

31st August 2011

The Secretariat
National Human Rights Action Plan
Attorney-General's Department
3-5 National Circuit
BARTON ACT 2600

Dear Secretariat

**THE MULTICULTURAL YOUTH ADVOCACY NETWORK (MYAN) SUBMISSION
ON THE NATIONAL HUMAN RIGHTS ACTION PLAN DRAFT BASELINE STUDY**

The MYAN welcome the opportunity to contribute to the consultation on the National Human Rights Action Plan Baseline Study. This submission provides a national perspective, drawing on the MYAN's breadth of experience working with young people from refugee and migrant backgrounds, their communities and the youth and settlement sectors across Australia.

The MYAN

The Multicultural Youth Advocacy Network (MYAN) is a nationally recognised body that represents migrant and newly arrived young people¹, in order to advance their rights and interests. As a national network, the MYAN is comprised of representatives from each of Australia's states and territories who work in the multicultural youth sector at the state/territory level². The MYAN was established in 2005 in response to an identified need for a national advisory and advocacy network for multicultural youth issues. The issues and needs of multicultural young people are often overlooked as they are a sub-group of both the broader youth and multicultural sectors and underrepresented in the policy and advocacy work of both the government and non-government sectors. The MYAN is currently auspiced by the Centre for Multicultural Youth.

Young people from culturally and linguistically diverse (CLD) backgrounds make up a sizeable proportion of Australia's young people. According to the 2006 Australian census, 2.7 million (14%) of Australia's total population of 19,855,288 are aged between 15 and 24 years. Of these young people, 310,832 were born overseas in a 'non-main English speaking country' (ABS classification) and 127,600 arrived in Australia between 2002 and 2006. Australia's young people speak over 200 different languages, and 330,068 young people spoke a language other than English at home.

¹ Consistent with the United Nations, the MYAN defines young people are those aged between 12 and 25 years.

² Refer to Attachment 1 for MYAN contact details

A COMMONWEALTH HUMAN RIGHTS ACT FOR AUSTRALIA

The MYAN believe that a Commonwealth Human Rights Act is necessary to give full effect to the human rights of all people in Australia, including the rights of Australian children and young people from refugee and migrant backgrounds.

Young people from multicultural backgrounds demonstrate high levels of strength, resilience, resourcefulness and understanding (Francis and Cornfoot, 2007:7). However, this group of young people often face particular barriers to accessing services and opportunities. These barriers include language, culture, unfamiliarity with Australian systems and processes, racism, and discrimination. These factors can place multicultural young people at social and economic disadvantage within Australian society, which in turn can place them at higher risk of social isolation.

Human rights laws are often of most importance to those who are most marginalised in society. A Commonwealth Human Rights Act is particularly integral to the promotion and protection of the rights of refugee, migrant, newly-arrived, and CLD young people and other marginalised and disempowered groups in Australia. A Commonwealth Human Rights Act would ensure that the Australian government was obliged to fully consider and report on human rights implications when developing legislation, programs and policies.

THE BASELINE STUDY

Section 3.10 *Refugees, asylum seekers and migrants*

The MYAN endorse the statement in the Baseline Study that “Migrants, asylum seekers and refugees each have different needs and experiences” and therefore do not agree with them being considered together as one ‘specific group’ of people in Australia in section 3.10 of the Baseline Study.

Asylum seekers

In relation to the human rights of asylum seekers, the MYAN are particularly concerned about Australia’s policy of mandatory detention, and the excision policies of off-shore processing for those asylum seekers who arrive by boat. We are concerned that the current agreement with Malaysia, to return asylum seekers who reach Australian territory by boat, in exchange for an increase in the quota of off-shore refugees from Malaysia, is contrary to Australia’s obligations under international law.

We would echo the UNHCR’s observation that the key test for success of this arrangement is the protection and vulnerability assessment procedures under which asylum-seekers will be assessed in Australia prior to any transfer taking place. We are particularly concerned about how this arrangement will affect young people, specifically unaccompanied minors. It is of utmost importance that this group of highly vulnerable children are processed in Australia. Off-shore processing would expose unaccompanied minors to unacceptable levels of risk and subject Australia’s human rights record to global scrutiny.

The MYAN are concerned that many aspects of existing immigration legislation and policy, including mandatory detention and excision, contravene Australia’s human rights’ obligations as a signatory to a number of UN conventions and treaties (including the 1951

Refugee Convention and the Convention on the Rights of the Child). For many young people, the process of seeking asylum in Australia (including mandatory detention) is traumatic, and is compounded by pre-arrival trauma and the developmental tasks of adolescence.

The body of evidence supporting the detrimental impact of immigration detention on young people is increasing. That mandatory detention has a significant detrimental impact on young people's mental and physical health is widely accepted and understood. Many organisations: health, welfare and others, have continually advocated for the abolition of mandatory detention.³

We are opposed to mandatory closed detention and advocate that people seeking asylum are supported to reside in the Australian community while their claims for protection are assessed.

