

**The Castan Centre for Human Rights Law
presents**

**The 2009 *Writing for Human Rights*
Secondary Schools Essay Competition**

*"We're not morons": governments should
butt out of young people's lives*

Schools Information Kit



Introduction

The annual Castan Centre *Writing for Human Rights* essay competition gives year 11 and 12 students the opportunity to learn about human rights by highlighting controversial current issues. This kit will give you everything you need to know to write an essay for this year's competition.

What is The Essay Topic?

"We're not morons": governments should butt out of young people's lives.

How Are Governments Interfering in Young People's Lives?

Governments have always limited the rights of young people in some ways. For example, children cannot legally drink alcohol until they are 18 years old. Most people accept that some limits are needed to protect children until they are old enough to make the right choices.

However, governments are increasingly interfering in young people's lives by imposing curfews, censoring internet access and restricting them from playing video games. Do you think that these types of limitations unfairly limit your rights, or do they protect young people?

What are Human Rights?

All people have human rights, regardless of age. Many human rights are protected in Victoria by the *Charter of Human Rights and Responsibilities Act 2006* (the "Charter"). The rights protected by the Charter include the right to life, the right to privacy and freedom of expression. A more detailed explanation of the Charter and human rights is included in Part 4 of this kit.

Are Governments Allowed to Limit Human Rights?

Yes. Under the Charter, the Victorian government can limit a human right when it can be "justified in a free and democratic society". International law also recognises that human rights sometimes need to be limited. Cases where human rights may be limited include:

- Where the interests of an individual and the community clash: for example, a convicted paedophile's right to privacy may be less important than the community's need to know where that person now lives.
- Where two rights cross over each other: for example, a person's right to privacy might sometimes be more important than the media's right to freedom of expression.
- Where the nation is experiencing a serious crisis: for example, freedom of movement and association may be limited in a time of war or natural disaster.

Another reason for limiting rights is to protect children. Most limitations on very young children are uncontroversial, but limitations on older teenagers can be more difficult to justify. For example, if 16 year-olds can be tried in the courts as adults, why can't they vote?

What Do You Mean by "Young People"?

The definition of "young people" is variable. Some restrictions on young people apply to those under 21 years of age (eg P plate laws). Mostly, however, they apply to those under 18 years of age.

Sometimes governments limit the right of all people under 18 to do something (eg purchase cigarettes), but sometimes they might only limit the rights of some people under 18 (eg 17 year-olds can drive a car in some states). You might want to talk about these inconsistencies in your essay.

Part 1 – Writing Your Essay

What Should I Focus on in My Essay?

You may write a general essay about whether governments should be able to limit young people's rights and, if so, how much they should be able to limit them. You may alternatively write about one particular law that a government has introduced which limits young people's rights. Whatever your approach, some important questions that you might ask are:

- Should governments be allowed to limit young people's rights any more than they limit adults' rights?
- Should governments stick to "traditional" areas of restriction, such as voting, alcohol consumption and driving?
- Do governments need to place new limits on new problems, such as internet access and anti-social behaviour?
- If young people are not consulted when laws are being drafted to limit their rights, are the laws morally acceptable?
- Should young people be expected to act as responsibly as adults?
- Is the definition of a "child" outdated?

Do I Need to Mention Specific Human Rights?

This topic is mainly about the idea of *limiting* rights, rather than any specific right. However there are a number of important human rights that you may choose to raise in your essay, depending on what you write about. This kit will help you to identify the human rights that are relevant to your argument. For example, if you want to write about internet censorship, you may talk about freedom of expression. If you want to write about curfews, you may talk about freedom of assembly. You do not need to have a detailed legal knowledge of these rights.

Do I Need to Mention the Charter of Human Rights and Responsibilities Act?

No. You may wish to discuss laws introduced by the federal government, other state governments or local governments outside of Victoria. None of these governments are covered by the Charter, which only operates in Victoria.

It is enough to know that human rights are recognised in many different ways: for example, by international treaties and by domestic laws such as the Charter. At the federal level in Australia there is no human rights charter, although many rights are protected in other laws.

What Resources Should I Use?

There are a number of resources in this essay kit which might help you. You should only use credible resources such as books, magazines, newspapers and similar online resources. Although open source sites such as Wikipedia are good for background information, you should not rely on them. You should also avoid sites such as weblogs.

We do not expect you to have lots of footnotes, however if you make a statement of fact, then you should insert a footnote containing the source from which you found the information, following this example: "police seized photographs from the Roslyn Oxley9 Gallery,"¹

¹ Michael Pelly "Artist Bill Henson Escapes Obscenity Charge" *The Australian*, 6 June 2008.

