

Submission about the Commonwealth Commissioner for Children and Young People Bill 2010

The Benevolent Society
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Contact: Annette Michaux

General Manager, Social Policy and Research

T: 02 9339 8065

E: annettem@bensoc.org.au

The Benevolent Society

Level 1, 188 Oxford Street

Paddington NSW 2021

PO Box 171

Paddington NSW 2021

T 02 9339 8000

F 02 9360 2319

www.bensoc.org.au

1. Introduction

Thank you for the opportunity to make a submission about the Commonwealth Commissioner for Children and Young People Bill 2010. The Benevolent Society strongly supports the establishment of an independent statutory office of Commonwealth Commissioner for Children and Young People, to advocate at a national level for the needs, rights and views of people below the age of eighteen.

Having a Commonwealth Commissioner with the power and the mandate to listen to, understand and advocate for children in Australia would make an important contribution to the protection and promotion of children's rights in Australia.

1.1 About The Benevolent Society (TBS)

The Benevolent Society is Australia's first charity. We are a secular, not-for-profit organisation working to bring about positive social change in response to community needs. Since 1813, we have identified major social challenges and worked to meet them head on.

Our purpose is to create caring and inclusive communities and a just society. We deliver leading edge programs and services, find innovative solutions to complex social issues and advocate for a more just society. We help the most vulnerable people in society, and support people from all backgrounds including Indigenous Australians and people from culturally and linguistically diverse communities.

The largest area of our work is with children and families. This work includes foster care, child protection, early intervention and community capacity building. Other services we provide include mental health, community aged care, carer respite, domestic violence, adoption, community leadership and services for the elderly.

Snapshot of The Benevolent Society

- TBS is a company limited by guarantee with an independent Board.
- 800 staff and 700 volunteers support more than 31,000 children and adults each year in New South Wales and Queensland.
- We deliver 122 programs in 55 locations with support from local, state and federal government, businesses, community partners, trusts and foundations.
- Our revenue in 2010 was \$65 million. Approximately 85% is spent directly on our services. A further 8% is spent on our leadership programs, social initiatives and research.
- In 2010, 76% of our income came from government sources. Private fundraising, trust and foundation grants provided another 4%, client fees generated 9% and investment income contributed 6%.

2. General comments

The Benevolent Society strongly supports the establishment of an independent statutory office of Commonwealth Commissioner for Children and Young People to advocate on behalf of Australia's children and young people.

Despite Australia's increasing prosperity there are still many children and young people experiencing disadvantage, who are at risk of not reaching their full potential.

The 2010 UNICEF *Innocenti Report Card 9, The Children Left Behind: Inequality in Child Well-Being*ⁱ, shows the growing gap between Australia and other rich nations in looking after our most vulnerable children.

The Australian Research Alliance for Children and Young People (ARACY) Report Card (2008), *The wellbeing of young Australians*ⁱⁱ, similarly shows that Australian children are not performing as well on indicators of health and wellbeing as children from other countries. Indigenous children and young people, in particular, are significantly disadvantaged. In relation to infant mortality, for instance, Australia is in the bottom third of OECD countries and the infant mortality rate for Indigenous Australians is more than double the non-Indigenous rate.

In 2009, the Australian Early Development Index (AEDI) checklist was completed with 97.5% of all children in their first year of schoolⁱⁱⁱ. The AEDI measures children's progress across five domains: Physical health and wellbeing, Social knowledge and competence, Emotional maturity, Language and cognitive development and Communications skills and general knowledge.

The results indicate that while the majority of children are doing well, nearly a quarter were developmentally vulnerable on one or more of the AEDI domains and 11.8% were developmentally vulnerable on two or more of the domains.

Children living in remote locations and in the most socio-economically disadvantaged communities were more likely to be vulnerable across the AEDI domains and almost half (47.4%) of Australia's Indigenous children were developmentally vulnerable on one or more domain. Children who are not proficient in English were also more likely to be vulnerable on one or more of the AEDI domains.

The incidence of child abuse and neglect is similarly concerning. According to the Australian Institute of Health and Welfare (AIHW), in 2008/09 there were 56,621 reports of child abuse and neglect substantiated by child protection services^{iv}.

While it must be acknowledged that the majority of children and young people are doing well, these results do highlight the need for more to be done to promote the safety and wellbeing of our children and young people. As outlined in the *National*

Framework for Protecting Australia's Children 2009-20', children have a right to be safe, valued and cared for.

If further justification were needed, Australia's future productivity and prosperity depends on realising the potential of all Australia's children. Research shows that not assisting all children to reach their full potential has significant social costs for individuals and for the community as a whole with higher unemployment, increased likelihood of crime and imprisonment, increased mental health problems and poorer physical health.

3. United Nations Conventions on the Rights of the Child

In 1990, Australia ratified the Convention on the Rights of the Child (CRC) and has specific obligations to children under international law, not all of which are currently being met. Australia has a responsibility to protect children, provide the services necessary for them to develop and achieve positive outcomes, and enable them to participate in the wider community.

The United Nations Committee has expressed concern that there is no national commissioner with a specific mandate for monitoring children's rights. By establishing the office of a national Children's Commissioner, the Australian Government will be taking an important step towards meeting its international obligations to protect and promote the rights of children in Australia.

The Benevolent Society supports the observations of the United Nations Committee on the Rights of the Child that an independent Children's Commission should:

- monitor the observation of children's rights under the CRC
- receive complaints of breaches of children's rights under the CRC
- provide a voice for children, ensuring that their opinions are expressed and heard
- be able to support children taking cases in court and intervene in relevant matters before a court
- promote public understanding of children's rights among government, public agencies and the general public.