With regard to the human rights of people seeking asylum in Australia, we refer the Secretariat to submission of Hotham Mission Asylum Seeker Project on the National Human Rights Action Plan Baseline Study.

Young people from refugee, migrant and CLD backgrounds

Australians from refugee or migrant backgrounds are Australian citizens and/or residents and should be treated as "part of the general community" (Section 2) by the National Human Rights Action Plan. However, additional action may be required to ensure full protection of their human rights in some areas.

This submission will deal largely with how the National Human Rights Action Plan should respond to the needs of refugee, migrant and other CLD young people and their communities.

3.10.1 Social inclusion and freedom from discrimination

While many of the needs of new arrivals are "shared with the wider Australia community and are addressed through mainstream agencies",⁴ the MYAN agree with the Refugee Council of Australia and the Australian Human Rights Commission that "there is still room for improvement to meet the needs of new arrivals ... In particular, ... recent humanitarian arrivals experience ongoing difficulties securing housing and employment."⁵

(a) Barriers to housing

The right to adequate housing is particularly integral to ensuring that newly-arrived young people settle well in Australia; and yet young people from culturally and linguistically diverse backgrounds are at greater risk of homelessness than other young people.⁶

³ *Headspace* (2011) Submission on the Migration Amendment (Detention Reform and Procedural Fairness) Bill 2010, p. 6.

⁴ National Human Rights Action Plan Baseline Study, Consultation Draft, June 2011, p. 84

⁵ *Ibid.*, p. 84.

⁶ Coventry, L., Guerra, C., Mackenzie, D. and Pinkney, S. (2002) *Wealth of All Nations: Identification of strategies to assist young people in transition to independence*, Australian Clearinghouse for Youth Studies, Tasmania, p 50; VicHealth (2007) *More than tolerance: Embracing diversity for health: Discrimination affecting migrant and*

Young people from refugee backgrounds are six to ten times more likely to be at risk of homelessness than Australian-born young people.⁷ An inability to access appropriate, safe and affordable housing is one of the most significant problems they encounter in Victoria; if they are not supported appropriately, then this places them at a high risk of homelessness and forms a substantive barrier to successful settlement.⁸

Despite this fact, people from refugee and migrant backgrounds are not identified as a priority group experiencing homelessness in **section 3.6.3** of the Baseline Study.

Social exclusion, including economic hardship, combined with the variables of the refugee experience, place refugees at extreme risk of remaining in a cycle of chronic homelessness.⁹ CMY has previously argued, in its paper *Finding Home in Victoria: Refugee and migrant young people who are homeless or at risk of homelessness*:

[Newly-arrived young people] ... have limited knowledge of and connections to the housing sector, are unsure who to ask, and know few people who can provide stable accommodation. ... Many housing and support agencies do not take into account the unfamiliarity of young people from refugee and migrant backgrounds with Australian systems—both conceptually and practically. Young people from refugee and migrant backgrounds typically have very little or no substantive knowledge of the complex housing and broader service systems (e.g. advocating for housing needs, leases, tenancy rights) as there is often no equivalent in their countries of origin. They have to negotiate the labyrinthine housing system with little cultural and practical knowledge of how this system works. This is a system where currently, the onus is on young people to find their way and learn how to instigate or navigate it.

Housing and support services tend to put young people of refugee and migrant backgrounds in the 'too-hard basket'. This may be due to cultural competency issues, but also to the very real obstacles they meet when trying to find accommodation for these young people. Knowing they will have to deal with active discrimination from boarding houses, transitional housing and real estate agents, and given their limited resources, they opt to place those who are more readily accepted and will be easier to find accommodation for.

refugee communities in Victoria, its health consequences, community attitudes and solutions – A summary report, Victorian Health Promotion Foundation, Melbourne.

⁷ Coventry, L., Guerra, C., Mackenzie, D. and Pinkney, S. (2002), p. 50.

⁸ Centre for Multicultural Youth (2011) *Finding Home in Victoria: Refugee and migrant young people who are homeless or at risk of homelessness*, Centre for Multicultural Youth, Melbourne, p. 6.

⁹ Ransley, C. and Drummond, S. (2001) *Homeless Twice: Exploring resettlement and homelessness for migrant and refugee young people*, Centre for Multicultural Youth Issues, Melbourne, p. 12.