Part 2 – Examples of Recent Limitations on Young People’s Rights

1. Internet Censorship

The Issue

The federal government is about to introduce an internet “filter” which will block illegal sites, such as those hosting child pornography, for all Australians. One of the main justifications for the filter is that it will protect young people from harmful material. However, the filter may also limit young people’s human rights. When you weigh up these two effects, do you think the filter is a good idea?

Arguments in Favour of Internet Censorship

- Some books, movies and games are banned in Australia. Similar online content should also be banned.
- Some information on the Internet may help people to carry out illegal acts, such as terrorism.
- Children need to be protected from harmful images and information. They should be able to use the Internet without being subjected to illegal content.

Arguments against Internet Censorship

- Filters are not effective. They block some legal sites and let some illegal sites through.
- Internet censorship may violate the right to education by stopping students from getting legal information that has been caught up in the filter.
- A filter will slow down the Internet: filters tested by the Australian government slowed Internet speed by as much as 86% (see Getup factsheet below).
- Even when filters are effective, there are still many other dangers for young people including online identity theft, cyber-bullying and child predators.

Human Rights Which May be Affected

- Freedom of expression, which protects the right to give and receive information and ideas of all kinds.
- The right to privacy and reputation, which protects people from having their reputation unlawfully attacked.
- The right to education.

Links:

- Getup Factsheet on the filter: www.getup.org.au/files/campaigns/internetcensorshipfactsheet.pdf
- Government website on the filter: www.dbcde.gov.au/communications_for_consumers/funding_programs_and_support/cyber-safety_plan/internet_service_provider_isp_filtering
- Electronic Frontiers Australia’s filter website: <http://nocleanfeed.com/>

2. Video Game Censorship

The Issue

Australia is the only western democracy without an R18+ classification category for video games. If a game does not meet the lower MA15+ rating, it is banned. This effectively means that any game not suitable for 15 year-olds is banned in Australia.

If video games that are currently banned were made legal, some children would inevitably be exposed to them: perhaps their parents or an older sibling would buy them, for example. Is the current ban therefore a good way to protect young children, or does it needlessly punish older children and adults?

Arguments in Favour of the Video Game Ban

- Protecting children from harmful content is more important than allowing adults to play some games.
- Violence in video games can encourage children to be violent in real-life.
- Video games are more interactive than movies, so the effects may be more severe.

Arguments against the Video Game Ban

- The current system treats all players like young children no matter how old they are.
- There is nothing linking video-game violence to real-life violence.
- The ban limits people's freedom of expression.

Human Rights Which May be Affected

- Freedom of expression, which protects the right to give and receive information and ideas of all kinds.

Links

- Electronic Frontiers Australia's R18+ games website: <http://r18games.com/>
- Interactive Entertainment Association of Australia discussion paper about R18+ games: www.ieaa.com.au/research/R18+%20Classification%20Gap%20Discussion.pdf
- *The Age* newspaper article about video game censorship: <http://blogs.theage.com.au/screenplay/archives//010915.html>
- Fact sheet for computer game retailers: www.classification.gov.au/resource.html?resource=865&filename=865.pdf

3. Child Protection laws – Bill Henson and Issues of Consent

The world-renowned Australian artist Bill Henson sparked controversy last year when his photos of a nude 12 year-old girl were seized by New South Wales police. Although the girl's parents consented to the photos, and did not complain about them, some people labelled them child pornography and the Prime Minister called them "absolutely revolting". Mr Henson was not charged with a crime, but the NSW government is now considering changing the law to stop someone from claiming that such photos are not pornography because they are for an "artistic purpose". This would effectively ban children posing nude for artists.

If the photos are not pornography, does that mean that they are OK, or should children still be prevented from posing nude to protect them? If posing nude for photographs is OK, should parental consent be required for all children under 18, for younger children only, or not at all?

Arguments in Favour of Making Nude Photography of Children Illegal

- It does not matter what the artist was trying to do. Nude photos of children are pornography and will be misused by paedophiles.
- Paedophiles may use the "artistic purpose" loophole to contact children.
- Children (and their parents) cannot control the images once they are released in public. This is a breach of the child's right to privacy.

Arguments against Making Nude Photography of Children Illegal

- Parents should be able to give consent for their children to pose nude. They know what is best for their children and can protect them.
- Art and pornography are very different. Nudity is not necessarily "dirty".
- If 16 year-olds can consent to having sexual relationships, they should be able to determine what they do with their body.

Human Rights Which May be Affected

- Freedom of expression, both for young model and the photographer.
- Freedom of association. That is, a child's right to choose who he or she hangs around with.
- The right to privacy.
- Freedom from discrimination, based on age.

