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Ms Julie Dennett
Committee Secretary
Senate Standing Committee on Legal and
Constitutional Affairs
PO Box 6100
Parliament House
Canberra ACT 2600

Dear Ms Dennett

Thank you for the opportunity to comment on the Commonwealth Commissioner for Children and Young People Bill 2010.

This office has a number of statutory responsibilities in relation to children and young people under both the *Community Services (Complaints, Review and Monitoring) Act (NSW)* and the *Ombudsman Act (NSW)*. Specifically, this office is required to

- monitor and review the delivery of community services in New South Wales;
- review the situation of a child in care, or a group of children in care;
- review the deaths of certain children and people with a disability. This includes children whose death was the result of abuse, neglect or in suspicious circumstances; children in statutory care; a child who was an inmate of a detention or correction centre; and children living in disability accommodation services; and
- oversight and review agency investigations into allegations of reportable conduct against employees of certain agencies.

I have had the benefit of reading the Australian Children's Commissioners and Guardians' submission to the inquiry and acknowledge the merit of some of the proposals put forward in that paper. Specifically I support:

- the proposal that the Commonwealth Commissioner sit within the Human Rights Commission;
- the Commissioner having responsibility for those matters that fall within the Commonwealth jurisdiction and international matters; and
- the delegation to the states of legal guardianship of unaccompanied children who arrive in Australia without the requisite visa.

I consider that the role of a Commonwealth Commissioner for Children and Young People could be twofold.

- The Commissioner should have a role in the promotion and protection of children's rights with reference to the United Nations Convention on the Rights of the Child.
- The Commissioner should have a strategic role in the monitoring and coordination of national priorities and policies with respect to children and young people. In particular, I would see a legitimate role for the Commissioner in overseeing the implementation of the National Child Protection Framework, and monitoring its delivery across the country.

Promotion and protection of children's rights

This role could have similar functions to the current Disability Discrimination, Aboriginal and Torres Strait Islander Social Justice, Race Discrimination and Sex Discrimination Commissioners. Specifically:

- to promote understanding and awareness/ acceptance of children's rights and the framework of the Convention on the Rights of the Child, including through education programs and the provision of guidelines;
- to examine acts, policy and procedure for compliance with children's rights and to make recommendations to improve legislation, policy and procedures with respect to rights;
- undertake research to promote children's rights;
- to make inquiries into complaints, acts or practices apparently inconsistent with children's rights; and
- to act as an amicus curiae or, with the leave of the court, to intervene in legal cases relevant to the rights of children.

In this respect I would also support the proposal in the Bill for the Commissioner to prepare reports to the United Nations Committee on the Rights of the Child on behalf of Australia, in the context of their having the capacity to provide an independent assessment in these reports.

National monitoring and coordination

I would consider that a Commonwealth Commissioner for Children and Young People could have a role in monitoring trends in relation to areas of national relevance, and the coordination of strategic responses to issues affecting children and young people across Australia. There is increasing overlap between Commonwealth and state/ territory jurisdictions, for example in relation to homelessness, housing, education and health care. Especially in those areas where equity requires a consistent national approach, a national children's commissioner would be well placed to identify and promote best practice from across the country and internationally. Given a clear strategic focus, this role would be quite distinct from, but complimentary to, state/ territory commissioners. I recognise that state/ territory commissioners are best placed to respond to emerging issues and to ensure quality in local level service delivery.

For these reasons I see a clear role for a Commonwealth Commissioner in overseeing the implementation of the National Child Protection Framework. In the discussion paper preceding the release of the Framework it was noted that

*a mechanism is also required to ensure that all governments including the Australian Government explain their performance in keeping children safe and what action they plan to take to address any deficits.*¹

This mechanism could be delivered through the office of an independent children's commissioner.

Yours sincerely

Steve Kinmond
Deputy Ombudsman, Community and Disability Services Commissioner

¹ Department of Families, Housing, Community Services and Indigenous Affairs (2008) *Australia's children: safe and well. A national framework for protecting Australia's children, a discussion paper for consultation*, May 2008, p 28