ISSUES THAT A NATIONAL HUMAN RIGHTS ACTION PLAN SHOULD ADDRESS IN REGARD TO HOUSING

- **Legislate for a human right to an adequate standard of living:** Incorporating recognition in the National Human Rights Action Plan (or, preferably in a Commonwealth Human Rights Act) of a human right to an adequate standard of living– that explicitly covers housing – will ensure that public authorities who work or provide services within the housing and homelessness support system will have to take more proactive action to respond to the housing and homelessness support needs of newly-arrived and other CLD young people. Public authorities would have to act compatibly with and give proper consideration to the rights of all Australians to adequate housing when initiating and implementing their policies, programs and practices.
- **Ensure people from refugee and migrant backgrounds are considered a priority group in any initiatives to assist homeless people.** CMY's policy paper *Finding Home in Victoria: Refugee and Migrant Young People Who are Homeless or at Risk of Homelessness* (attached to this submission), makes the following recommendations which would help to ensure that people from refugee and migrant backgrounds are considered a priority group in any initiatives to assist homeless people.
 1. That the Commonwealth and State and Territory governments acknowledge the particular vulnerability to homelessness of young people from refugee and migrant backgrounds and include them in their strategies.
 2. That all Commonwealth and State and Territory government-funded projects and programs for young people include targets for young people of refugee and migrant backgrounds, proportional to their greater risk of homelessness.
 3. That the Commonwealth and State and Territory governments develop a more detailed data collection system in relation to this cohort of young people and ensure consistency of data collection across all housing and housing-related services.
 4. That the Commonwealth and State and Territory governments' annual reports on progress towards the interim and Homelessness 2020 targets specifically incorporate information about improvements to the housing stability and family, school and work engagement of young people from refugee and migrant backgrounds.
 5. That the Commonwealth and State and Territory governments recognise the housing needs of large families and develop appropriate strategies to address them.
 6. That the various State and Territory Housing Offices and Departments and SAAP undertake an extensive audit of migrant and refugee youth access to the homelessness service system in Australia to identify barriers to access and to inform the development of strategies to overcome these barriers.
 7. That longitudinal research be funded and undertaken to focus on the scope and nature of migrant and refugee youth homelessness.

(b) Barriers to employment

Being engaged in appropriate education and training to meet their needs, and having pathways and opportunities to gain substantial employment are key to successful settlement outcomes for newly-arrived young people.

As noted in the Baseline Study, barriers to securing meaningful employment by refugees are a priority concern that the National Human Rights Action Plan must address. The MYAN's experience in working with young people from refugee and migrant backgrounds and their communities for 20 years supports the findings of the Australian Human Rights Commission that there are many significant and structural barriers to people from refugee backgrounds securing appropriate training and employment. Barriers include, but are not limited to:

- Lack of knowledge about post compulsory training pathways;
- Lack of familiarity with employment services and Australian systems in relation to searching for and securing paid employment – e.g. job applications, interviews, developing a CV - and lack of job search skills;
- Lack of relevant work experience;
- Limited English language skills;
- Experiences of racism and discrimination in looking for work and in interview and selection processes;
- Limited resources and/or cultural competency within the employment services sector to respond to the needs of this group of young people;
- Lack of recognition of prior learning and/or training when accessing employment opportunities; and
- Access often to only unskilled or low paid employment.

While humanitarian entrants to Australia are eligible for the full range of Job Services Australia (JSA) assistance from arrival, levels of assistance to newly-arrived and other people from CLD backgrounds vary across services and regions.¹⁰ As noted by the Refugee Council of Australia and acknowledged in the Baseline Study, many mainstream employment services are ineffective at providing appropriately tailored services to refugees in particular. Those who require assistance finding employment should be able to expect consistent service across JSA providers.

The availability of more than 510 hours of free English language lessons through the Adult Migrant English Program would go some way towards improving employment outcomes for young people from refugee and migrant backgrounds. The current 510 hours available are inadequate to equip many newly-arrived people from non-English speaking countries with sufficient English language skills to find meaningful employment.

The MYAN welcome the possibilities under the National Partnership on Youth Attainment and Transitions (including the “Earn or Learn” framework), for young people to achieve higher qualifications. However, we understand that refugee and newly arrived young people need targeted support to increase their engagement in training pathways and capacity to secure employment.

¹⁰ Centre for Multicultural Youth (2011) *The Impact of Visa Restrictions and Entitlements for Newly-Arrived Young People* Centre for Multicultural Youth, Melbourne.

ISSUES THAT A NATIONAL HUMAN RIGHTS ACTION PLAN SHOULD ADDRESS IN RESPECT TO EMPLOYMENT

- Recognition of the particular needs of refugee & newly arrived young people in the National Partnership on Youth Attainment and Transitions.
- Invest in programs that increase the access of refugee and newly-arrived young people to training pathways.
- Increase investment from the Department for Education, Employment and Workplace Relations (DEEWR), under the COAG agenda, in job skills and employability of newly arrived young people by:
 - a. Investing in employability and workforce engagement strategies to effectively orient young people to workforce roles and responsibilities.
 - b. Expanding employer education campaigns that (i) highlight the employability of young people who are newly arrived and from refugee backgrounds and (ii) address misconceptions and/or discrimination and racism in the workforce.
 - c. Utilising good practice program examples in achieving the above.