Links

- Bill Henson's Sydney gallery: www.roslynolex9.com.au/artists/18/Bill_Henson/
- *Australian* newspaper story referring to the Rudd comment: www.theaustralian.news.com.au/story/0,,23749181-16947,00.html
- *Australian Review of Public Affairs* article discussing the human rights implications of the issue: <http://www.australianreview.net/digest/2008/06/valentine.html>

4. Curfews

In recent years, many local and state governments around Australia have used curfews to keep youth off the streets during certain hours. For example, the Western Australian state government has implemented curfews for children under 16 years of age after 10pm in Northbridge, Perth. A similar curfew was introduced in the Indigenous community of Woorabinda in 2007, and Mt Isa is currently considering a curfew. Do curfews protect youth, or do they just restrict their freedom?

Arguments in Favour of Curfews

- Curfews keep young people safe because they discourage youth from forming gangs. People in gangs have the courage to do things that they would not do by themselves.
- Young people's freedom of movement is only restricted at night, so they still have all day to do things and meet people. They should be in their homes at night.
- Youth gangs often commit crimes and terrorise local communities.
- Curfews are an easy and inexpensive way of "cleaning up" crime hotspots.

Arguments against Curfews

- Curfews impede young people's freedom to meet with friends or attend events.
- Crimes are committed by people of all ages, so why target "anti-social" children?
- Curfews discriminate against homeless children, and some racial groups such as Indigenous children.²

Human Rights Which May be Affected

- Freedom of association and assembly during the hours of curfew.
- Freedom of movement during the hours of curfew.
- Freedom from discrimination, particularly for homeless and minority children, and for children in general.

Links

- Article about the Northbridge curfew:
www.thewest.com.au/default.aspx?MenuID=77&ContentID=15962
- Article about the proposed Mount Isa curfew:
www.news.com.au/story/0,23599,24709745-29277,00.html?from=public_rss
- Article about the Woorabinda curfew:
www.abc.net.au/news/stories/2007/08/16/2006405.htm
- White, R 2004 'Police and community responses to youth gangs', Trends and issues in crime and criminal justice, *Australian Institute of Criminology*, no. 274, March 2004.

² Susan Kerr "Koori Kids Betrayed as Carr Extends Curfew Laws" 1997 *Indigenous Law Bulletin* 40 <www.austlii.edu.au/au/journals/ILB/1997/40.html>.

5. P Plate Restrictions

In 2007, the Victorian government implemented a new set of rules for probationary (P plate) drivers who are under 21 years old. These drivers cannot carry more than one peer passenger (someone between 16 and 21 years old with the exception of certain relatives), in their car for the first 12 months of the probationary license. New drivers over 21 years old are not subject to the same restriction. Is it reasonable to target young people in this way?

Arguments in Favour of Peer Passenger Restrictions

- Young drivers are responsible for the highest percentage of road deaths, often because of speed and risky driving. Young passengers may encourage this type of driving.
- New drivers need to pay more attention when driving, and their peers can be a distraction.
- Young people's freedom of association is not unreasonably limited as they can associate with their friends while not driving a car.

Arguments against Peer Passenger Restrictions

- Because Peer Passenger Restrictions make it illegal to drive with more than one person their own age, they unreasonably limit the freedoms of assembly and association.
- New drivers over the age of 21 need to pay the same attention to their driving as new drivers under 21, yet they do not have similar restrictions placed on them.
- Not all young drivers are bad drivers or subject to peer pressure.
- These limitations place a burden on parents as they must now drive their children around when previously their children's friends could do so.

Human Rights Which May be Affected

- Freedom of association.
- Freedom of movement for those who cannot ride in their friends' cars.
- Freedom from discrimination, based on age.

Links

- Vic Roads Article about the Peer Passenger Restriction:
<http://www.vicroads.vic.gov.au/Home/Licensing/GettingYourPs/Peerpassengerrestriction.htm>
- FAQ about the graduated licensing system and other data:
<http://www.arrivealive.vic.gov.au/node/208>
- Arrive Alive Website (information on the government initiative involving young drivers):
<http://www.arrivealive.vic.gov.au/>
- December 2007 article regarding the Victorian Government's initial opposition to Peer Passenger restrictions:
<http://www.drive.com.au/Editorial/ArticleDetail.aspx?ArticleID=46255&vf=1>

Part 3 – Examples of Traditional Limitations on Young People’s Rights

Below are some examples of ways that governments have traditionally limited young people’s rights. Some of these limitations are also controversial, and some are not. We have provided this section for background only: we do not expect you to write an essay on one of these limitations, but you might refer to them as background in your essay.

1. Compulsory school attendance

In most countries, children must attend school until they either complete a certain level of education (e.g. grade 6), or reach a certain age (16 years old in Victoria).

Arguments in Favour of Compulsory School Attendance

Educated people can get good jobs and can better look after themselves: for example, they can understand important documents, do their own banking and deal with bureaucracies.

Arguments against Compulsory School Attendance

Some young people do not enjoy school and would rather work instead. Others may want to work in their family’s business or play professional sport. It seems silly to make young people attend school when they do not want to.