4. Commonwealth Commissioner for Children and Young People Bill 2010

While The Benevolent Society is very supportive of the Bill, TBS recommends a number of modifications as discussed below.

Section 3

As outlined in Section 3 of the Bill, The Benevolent Society supports:

- (1) *The object of this Act to establish an independent statutory office of Commonwealth Commissioner for Children and Young People.*

In relation to sub-section (2), there are a number of recommendations that The Benevolent Society would like to make. The Bill states that:

- (2) *The Commissioner will:*
- (a) *advocate at a national level for the needs, views and rights of people below the age of 18; and*
 - (b) *monitor the development and application of laws affecting children and young people; and*
 - (c) *coordinate related policies, programs and funding across Australia, which impact on children and young people; and*
 - (d) *proactively involve children and young people in the decisions that affect them.*

Point (a) should be reworded to explicitly include 'promote the safety and wellbeing' of children and young people in line with the National Framework for Protection Australia's Children.

In relation to point (c), while national coordination of policies, programs and funding would be extremely beneficial in order to avoid duplication, promote information sharing and innovation as well as identify gaps in the service system, it is unclear how this will be achieved.

Section 4

The Benevolent Society supports, without modification, Section 4 of the Bill, *Principles underlying this Act*, that is:

- (a) *every child is a valued member of society; and*
- (b) *the family has the primary responsibility for the upbringing and development of its children and should be supported in that role; and*
- (c) *every child is entitled to be protected from abuse, exploitation and discrimination; and*
- (d) *every child is entitled to form and express views and have those views taken into account in a way that has regard to the child's age and maturity; and*
- (e) *in decisions involving a child, the child's best interests are of primary concern.*

Section 9

In relation Section 9 of the Bill, *Functions and powers of Commissioner*, The Benevolent Society is very supportive of the proposed functions with a few recommended changes.

As stated previously, it is unclear how a Commonwealth Commissioner will be able to coordinate policies, programs and funding as expressed in sub-section (1), point (i) below.

- (i) co-ordinating policies, programs and funding which impact on children and young people, between federal, state, territory and local governments.*

Coordination across government is extremely complex particularly given differing legislation across jurisdictions. A more achievable role for the Commonwealth Commissioner may be one of promoting and monitoring coordination.

This point also does not capture the considerable role the non-government sector plays in supporting children, young people and their families.

Point (f) of this sub-section states that one of the functions will be:

- (f) promoting public education programs about, and ensuring strong investment in, early childhood development.*

While the early years are critical to long term positive outcomes for children, it is important that public education programs and investment is not limited to 'early childhood development'. There should be a focus on key developmental issues up to the age of 18, as appropriate, as well address broader societal factors which may be impacting negatively on children.

Section 10

Section 10, *How the Commissioner is to perform functions*, specifies that the Commissioner must:

- (e) consult with educators*

Consultation with educators is clearly important but should not be limited to this group. It would be beneficial to either include all key professionals who work closely with children and young people or replace this with 'experts/professionals working with children and young people'.

Other comments

Vulnerable children and young people

As already stated, research indicates there are sections of our society experiencing considerable disadvantage. A national Commissioner could make an important contribution to increasing options for vulnerable children to enjoy their human rights. The Benevolent Society strongly urges that the Bill acknowledges the need to focus on those who are most vulnerable, including:

- Indigenous children and young people
- Children and young people at risk of abuse and neglect
- Children and young people in the out-of-home care system
- Children and young people in detention centres
- Children and young people living with a disability
- Children and young people living in remote locations
- Children and young people who are carers.

Commissioners in other jurisdictions

It is important that the Commonwealth Commissioner does not just duplicate the work of existing State and Territory Commissioners. It would be beneficial to clarify the relationship and differing roles of the Commonwealth Commissioner in relation to the State/Territory counterparts.

For instance, a Commonwealth Commissioner could play a leadership role in driving a national shared agenda for change. The Commissioner could progress key national projects – such as data, research, information sharing and national consistency in critical areas, which was identified as an important issue in the National Framework for Protecting Australia's Children.

The Commissioner could also play an important role in monitoring the progress of key national initiatives and frameworks such as the above Framework.

5. Concluding comments

Australia needs to follow the lead of countries such as New Zealand, Britain, Norway and Sweden in providing children and young people with a voice at a national level, to ensure that we adequately fulfil our international obligations as a signatory to the United Nations Convention on the Rights of the Child.

As a signatory to the UN Convention on the Rights of the Child, Australia has a responsibility in upholding the full range of human rights – civil, cultural, economic,

political and social rights, which are essentially underpinned by four paramount principles:

- Non-discrimination in the applicability of children's rights
- The primacy of the consideration of the child's best interests
- The child's right to survival and development
- The child's right to participation in decision-making.

In establishing a Commonwealth Commissioner it is essential that the features identified by the UN Committee on the Rights of the Child as being essential to ensuring the role is effective and meaningful are fully adopted. That is:

- independence from government
- statutory authority and power, including security of tenure
- adequate resourcing
- accessibility to children, including establishment of a child-appropriate complaints process
- exclusive focus on children under 18 years of age
- ability to act proactively and reactively and to direct its own agenda.

ⁱ UNICEF, *Innocenti Report Card 9, The Children Left Behind: Inequality in Child Well-Being, 2010*.

ⁱⁱ Australian Research Alliance for Children and Young People (ARACY) *Report Card: The wellbeing of young Australians, 2008*.

ⁱⁱⁱ Australian Early Development Index website, www.rch.org.au/aed.

^{iv} Australian Institute of Health and Welfare, *Child Protection Australia, 2008-09*.

^v Commonwealth of Australia, *Protecting children is everyone's business, National Framework for Protecting Australia's Children, 2009-2020*.