3.10.2 Community attitudes

Despite the diversity of the Australian community, racism is an ever-present reality for multicultural young people. A recent national study conducted by the Foundation for Young Australians found that over 80% of research participants, from non-Anglo-Australian backgrounds, reported being subjected to some form of racism.¹¹

Experiences of racism can be divided into explicit racism, including racial vilification and abuse, and implicit racism. Implicit racism is seen in community attitudes and the representations of migrant and refugee young people in the media. Media representation is often negative, failing to recognise diversity, achievements and strengths of multicultural young people and their communities.

Young people often experience more explicit racism and discrimination at school (i.e. racist bullying and exclusion, and conflict between groups of young people), at work or when seeking employment, and in the private housing sector – most commonly when seeking private rental through real estate agents.

For young people from multicultural backgrounds, the experience of racism and discrimination threatens personal and cultural identity and can have a detrimental impact on mental health, psychological development and capacity to negotiate the transition to adulthood.¹²

¹¹ Mansouri, F.et.al. (2009) *The Impact of Racism upon the Health and Wellbeing of Young Australians* (Report, Foundation for Young Australians and the Institute for Citizenship and Globalization, p. 3.

¹² Australian Human Rights and Equal Opportunity Commission (2004) *Listen: National consultations on eliminating prejudice against Arab and Muslim Australians*, pp79-82; Western Young Person's Independent Network and Equal Opportunity Commission Victoria (2003) *No Space for Racism: Young People's Voices and Recommendations*, Melbourne; and VicHealth (2007: 11).

The experience of racism and discrimination can also be a key barrier to social inclusion, as it can diminish a young person's sense of connection and belonging to their community and broader society, can create a sense of marginalisation and isolation and diminish participation in education, employment or recreational activities. It can also contribute to feelings of anger, depression, heightened fear of being attacked verbally and physically, headaches and other physical symptoms, and flashbacks to trauma experienced prior to settling in Australia.¹³

This research also highlighted the importance of school-based programs in promoting cultural diversity and addressing racist attitudes.¹⁴

The MYAN endorse the National Anti-Racism Partnership and Strategy and the restoration of the stand-alone position of the Race Discrimination Commissioner. However more action is required to address community attitudes towards young people from refugee and migrant backgrounds.

ISSUES THAT A NATIONAL HUMAN RIGHTS ACTION PLAN SHOULD ADDRESS IN RESPECT TO COMMUNITY ATTITUDES TOWARDS YOUNG PEOPLE FROM REFUGEE AND MIGRANT BACKGROUNDS

- Increase funding and availability of programs in schools and local communities that promote positive images of culturally diverse young people and combat racism and discrimination.
- Implement the Foundation for Young Australians report recommendations, including the provision of targeted classroom resources and teaching tools, including curriculum materials that address racism and discrimination.

3.10.3 Access to Justice

As noted in the Baseline Study, perceptions of discrimination by police and other authority figures are not uncommon among young people from refugee or migrant backgrounds in Australia.

Young people from a refugee or migrant background are often fearful and mistrustful of police and authoritative figures due to experiences in their country of origin.¹⁵ Often authorities have been complicit in persecution and torture rather than provided protection. Given their frequent and visible use of public space and public transport, young people from refugee and migrant backgrounds can be targets for over-policing.

Young people from refugee and migrant backgrounds often feel targeted and 'hassled' by police due to racial, religious, ethnic and cultural stereotypes.¹⁶ In 2008, Australian-Sudanese young people in Victoria identified their experience of policing as the biggest issue

¹³ Mansouri, F.et.al.(2009), p. 7.

¹⁴ Ibid., p. 4.

¹⁵ Coventry, L., Guerra, C., Mackenzie, D. and Pinkney, S. (2002), p. 48.

¹⁶ Western Young Person's Independent Network and Equal Opportunity Commission Victoria (2003: 12-18).

facing them.¹⁷ Various studies have shown that refugee and migrant young people are more likely than other groups of young people (with the exception of Indigenous young people) to be stopped by the police for questioning.¹⁸ A 2010 study on the experience of young African Australians in three Victorian regions found that African youth were over-policed, and that this over-policing was based on race.¹⁹

Specific issues include, 'overuse of stop and search powers, police engaging in excessive questioning and, in some cases, extra-legal police violence'.²⁰ Furthermore, there are currently inadequate police complaints mechanisms in place through which these groups feel that they can report over-policing, this means that such incidents are often not reported or not adequately investigated if reported.²¹

Refugee and migrant young people, in particular, are often unaware or unable to make use of their rights and find formal complaints procedures inaccessible or ineffective. Smith and Reside (2010) note:

*Routine police harassment of African young people as well as police violence is either under-reported to the relevant oversight bodies, or these bodies are not adequately investigating these incidents, or both. The lack of an effective oversight body amounts to African young people (and probably other groups as well) being structurally excluded from justice. ... despite generally having a good understanding of their formal rights, for the most part young people cannot assert these rights – in fact asserting them often results in police hostility and aggression.*²²

There is a lack of adequate police training, especially cross-cultural training amongst general duties officers, in dealing with people from culturally and linguistically diverse backgrounds, particularly refugees and recent migrants.

