical and mental health Article 12, International Covenant on Economic, Social and Cultural Rights

Good physical and mental health is a vital right and, along with access to housing, a pre-condition of enjoying many other rights.

While there is no general law in Australia relating to the right to health, our system of universal public health remains in good shape compared with many other developed countries. However, it does have significant problems that prevent many low income Australians from accessing the highest possible standard of health.

It is chronically under-funded and there are major coverage issues, particularly in relation to rural and Indigenous people. Other problems with our public health care system identified by participants involved in Jesuit Social Services' community development work in Western Sydney, include:

- The lack of culturally appropriate healthcare with some illnesses suffered by particular cultural groups not understood by healthcare providers.

⁹ This is where we've ended up and I feel lost, *The Age*, June 8, 2009, Our slumlord millionaires, *The Sunday Age*, June 14, 2009

- Inadequate dental health services.
- Long waiting times and the fact that people have to travel to access elective surgery and other treatments, often at considerable expense.

Another group often excluded from health services are the mentally ill, especially those suffering from mental illness and/or alcohol or substance abuse. Medical and social welfare staff are often unable to correctly diagnose or deal with people who may be experiencing multiple problems, including brain injury, mental illness, drug use, self harm and other challenging anti-social and sometimes violent behaviors, in addition to their other economic and social needs.

“One client who had acquired brain injury received new medication. The bottle had no clear instructions and the doctor did not give him enough information and didn’t explain the side effects. He took too many and overdosed and had to go to hospital. When the ambulance people came and took him away they were very dismissive, basically inferring that he was a junkie.”

Staff member, Gateway

Often the lack of timely, appropriate and comprehensive responses to high-risk people suffering multiple health and behavioral problems has more to do with the way existing policies and programs are structured and implemented, rather than problems with specific laws, as such.

“If there is a shortage of acute beds for patients, ironically higher the risk, the greater the need and the greater the chance that they will be excluded from services due to that risk and complexity.”

Staff member, Connexions

Sometimes, the problem is as simple as not being listened to.

“I felt my human rights were breached when I was put in a psychiatric ward. My mum and dad did not understand me, there was a lot of tension and the family really fell apart. Being told I had had a psychotic episode was really difficult. It changed my life. It was huge. I felt I did not get enough information. I got put on medication without my consent. The doctor was very insistent and there was nothing I could say to change his opinion.”

Jim, young male participant

The right to an adequate income and social security

Art 9 International Covenant on Economic, Social and Political Rights

While Australia’s social security system is spelt out in many pieces of legislation, the level of payment under this system, especially for the unemployed is a major issue. Put simply, the weekly payment of the single ‘Independent’ rate of Youth Allowance (\$185.70 per week) and the single rate of Newstart (\$226.65) are not enough to live on with any freedom or dignity.

“The most important thing is having a roof over your head and enough to eat. This was hard before and is even harder now with the financial crisis. Centrelink benefits do not cover this. Trying to live on Youth Allowance is really hard, it’s nothing, it is just a struggle to survive. There are times I can barely afford food, let a lone a tram ticket. I am given fines I just can’t pay.”

Maya, young female participant

“Yeah.... To tell you the truth it ain't easy looking after yourself totally at my age (19). Every week is a struggle. I think of other kids who are at home with their families getting fed a good meal every night, and getting their clothes paid for. I can't even afford a train ticket. Every time I get on without a ticket I live in fear of getting picked up by the inspectors, but on a Centrelink income you can't afford to buy a ticket, you just can't. I do (shoplift) every now and again to get by. I'm not proud of it, but I do. My strategy is just to shoplift the basics like toothpaste, soap and shampoo and little things like a new hairbrush when I need one, and paper and pens and stuff for school (I have just gone back to school after a few years which is a long story). Oh, and the socks and undies and deodorant, they are on my list of essentials. I haven't been caught yet but I am terrified of getting a police record.”
Kane, young male participant¹⁰

There is also the issue of young people getting 'breached' by Centrelink. It is our experience that these people are often wrestling with serious health and personal issues that seriously impact on their ability to meet the requirements.

We are concerned about the recently announced Jobs and Training Compact under which the unemployed young people are expected to undertake training or study in return for accessing Youth Allowance benefits. What will happen to those people who are simply unable to study or work?