2. Minimum Voting Age

In Australia, you must be 18 years old to vote. This rule is controversial, although most people agree that there must be a minimum voting age.

Arguments in Favour of a Minimum Voting Age of 18

Young people cannot make an educated decision on who to vote for and are too immature to be allowed to have a say in the important decision of who runs the government.

Arguments against a Minimum Voting Age of 18

Sixteen and 17 year-olds are legally allowed to leave school, work full-time, join the Australian Defence Forces, consent to sex and sometimes be tried as adults if they commit a crime. These decisions are just as important as choosing the government, and many teenagers are very engaged in politics.

3. Alcohol restrictions

In Australia, anyone under 18 years old is not allowed to drink or buy alcohol. Some other countries require you to be 21 years old to drink, while others have no minimum age.

Arguments in Favour of a Minimum Drinking Age

Drinking alcohol impairs people’s ability to make decisions, so it is very important that it is only drunk by people who can drink it responsibly.

Arguments against a Minimum Drinking Age

It is arbitrary to say that someone who is 18 can drink, but someone who is 17 years and 11 months old cannot drink. Also, prohibiting children from drinking responsibly encourages them to think of alcohol as something that is taboo. This in turn increases the likelihood that children will abuse alcohol when they finally start drinking.

4. Other Limitations

Other limitations of young people’s rights include the prohibitions on purchasing cigarettes, working (this applies to younger children), driving and getting married.

Part 4 – Victorian Charter of Human Rights and Responsibilities

Australia is the only western democracy without a national bill of rights, however Victoria has the *Charter of Human Rights and Responsibilities Act 2006* (the “Charter”). The Australian Capital Territory has the *Human Rights Act 2004*, and several states and the federal government are considering introducing similar legislation.

Where Do the Rights in the Charter Come from?

The first major international human rights document was the *Universal Declaration of Human Rights*, which was made by the United Nations after World War II. It was then divided into two binding treaties, which have been ratified by most of the world’s nations, including Australia. They are:

- The *International Covenant on Civil and Political Rights* (ICCPR), which protects rights such as freedom of religion, freedom of speech, and the right to life.
- The *International Covenant on Economic, Social and Cultural Rights* (ICESCR), which protects rights such as the rights to education, health and work.

The Charter is modelled on the ICCPR, however it has modified or excluded some controversial rights. For example, the Charter does not apply to abortion laws, and the right of self-determination is not included. The Charter does not include ICESCR rights.

How Does the Charter Work?

Public authorities: the Charter prohibits government authorities (known as “public authorities”, for example government departments, local councils, police officers) from violating human rights. This requirement will help to instil a “culture” of respect for human rights into public bodies.

Individual rights: the Charter is not designed to encourage law suits, so people cannot sue someone for a breach of their rights. However, if they are suing a public authority for breaching some other law, they can also argue that the authority has breached their rights.

New legislation: the government must state whether each new law complies with the Charter when it introduces the law to Parliament. The government can still pass legislation if it is not compatible with the Charter, and it only needs to explain why it is doing so. The intention is that the law will encourage the government to respect human rights because it will be reluctant to admit that it is passing a law which violates human rights.

Human rights in the courts: the Supreme Court can declare that a law does not comply with the Charter, but this does not make the law invalid. After the court makes such a declaration, the government must respond in Parliament, but it does not have to change the law if it does not want to. Courts must also interpret laws so that they are compatible with human rights, where possible.

How Does the Charter Apply to Children?

The Charter applies to all people, including children. The Charter also provides special protection for children in some situations, for example in the legal system. On the other hand, the Charter does not include all of the rights contained in the international *Convention on the Rights of the Child*. Many of those rights – such as the rights to education and health – are economic, social and cultural rights rather than civil and political rights.

Useful General Internet Resources

- www.lawstuff.org.au is a simple, easy to understand site for young people.
- www.youthlaw.asn.au/legalinfo/Charter-Rights-Resp.pdf is a fact sheet on the Charter.
- www.youthforhumanrights.org.au/ has general information on human rights.
- www.justice.vic.gov.au/humanrights is the Victorian government's human rights website.
- www.equalopportunitycommission.vic.gov.au/home.asp is the Victorian Equal Opportunity and Human Rights Commission site.
- www.un.org/rights/ is the United Nations human rights page.
- Universal Declaration of Human Rights : www.unhchr.ch/udhr/lang/eng.htm
- International Covenant on Civil & Political Rights: www2.ohchr.org/english/law/ccpr.htm
- International Covenant on Economic Social and Cultural Rights: <http://www2.ohchr.org/english/law/cescr.htm>
- The Charter: www.austlii.edu.au/au/legis/vic/consol_act/cohrara2006433/

Contacts and Other Information

The Competition Website

The Website contains downloadable copies of this kit and the entry form, and other information.

www.law.monash.edu.au/castancentre/cc-human-writes

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