In CMY's experience, Victoria Police Multicultural Liaison Officers (MLOs), New and Emerging Community Liaison Officers (NECLOs) and Youth Resource Officers (YROs) have been generally effective in their engagement with, and support to, young people from refugee and migrant backgrounds in their communities. For example, in an outer Melbourne region police officers are attached to local schools and are well placed to respond to instances of bullying or violence that have the potential to escalate otherwise. In the same region, the YROs, senior sergeants and the District Inspector invest a lot of time facilitating or attending

¹⁷ Victorian Equal Opportunity & Human Rights Commission (2008) *Rights of Passage: The experiences of Australian-Sudanese young people*, Melbourne, p. 30.

¹⁸ National Crime Prevention (1999) *Hanging out: Negotiating young people's use of public space* (Attorney-General's Department: Canberra). The Western Young People's Independent Network in Melbourne also reports that refugee and migrant young people often feel targeted and 'hassled' by police due to racial, religious, ethnic and cultural stereotypes (Francis, S. and Cornfoot, S. (2007) *Multicultural Youth in Australia: Settlement and Transition* (Centre for Multicultural Youth Issues: Melbourne for the Australian Research Alliance for Children and Youth)).

¹⁹ Smith, B. and Reside, S. (2010) *'Boys, you wanna give me some action?' Interventions into Policing of Racialised Communities in Melbourne*, Fitzroy Legal Service Inc., Western Suburbs Legal Service Inc, and Springvale Monash Legal Service Inc., Melbourne.

²⁰ Ibid 11.

²¹ Ibid.

²² Ibid., p.2.

various community events. This has been an effective way to forge positive relationships with young people and their families from refugee and migrant backgrounds.

However, as most MLOs, NECLOs and YROs work standard business hours, they are not the officers on duty who respond to crisis calls. In CMY's experience, many officers on duty are limited in their understanding of different cultures and in communication with young people from a refugee background. This impacts on their ability to interact well with young people from different cultural backgrounds and can result in situations easily escalating beyond what is necessary. Tension often arises as a result of simple misunderstandings and miscommunications relating to language, culture and body language.

The attitude of senior police officers towards young people from refugee and migrant backgrounds can also be a major contributing factor to the attitudes of other police officers in the station. It is therefore vital that a culturally aware community policing approach receives endorsement at the highest levels in each station and all officers have an awareness of the refugee experience and the cultural needs of young people from refugee and migrant backgrounds.

An approach focused on building relationships and trust between police and young people is vital to address some of the tensions that exist. Francis and Cornfoot, for example, suggest the effectiveness of programs which increase dialogue between police, young people, multicultural communities and service providers to tackle difficult relationships and look at strategies for prevention and addressing anti-social behaviour.²³

ISSUES THAT A NATIONAL HUMAN RIGHTS ACTION PLAN SHOULD ADDRESS IN RESPECT TO ACCESS TO JUSTICE FOR YOUNG PEOPLE FROM REFUGEE AND MIGRANT BACKGROUNDS

- Invest in training for police across jurisdictions in working with young people from diverse cultural backgrounds, with a particular focus on understanding the issues faced by refugees.
- Provide funding for a more culturally appropriate juvenile justice system on a state-by-state basis.
- Audit existing community policing approaches for cultural sensitivity and develop and share good practice models across all community policing programs. Good practice community policing models should receive active and visible involvement and promotion by senior members of the police force.
- Implement a national approach to data collection that includes cultural background, language spoken and country of birth of young people in contact with the juvenile justice system.
- Provide better access to data around cultural background, language spoken and country of birth of young people in contact with the juvenile justice system to support better tailoring of services for these young people.

Further, the MYAN endorse the following recommendation from the Flemington and Kensington Community Legal Centre report *Race or Reason? Police encounters with Young People in the Flemington Region and Surrounding Areas* (2011):

²³ Francis, S. and Cornfoot, S. (2007) *Working with Multicultural Youth: Programs, Strategies and Future Directions* (Centre for Multicultural Youth Issues: Melbourne for the Australian Research Alliance for Children and Youth), p. 30.

Introduction of a protocol limiting police interaction with youth and minority groups to situations where police have statutory/common law grounds to question a young person or where police contact is invited by the young person.

In particular we recommend the adoption of recommendation 61 of the Stephen Lawrence Inquiry which states as follows:

“That the Home Secretary, in Consultation with Police Service should ensure that a record is made by police officers of all “stops” and “stops and searches” made under any legislative provision. ... non-statutory or so-called “voluntary” stops must also be recorded. The record to include the reason for the stop, the outcome and the self-defined ethnicity of the person stopped. A copy of the record shall be given to the person stopped.”²⁴

ADDITIONAL ISSUES THAT A NATIONAL HUMAN RIGHTS ACTION PLAN SHOULD ADDRESS

If the purpose of the Baseline Study is to survey the status of human rights in Australia to identify priority areas of action for inclusion in the National Human Rights Action Plan, then the MYAN believe that fundamental human rights issues for young people from refugee and migrant backgrounds have been minimised or overlooked in some areas.

