

November 2010

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Ms Julie Dennett
Committee Secretary
Legislation Committee
Parliament House
Canberra ACT 2600
Via email: legcon.sen@aph.gov.au

Dear Ms Dennett

**Inquiry into the Commonwealth Commissioner for Children and Young
People Bill 2010**

Thank you for your letter of 15 November 2010 and the invitation to make a submission to the above Inquiry.

I note that the Bill proposes the establishment of a Commissioner as a measure to assist Australia to meet its international obligations under the United Nations Convention on the Rights of the Child. I note the Bill envisages the Commissioner would develop cooperative relationships with relevant State and Territory bodies.

Due to the emphasis in the Bill on the development of cooperative relationships with offices such as mine, it may be helpful to the Committee to explain my role in relation to the *Charter of Human Rights and Responsibilities Act 2006* (the Charter).

Section 13 (1A) of the *Ombudsman Act 1973* enables me to enquire into or investigate whether any administrative action is incompatible with a human right set out in the Charter. In this regard, in the past year I have tabled in the Victorian Parliament three reports that have commented on the failure of public bodies to act compatibly with the Charter in relation to vulnerable children and young people. My reports have also identified a lack of effective oversight of services to vulnerable children and young people.

My Own motion investigation into the Department of Human Services Child Protection Program was tabled on 25 November 2009. I concluded that the department was not meeting a number of its obligations to children under the Charter. These rights included the right to protection of families and children (s17), the right to protection of cultural rights for indigenous people (s19[2]) and the right to privacy and reputation (s13).

My Own Motion investigation into Child Protection – out of home care was tabled on 26 May 2010. I examined the safety and quality of care being provided to children in out of home care by the Department of Human Services. My investigation found breaches of the Charter in respect to the right of every child to, without discrimination; such protection as is in his or her best interests; and is needed by him or her by reason of being a child (sections 17[2]).

As a result of my investigations I made 63 recommendations regarding how the child protection system in Victoria could be improved to improve the protection of vulnerable children and young people.

My third report *Whistleblowers Protection Act 2001 Investigation into conditions at the Melbourne Youth Justice Precinct* was tabled on 4 October 2010. I identified disgraceful conditions at the Melbourne Youth Justice Precinct which accommodates sentenced and remanded detainees aged between 10 and 21 years. I concluded that the conditions in the precinct were incompatible with either the Charter's provisions regarding the humane treatment of persons deprived of their liberty or those in relation to the treatment of children in the criminal process. I made twenty seven recommendations including that consideration be given to the replacement of the precinct. All of my recommendations were accepted by the Department of Human Services.

A common theme in these recent investigations has been the lack of accountability of the services to vulnerable children and young people that were examined during my investigations. In my two reports regarding the child protection system, I noted that Victoria's Child Safety Commissioner is the only such body in Australia that is unable to table a special report to Parliament on issues arising from his functions. I also concluded that the Melbourne Youth Justice Precinct is subject to less external scrutiny than the adult prison system in Victoria.

My office continues to closely examine the application of the Charter in protecting the human rights of vulnerable people. The circumstances of children and young people will remain a particular focus of my office as I monitor the progress of the relevant agencies in implementing my

recommendations. In due course I will report on this progress to the Victorian Parliament.

I trust that the above information is helpful to the Committee as it undertakes its Inquiry. Copies of the reports referred to above can be downloaded from my website – www.ombudsman.vic.gov.au. I have also included the links to the reports in the electronic version of my letter. If you have any queries please contact Mr Stephen Mumford, Director of Investigations, on

Yours sincerely

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