Breaching will deny this already vulnerable group access to an adequate standard of living, right to adequate income and social security and right to food and housing.

“We have got lots of people who come through here and you can do a quick assessment of them and it is clear that they will not be ready for work or study for some considerable time. It seems pointless putting them through the hoops.”
Staff member, Connexions

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

“Human rights can only be protected through respect towards individuals by other individuals. People cannot be forced to respect others. They have to want to. Education and good legislation can help but the true test is to create strong communities that respect and care about all their members and give equal meaning to the needs of the most vulnerable. Resourcing community services and creating an economy that is designed to provide a quality of life to all would create human rights.”
Staff member, Brosnan Youth Services

There is no magic formula for how we might eradicate human rights abuses in Australia or balance the protection of human rights and responsibilities with issues such as the protection of the public in times of emergency. But there are steps we as a nation could take now to initiate a much broader conversation that recognises violations of rights do take place and that puts us on the road to ameliorating some of the most serious and persistent violations.

a) Introduce a human rights act

Jesuit Social Services believes the crucial starting point for this would be the introduction of a national human rights act, similar to the 'parliamentary rights

¹⁰ Excerpt from an interview first published in Jesuit Social Services' submission to the Australian Government's Carbon Pollution Reduction Scheme Green Paper consultation, 2008

models' introduced in Great Britain in 1998, the Australian Capital Territory (ACT) in 2004 and Victoria in 2006.

This is a piece of legislation that places an onus on parliament, the bureaucracy and major public service providers to consider human rights when formulating legislation and policy or providing services. It does not require a constitutional amendment. Rather than allow the courts to take a role that they have not previously, it only encourages them to interpret laws made by parliament, in so far as they can, to be consistent with the act. If any inconsistency exists the only action required is to bring the matter to the attention of parliament. It also has the advantage of being open to review and amendment over time, as has already occurred to the ACT law.

One preferred difference to the acts introduced in Victoria and the ACT, is that this national act should include economic and social and cultural rights (and as a minimum, the rights to health, housing and education), as well as civil and political rights as they are interrelated and depend on each other for their realisation. For example, homeless people are unable to vote if they do not have a place of residence at which to register from.

"A human rights act would help a lot. For example, in terms of new arrivals it might help make things clearer. It would help a lot in terms of protecting the disadvantaged. It would clearly set out what our laws are and what the rights and responsibilities of people are."

Staff member, Communities Together

"I think it would enable people to open up the question of how the government at all levels can take an active role in promoting the well being of disadvantaged groups rather than the minimalist role in avoiding harm that the government took for itself under the previous Prime Minister. If all legislation had to be consistent with a human rights act, it would mean that the question of rights would have to be debated on the public record in a way it isn't now, contributing to a deeper human rights culture."

Staff member, Communities Together

"Requiring all departments and semi-government agencies to report to parliament in respect to affirmative action became an effective method of bringing about change. Hopefully the same would happen in regard to human rights."

Staff member, Gateway

In addition to building a deeper human rights culture, Jesuit Social Services believes a human rights act would have the following benefits:

- It would set out and codify the human rights we believe embody the values and aspirations of our society, as well as the responsibilities that come with these.
- It would fill in the gaps and omissions in our present system of human rights protection, including harmonising our domestic laws with our international human rights obligations.
- It would ensure that human rights considerations, including the concerns of the most marginalised, are brought to the centre of government and embedded in the design of legislation and public policy, while ensuring decision making, including on budgetary and resource allocation, remain firmly in the hands of elected representatives.

- It would provide benchmarks against which the government's performance in the area of human rights can be measured.
- It would provide tools for individuals to advocate for their own rights or for community organisations to advocate on their behalf, with government departments and service providers. This would result in better outcomes for marginalised and disadvantaged people who believe their rights have been infringed, as has already been evidenced by the experience in the United Kingdom, the Australian Capital Territory and Victoria.

Similar to the Victorian Charter of Human Rights and Responsibilities Act 2004, a national human rights act should specify the act be reviewed after four years.

Jesuit Social Service hopes that by making the operation of government more transparent and responsive, a human rights act will also contribute to more innovative and responsive policy thinking and decision-making that is not vulnerable to the political cycle. It is often our experience that many government service providers have difficulty supporting the needs of people with complex or multiple needs, no matter how well intentioned.