These areas are: education, health, and improved protection of human rights for children and young people.

The right to education

Access to appropriate education is commonly noted as the most significant issue for young people from refugee and migrant backgrounds. This group of young people are often required to learn a new language in an unfamiliar educational or learning environment, and for many refugee and newly arrived young people, this is compounded by limited, interrupted or no formal schooling prior to their arrival in Australia.

It is the belief of the MYAN, that the current Australian education system disadvantages young people with interrupted education.

The key issues for young people and their families in accessing and remaining engaged in education are:

- Limited or no understanding of the Australian education and training system, combined with often unrealistic expectations from family and/or self.
- Limited resources for intensive ESL support.

²⁴ Dolic, Z. (2011) *Race or Reason? Police Encounters with Young People in the Flemington Region and Surrounding Areas* Flemington and Kensington Community Legal Centre, Melbourne.

- Lack of targeted support for the transition from English Language Schools/Centres into mainstream schools secondary schools and/or into training.
- Lack of flexibility and resources in mainstream schools (both English Language Centres and secondary schools) to cope with and respond to the literacy level and needs of newly arrived and refugee young people (particularly given the high rates of disrupted or very limited schooling prior to arrival in Australia).
- Limited understanding and targeted support to understand, navigate and access training and higher education pathways – i.e. understanding the system, accessing information and services, and accessing alternative pathways between school and further education and training.
- Finding space and time to study – in the context of often crowded living environments, supporting family in the resettlement process, and pressure to earn an income in addition to studying.

After 6-12 months of initial English language classes, newly-arrived young people are placed into class in a year level according to their age (e.g. Year 11 for 16 year olds), rather than according to their level of education or ability. There is a lack of support for the transition from English Language Schools/Centres into mainstream schools and/or into training²⁵. Placing young people in year levels that exceed their ability, due to interrupted education and English language difficulties, increases the risk of disengagement from the education system and of failure.

Additionally, many of the families are without adequate financial and social resources to support the young people to participate successfully in their education. Many families need extra assistance to secure grants for text books, uniforms and other necessary expenses.

The level of assistance required for young people from refugee and migrant backgrounds in education can be far greater than that required for Australian born young people and their families. However, stabilising the young person in education is often one of the most effective strategies to support the family unit and the process of resettlement. Pressure on families to support young people in education is a major contributing factor to young people leaving home.

It is vital that newly arrived young people have access to appropriately targeted and quality educational and vocational support in their initial settlement period. Without adequate intensive English language support, refugee and newly arrived young people will leave the formal education system with insufficient literacy and language skills to participate productively in the workforce or pursue further education and/or training.

There is currently no national framework to oversee or guide funding allocations for ESL support across Australia. Under the new National Education Agreement, states and territories have the sole responsibility for determining and directing education funding, including ESL resources.

The MYAN are increasingly concerned that, in the absence of a national framework, this system will result in (i) funding being redirected away from specialised ESL support for newly

²⁵ Multicultural Youth Advocacy Network (2010) *MULTICULTURAL YOUTH BRIEFING PAPER Multicultural Youth Advocacy Network (Australia)*, MYAN, Australia, p. 7.

arrived young people and (ii) significant disparities between states/territories in the level and nature of funding for these programs.

ISSUES THAT A NATIONAL HUMAN RIGHTS ACTION PLAN SHOULD ADDRESS IN RESPECT TO THE RIGHT TO EDUCATION FOR YOUNG PEOPLE FROM REFUGEE AND MIGRANT BACKGROUNDS

- DEEWR to conduct a review of ESL programs for refugee and newly arrived young people to (i) determine the nature and extent of funding allocation and investment across jurisdictions and (ii) establish national consistency based on good practice.
- Include a directive in the National Education Agreement requiring states and territories to develop a specific strategy, for supporting refugee young people with intensive English Language.
- Increase investment in transition programs or initiatives that support the transition for newly arrived young people from ESL settings into mainstream secondary schools.
- Increase investment in learning support programs, e.g. homework support.

The right to the highest attainable standard of health

The right to health, both physical and mental, is fundamental to the ability to exercise all other human rights.

Young people of migrant and refugee backgrounds often experience barriers to accessing appropriate health services (such as language difficulties, cultural insensitivity of services, or lack of awareness by young people of what services are available.) Access to health services is of particular concern for young people from refugee backgrounds, given that “newly arrived refugees are reported to have higher rates of long term physical and psychological problems when compared to other migrants.”²⁶ They may be more in need of health care, and are likely to be more isolated than other young people in Australia, further impacting on their emotional and physical wellbeing.

