

Submission to the Parliament of Australia, Senate, on the Bill to create a Commonwealth Commissioner for Children and Young People 2010.

PeakCare is the Queensland peak body for child protection service providers across the state. We are also a member of national peak bodies which focus on the wellbeing of children and families. Child protection is our core focus. Our vision is healthy and safe children, young people, families and communities who are strong and connected. We believe in social inclusion and work in partnership to pursue excellence in policy development, planning, implementation and delivery of services to promote the safety and well being of children, young people and their families.

PeakCare has been a member of the Non Government team which participated in the development of the National Framework for Protecting Australia's Children (NFPAC) and the first three year implementation plan. PeakCare supports the introduction of the Commonwealth Commissioner for Children and Young People Bill 2010.

If the Commissioner were to be given appropriate powers and resources the position has the potential to develop effective monitoring of current systems which affect children and young people and to provide research and expert advice to all levels of government to strategically change Australia's institutions to better protect children and young people. It would greatly enhance Australia's obligations under the United Nations' Convention on the Rights of the Child (UN CROC) and would herald an important emphasis on the needs of children and young people in policy development in this country.

The recent reports of the increased numbers of children and young people reported to authorities for suspected abuse and neglect indicate that Australia's institutions are failing to offer adequate support for vulnerable families in a timely and effective manner. The costs associated with the Out of Home Care system and the aftermath of ineffective tertiary care systems are further indications that such children and young people require more robust systems to adequately protect them into their adulthood. The NFPAC recognizes the need to better support the Australian community and its institutions to provide interventions which have been demonstrated to prevent vulnerability and promote resilience. The office of a Commonwealth Commissioner would be in an optimal position to actively pursue systemic changes towards a society where children and young people are valued and protected- a true family welfare model rather than a residual child protection model. Family welfare models are prevalent in Sweden and other European countries where the state is seen as a helping and supportive mechanism for families rather than an institution to be feared.

The proposal as outlined in the Bill

PeakCare endorses the complete independence of the Commissioner and their staff. It is important for a position such as this to be capable of independent action and to have sufficient authority within Australia's system to pursue issues which relate to their office and purpose. The situation in Australia is complex because of the diverse jurisdictions involved in children's matters; for example the Commonwealth government is responsible for the family law issues whilst the states and territories are responsible for child welfare more generally. The lack of consistency around the jurisdictions can cause concern and hardship for children and young people and can allow for children and young people to miss access to services if they move around the country. Some examples of this complexity are the school entry age, a lack of a national school curriculum, the after care service provision for children and young people leaving state care and the differences in thresholds for receiving state services once neglect or abuse has been reported and substantiated. The NFPAC acknowledges this situation and the difficulty in gaining support for innovation under this framework from states and territories has emphasized a need for greater uniformity across jurisdictions. The role of the Commonwealth Commissioner could be enhanced to work towards a greater alignment of legislation and standards for all children and young people in Australia. The principles of the Act (section 4) indicate that it is the intention of the legislation to empower the Commissioner to uphold the U N CROC and PeakCare urges that further cohesion between state and federal legislation, policy and programs also be considered an aim of the position. Better alignment of reporting mechanisms, policy positions and program delivery will enhance the Commissioner's ability to provide meaningful reports to the UN and to Australia's governments. This will further be enhanced if the legislation makes it explicit that the Commissioner must aim to improve the services and support of children and young people throughout the nation rather than facilitate a drift to the lowest common denominator as has been some of our experiences to-date with national alignment projects.

PeakCare suggests that section 5 of the proposed Act be extended to include definitions of 'best interests of the child', 'discrimination', 'family' and 'participation in decision making'. There are numerous contemporary pieces of legislation from which to draw definitions which have broad agreement.

In Part 2 of the proposed legislation PeakCare supports the functions of the Commissioner as outlined in section 9 and that the office is a statutory body. We ask that consideration is given to the following:

to further expanding the role as outlined in section 9 (d) to promote the intentions of UN CROC whereby care is taken not to separate children from their parents, promote contact between children and their families and a sharing of parental responsibilities between parents and guardians;

removing the function of the Commissioner being 'a legal guardian of children and young people who arrive in Australia without the required visa or other authority for entry into Australia' (9 (e)). This might have the potential to remove the independence of the Commonwealth Commissioner and furthermore it might undermine the Commissioner's duty to assess and monitor the rights of children who arrive in Australia and to report on

their well being more widely;
the coordination of funding and programs appears to be a rather ambitious role given the complexity of Federal and State jurisdictions in Australia.(section 9(i)). It might be more realistic to ensure that the Commissioner's role is clear in facilitating better alignment of legislation, policies and funding across all jurisdictions and in researching where better alignment can be progressed;
PeakCare understands that the roles of State Commissioners and that of the Commonwealth need to be well defined to avoid duplication and to better give effect to the promotion of seamless services for children and young people and to ensure that reports to the UN CROC are very clear in the marking of progress towards improved well being for Australia's children;
section 9(h) appears unclear and to tend towards intervention in individual cases, which might become onerous and unwieldy in practice. It would be better to consider the role to be one of ensuring that legislation robustly supports and promotes the wellbeing of children and young people, that such legislation is complied with and that their rights under UN CROC are supported by any legislation which may be enacted at a federal level. The role with the State Commissioners could be to encourage the same at a state level; and
PeakCare is keen that the National Framework for Protecting Australia's Children is closely and independently monitored and its progress publically reported on. It would seem that this could be a meaningful and important role for the Commonwealth Commissioner.

The manner in which the Commissioner performs the functions (section 10) is an important element to the legislation and Peakcare urges careful consideration be given to incorporating a function of liaison and consultation with the non government (NGO) sector to ensure an effective partnership between the government and NGO sectors in meeting the needs and rights of children and young people. This sector delivers important services to children, young people and their families and consequently holds a great deal of knowledge and skills about how legislation, policies and funding impacts on those stakeholders. The significant contribution of the NGO sector in delivering services to children and young people and in monitoring their well being should not be overlooked when designing the role of the Commissioner's office. PeakCare believes that the Commissioner must be mandated to consult with the NGO sector as they have been mandated to consult with the other parties. It is important that academics and researchers and other stakeholders are also encouraged to participate in the work of the Commissioner.

Section 20 discusses the appointment to the role of the Commissioner. It is important to expressly promote continuity and permanency in the role. Whilst PeakCare understands the intent of the section, it is important that there is clarity that permanent appointment for full terms is highlighted to ensure that Commissioners can be consistent and fearless in their reporting and related activities.

PeakCare submits that the regular reporting to Parliament of the activities of the

Commission is important but that this section needs to be widened to include regular public reporting on the system of services for children and young people and the success achieved towards the improvement of the well being of Australia's children and young people. This is the crux of the role of the Commission and a public report would help to galvanise activity across jurisdictions to achieve this. The report could analyze service and policy gaps and make recommendations for future activity and focus. It is important also that the Commissioner be empowered to report on the improvements to services for and the wellbeing of Australia's Aboriginal and Torres Strait Islander children and families.

References

Australian Institute for Health and Welfare, 'Child Protection Australia 2008-9', Canberra.

Council of Australian Governments, 'The National Framework for Protecting Australia's Children, 2009-2020', Canberra.

Kautto, M; Heikkilä, M; Hvinden, B; Marklund, S; and Ploug, N; 1999, 'Nordic Social Policy: Changing welfare states', London and New York

Mc Dowall, J for the CREATE Foundation, 'CREATE Report Card 2009, Transitioning from Care: Tracking Progress: 6.' Canberra.