There is an urgent need for solutions to service provision that emphasises:

- 'Whole of person' service delivery especially for people who do not fit into clear diagnostic categories
- Flexible and informal pathways
- Early intervention
- The importance of cultural factors and influences
- The active involvement of participants in program design, rather than as a token measure or second thought.
- Funding times-lines that are not restrictive or overly project specific, and which go beyond single political cycles.

This is vital if government is serious about having an impact on the long-term disadvantage experienced by many Australians. A good example is the recently announced Jobs and Training Compact under which young people are expected to undertake training or study in return for accessing Youth Allowance benefits. Looked at from a human rights perspective, this direction places an obligation on government to include flexible learning pathways and specific community supports for young people with a disability or mental illness.

"We need to get better at creating a direct link between the policy and intent, and start to solve problems from the bottom up. This is not just a matter of going into a community and asking what people want, I am not suggesting that, but it is about doing more than forming tighter work plans and KPIs. It is about putting more resources at the point of implementation. Hopefully, a human rights act would help do this."

Staff member, Communities Together

To be effective, a human rights act must be coupled with measures to ensure that there is full and equitable access for the most disadvantaged to the rights it espouses. This includes improved human rights education and increased government funding to train government departments, service providers and the community sector to ensure advocacy can occur with and on behalf of those people whose rights are being violated.

In terms of additional initiatives that would be necessary to support the working of a human rights act, Jesuit Social Services recommends the following proposals to the National Human Rights Consultation:

b) Increasing the power of the Australian Human Rights Commission

A strengthened AHRC is vital to ensuring the benefits of a human rights act flow through the public service, government and non-government service providers, and the community. The AHRC's enabling act and budget should be amended to allow it to:

- Ensure the executive arm of government complies with a human rights act, including the power to examine and report on any existing or proposed Commonwealth, state or territory legislation that is incompatible with it.
- Investigate when it becomes aware of potential human rights infringements, including powers to seek and enforce compliance with its decisions. This must include requiring public authorities to act in a compatible way with the act unless otherwise authorised by law.
- Act as a source of advice to government, public service and statutory authorities covered by the act.
- Undertake an annual review to the federal parliament on the operation of the human rights act, including advising on systemic issues and problems identified in the course of its work.
- Conduct research and initiate its own inquiries on human rights issues, particularly as they relate to the operation of the act.
- Support broader cultural change by undertaking educational and outreach efforts and facilitate community discussion on human rights issues.

c) Upholding and enforcing human rights under an act

To be effective, a human rights act must include the capacity to take action to uphold human rights. For a right, to be a right, it must be enforceable or have some outcome otherwise it remains a powerless guideline.

While we support some form of mechanism to hear claims of human rights abuses and determine redress, if proven, Jesuit Social Services does not want to see the introduction of further complex and expensive remedies and procedures. There are already a number of avenues open to people seeking redress for grievances, including administrative law and ombudsmen structures at Commonwealth, state and territory levels. These rely on specialist legal frameworks and knowledge that is often unresponsive to the needs of the poor and marginalised.

Redress for alleged human rights abuses should be done, wherever possible, via alternative dispute resolution (ADR) and conciliation processes occurring outside the court system, even though they may suggest options within the intent of the law.

“We don’t need more lawyers! If the people we work with were told they had to go to court to uphold their rights most would not. They would be scared. Many of them do not have a good experience with the court system or would be worried that what they could have done in the past could come up and be used against them. You need a safe avenue for them to pursue their rights. This is a fear of structures in general. If it is a process that only puts them through more pain and distress it will not work. It must be fair to all sides but it must also be accessible.”

Staff member, Gateway

ADR is part of a wider movement towards non-adversarial justice within the Victorian justice system, using alternative means to deal with civil and criminal matters. It has the potential to resolve human rights complaints more quickly, cheaply and in some cases more effectively and with less emotional stress and cost to tax payers than traditional litigation.

A recent report by the Victorian parliament’s Law Reform Committee¹¹ recommended expanding community access to ADR for members of the community, including:

- More dispute settlement centres throughout Victoria.
- Providing assistance for people from non-English speaking backgrounds and culturally appropriate services.
- Increasing the capacity of people to resolve disputes through education about conflict resolution and communication.