Some young people face a number of mental health risk factors in addition to those of the general population of young people, including: experiences of racism and discrimination; negotiating issues of belonging and identity in a cross-cultural context; and, for refugee young people, pre-settlement experiences of trauma or torture. Additionally, it is well-established that people from CLD backgrounds do not access mental health services at a comparable rate to those from the mainstream community.²⁷ Anecdotal evidence indicates that young people from migrant and refugee backgrounds have very low usage of mental health services in particular.

Major barriers to the uptake of mental health services amongst CLD people include:

language, lack of information regarding services, communication, stigma, inappropriate use or lack of appropriate interpreters, and cultural differences between clients and clinicians (Australian Government, 2004; McDonald & Steel,

²⁶ Foundation House and Refugee Health Network (2009) *Access to specialist services by refugees in Victoria: A report prepared for the Department of Human Services by the Refugee Health Network*, Refugee Health Network, Melbourne, p 11.

²⁷ Multicultural Mental Health Australia and Victorian Transcultural Psychiatric Unit (2011: 20).

1997; St Vincents Mental Health Service & Craze Lateral Solutions, 2005). ... Additionally, it has been noted that people from CALD backgrounds are often unaware of the range of services and supports available and very frequently misunderstood how these services.²⁸

The MYAN has identified the following additional key issues regarding mental health:

- A lack of access to appropriate mental health treatment;
- Lack of coordination between mental health and other support services;
- Lack of resources and cultural competency in mainstream youth mental health services;
- Lack of data regarding access by multicultural young people into mainstream mental health services.

As Multicultural Mental Health Australia found in its recent report, “It is widely acknowledged that there is a need for services to become more adept at working with people from a CALD background by adopting culturally competent practices”.²⁹

Intervening early or appropriately into mental health issues for refugee and migrant young people requires an understanding and application of a transcultural mental health model. Understandings of mental health (including assessment and treatment responses) are culturally constructed concepts that need to be sensitively explained to young people and their families. Translating material is not sufficient to address cultural understandings. A transcultural mental health approach recognises the significance of cultural and linguistic factors in understanding mental health and addresses specific risk factors for individuals and groups.

The MYAN also believe that young people from CLD backgrounds need to be consulted wherever possible about their experiences and needs regarding mental health services.

The MYAN welcomes recent announcements of increased funding for youth mental health services but would like to see the implementation of culturally appropriate service responses to the mental health of young people from multicultural backgrounds.

ISSUES THAT A NATIONAL HUMAN RIGHTS ACTION PLAN SHOULD ADDRESS IN RESPECT TO THE RIGHT TO THE HIGHEST ATTAINABLE STANDARD OF HEALTH FOR YOUNG PEOPLE FROM REFUGEE AND MIGRANT BACKGROUNDS

- Develop a Multicultural Youth Mental Health Strategy to assess and increase the access of young people from refugee and migrant backgrounds into mainstream youth mental health services. This strategy should include:
 - Sector development to ensure that mainstream mental health services are equipped with the skills and knowledge to support refugee and migrant young people and incorporate a transcultural approach to mental health service delivery and;

²⁸ Ibid. citing operated National Ethnic Disability Alliance (NEDA), MMHA, & Australian Mental Health Consumer Network (AMHCN) 2004.

²⁹ Ibid. citing Alimant & Ann, 2008; Homelessness Australia 2007; Multicultural Mental Health Australia, 2010a; and Wositzky, 2001.

- A national research project to examine and document existing program models that engage, treat and provide appropriate follow up support for young people from multicultural backgrounds, especially those from refugee backgrounds or from new and emerging communities of migrants.

Better protection of the human rights of children and young people in Australia

The creation of a Commonwealth Commissioner for Children and Young People

The creation of a Commonwealth Commissioner for Children and Young People would better ensure that Australia meets its obligations under international law to protect the human rights of children and young people. In particular a Commonwealth Commissioner would better ensure the Australian Government meets its commitments under the UN Convention on the Rights of the Child and the 1951 Convention on the Status of Refugees.

The establishment of a Commonwealth Commissioner for Children and Young People has been identified by a number of bodies and reports as a significant mechanism for better ensuring children and young people in Australia have their human rights upheld, promoted and enjoyed. These include: the UN High Commissioner for Human Rights (May, 2011 during a visit to Australia); the *Non-Government Report on the Implementation of the United Nations Convention on the Rights of the Child in Australia* (2011); the Australian Human Rights Commission (2010)³⁰; and the COAG's *National Framework for Protecting Australian Children* (2009).

It is particularly important that a Commonwealth Commissioner for children and young people is given legal guardianship of unaccompanied children and young people seeking asylum in Australia. The existing arrangements, where the Minister for Immigration and Citizenship, as guardian, is both the decision-maker in relation to immigration status resolution (and therefore detention or return), and also required to act in the best interests of the child presents a possible conflict of interest (regardless of whether the guardianship role is designated).

The right to participate: Article 12 of the UN Convention on the Rights of the Child

Article 12 of the UN Convention on the Rights of the Child, to which Australia is a signatory, articulates the right of children and young people to participate in matters affecting them:

- **Article 12(1):** States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child;
- **Article 12(2):** For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.

³⁰ Australian Human Rights Commission (2010) Inquiry into the Commonwealth Commissioner for Children and Young People Bill 2010: Submission to the Senate Legal and Constitutional Affairs Committee, available at: http://www.hreoc.gov.au/legal/submissions/2010/20101215_children_commissioner.pdf, viewed 23 August 2011.

As the Victorian Office for Youth and Youth Affairs Council of Victoria have previously noted:

“for any democratic society, it is important that all members have the opportunities to participate in the decision-making processes that affect them and their communities”. When young people are able to meaningfully participate in governmental, community, and school processes, young people “make invaluable contributions to communities and are empowered themselves when they participate”³¹.

Young people surveyed as part of the Victorian Equal Opportunity and Human Rights Commission’s 2008 report on the Victorian Charter of Human Rights and Responsibilities Act said that they felt as though they only sometimes had a chance to have a say or be involved in things that happen in their local community, and hardly ever had a chance at state government level.³² Civic participation can be even more difficult for young people from refugee or migrant backgrounds, who may be unfamiliar with participatory opportunities and processes in Australia. Barriers are compounded for those from Non-English speaking countries.

A study commissioned by the National Youth Affairs Research Scheme that researched participation approaches on the part of young people aged 12–25 years from diverse backgrounds – Indigenous, CALD, low SES, disability, and out-of-home care – found that there had not been widespread involvement of young people from those backgrounds in decision-making processes in government, schools and communities, despite official support for their involvement.³³ Research further shows that young people who were not born in Australia are less likely to participate in civic engagement (e.g. writing letters to the editor, contacting MPs, taking part in protests etc.) than Australian-born young people. The latter result is particularly strong if English was not the main language spoken at home.³⁴ Another survey reported that CALD children/young people were less likely than to report that there were chances for young people to decide things like class activities and rules; and least likely to say that they can help decide when activities are provided or how they are run in their neighbourhoods.³⁵

³¹ Office for Youth and YACVic (2004) *Consulting Young People about their Ideas and Opinions: a Handbook for Organisations Working with Young People*, p. 1.

³² Youthlaw’s submission to the Scrutiny of Acts and Regulations Committee on the Review of the Victorian Charter of Human Rights and Responsibilities Act 2006, p 6, citing Victorian Equal Opportunity and Human Rights Commission (2008) *Report on the Operation of the Charter of Human Rights and Responsibilities* (VEOHRC, Melbourne), 116-117.

³³ Muir et al. (2009) *State of Australia’s Young People: A Report on the social, economic, health and family lives of young people*, Commonwealth of Australia, p. 84, citing (Bell et al., 2008).

³⁴ Ibid.

³⁵ Victorian Government Department of Education and Early Childhood Development and the Department of Planning and Community Development (2008) *The State of Victoria’s Young People* Melbourne, Victoria, pp. 6 and 9, citing Williams 2007.

ISSUES THAT A NATIONAL HUMAN RIGHTS ACTION PLAN SHOULD ADDRESS IN RESPECT TO PROTECTING THE HUMAN RIGHTS OF CHILDREN AND YOUNG PEOPLE IN AUSTRALIA

- Create an independent Commonwealth Commissioner for Children and Young People in Australia, with legal guardianship of unaccompanied children and young people who arrive in Australia seeking asylum.
- Incorporate a right to participation for children and young people in the National Human Rights Action Plan, in line with Article 12 of CROC, to protect and enhance the right of all children and young people, including those from diverse backgrounds to participate in matters and decision-making processes that affect them. The right to participate must also be responsive to the diversity of cultural and linguistic backgrounds and life experiences of children and young people in Australia.

ADDITIONAL ISSUES THAT A NATIONAL HUMAN RIGHTS ACTION PLAN SHOULD ADDRESS IN TERMS OF MONITORING AND COMPLIANCE WITH HUMAN RIGHTS IN AUSTRALIA

- There needs to be better data collection and access in a wide range of areas under both Federal and State and Territory governance (e.g. through FACHSIA, DEEWR, DIAC departments of justice, and child protective services) to ensure that we can truly measure how the human rights of young people from various cultural and linguistic backgrounds (including those from refugee and migrant backgrounds) are being enhanced and protected in Australia.
- The National Human Rights Action Plan should include mandatory regular auditing of public authorities, to be overseen by an independent body, such as the Australian Human Rights Commission, to ensure consideration of compliance with human rights in decision-making and the development of legislation, programs and policies.
- The National Human Rights Action Plan should require statements of compatibility or incompatibility with human rights for all proposed Commonwealth legislation.

If you have any questions about this submission please do not hesitate to contact me on the details below.

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Appendix 1
MYAN State & Territory Representatives

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