Any complaints process undertaken as part of the introduction of a human rights act must examine these models and processes.

The AHRC and its state and territory counterparts could be the focal point for hearing and redressing such complaints.

Consideration also needs to be given to how avenues for human rights complaint could be made more accessible to young people (for example, via the Internet) and people from non-English speaking backgrounds.

d) Increasing access to community justice

While the increased use of ADR would provide cheaper and more accessible avenues of hearing complaints associated with the operation of a human rights act, access to the mainstream justice system remains a vital precondition of people being able to understand and enforce their rights.

In addition to ADR mechanisms, if they are to be implemented on a large scale, appropriate legal and related support measures for low income parties, such as low cost representation, would also be required. This is important to ensure these people can participate on equal terms with more equipped and legally sophisticated

¹¹ *Inquiry into Alternative Dispute Resolution and Restorative Justice*, Law Reform Committee, Parliament of Victoria, May 2009

opponents. As noted above, support will also be required for people who have other challenges such as language barriers.¹²

The burden for providing such services will most likely fall on the community legal sector and state and territory legal aid systems. Not only are these the only affordable services for the poor, they are often best placed to flexibly to respond to the needs of disadvantaged clients in areas of law that other providers are unwilling or unable to cover.¹³

Jesuit Social Services notes the comments in relation to the financial state of the community legal sector contained in a number of submissions to the inquiry into Access to Justice being undertaken by the Senate Standing Committee on Legal and Constitutional Affairs. A decade of inadequate funding has meant community legal centres are finding it hard to maintain levels of service and qualified staff. Similarly, low levels of funding have resulted in one in five disadvantaged people who seek legal aid being turned away.¹⁴

To ensure that the poor are able to access benefits provided by the adoption of a national human rights act, we urge the National Human Rights Consultation to recommend that funding for community legal centres and legal aid should be increased to enable these services to continue to provide access to justice for the disadvantaged.

e) A greater focus on community education

“Whatever is done about human rights, it needs to include education [about human rights] that helps people make sense of the issue down to the level of the personal. I often feel that some of this stuff is too theoretical.”

Staff member, Connexions

People do not understand their human rights, the right to transport, health and education. We need clear material in their language about what their rights are and what happens if they are breached.”

Staff member, Communities Together

Increased community education is important to creating a deeper human rights culture in Australia. In addition to increasing the role of the AHRC in the area of human rights education, consideration should be given to ensuring all primary and secondary school students receive an education about human rights, and that this be made part of the curriculum. To support this, all pre-service and in-service teachers should receive human rights education and training.

¹² *Alternative Dispute Resolution in the Civil Justice System*, Federation of Community Legal Centres (Vic), May 2009, page 2, www.communitylaw.org.au

¹³ National Association of Community Legal Centres submission to the Senate Standing Committee on Legal and Constitutional Affairs, Inquiry into Access to Justice, April 2009

¹⁴ Legal aid centres struggling, *The Age*, June 9 2009

Recommendations

Jesuit Social Services recommendations to the National Human Rights Consultation:

Recommendation 1

That the National Human Rights Consultation supports the adoption of a national human rights act including economic, social and cultural as well as civil and political rights.

Recommendation 2

That the National Human Rights Consultation supports amending the enabling act and budget of the Australian Human Rights Commission so that it has the power to:

- Examine and report on any existing or proposed Commonwealth, state or territory legislation that is incompatible with the act.
- Investigate potential human rights infringements of the act and enforce compliance with its decisions.
- Act as a source of advice to government, public service, and statutory authorities covered by the human rights act.
- Report annually to the federal parliament on the operation of the human rights act.
- Conduct research and initiate its own inquiries on human rights issues,
- Undertake educational and outreach efforts and facilitate community discussion on human rights issues.

Recommendation 3

That the National Human Rights Consultation examines alternative dispute resolution processes as a key part of the process for complaints made under a human rights act.

Recommendation 4

That funding for community legal centres and legal aid be increased to enable these services to continue to provide access to justice for the disadvantaged.

Recommendation 5

That human rights education is made part of the curriculum for all primary and secondary school students and that all pre-service and in-service teachers receive human rights education and training.