

SENATE LEGAL AND CONSTITUTIONAL AFFAIRS COMMITTEE:
Commonwealth Commissioner
for Children and Young People Bill 2010

SUBMISSION

The Centre for Excellence in Child and Family Welfare as the peak body representing 98 organisations within the Children, Youth and Family Services sector in Victoria, strongly supports the establishment of an independent Commonwealth Children's Commissioner.

The Centre notes in particular Clauses 9, 10 and 11 of the Bill, which outline the role, powers and functions of the proposed Commissioner, and supports the intent of these Clauses. The Centre also applauds the Bill for taking as its central reference point the United Nations Convention on the Rights of the Child. We believe that Australia should be seen to uphold the Convention by more strongly and stringently applying the principles outlined within it. Our government should be seen to uphold, in law, a rights-based approach to all our children – both in mainstream society and those who are amongst the most vulnerable in our midst – such as children in the care of the State.

The Centre believes that a Commonwealth Children's Commissioner should have a broad brief across all issues concerning children and childhood, from universal services to targeted secondary and tertiary services. Currently in Victoria our Child Safety Commissioner's role is limited to children in out of home care or at least heavily involved with child protection. And in this role the Office is also limited - currently working as it does to negotiate and advocate on behalf of these young people, but without the formal capacity to call for information held within the Department of Human Services, or to compile and request action on cases that indicate systemic or thematic problems with the system.

The Victorian Child Safety Commissioner also does not have a means of operating a formal complaints management process: individual concerns are managed as and when they are brought to the Office's attention, and only with the resources available at the time.

In view of the clear links with States/Territories' Child Safety Commissioners/ Children's Commissioners, the Centre would advocate for a formal linking of these positions – all of whom currently operate in somewhat differing ways, having differing powers and levels of independence – under the auspice of the Commonwealth Children's Commissioner. This would concur with the intent of Clause 12 (2) relating to cooperation and interaction between the Commonwealth and the various State/Territory bodies, but also strengthen a network of independent commissioners around the country.

The Centre strongly supports the independence of the Commonwealth Commissioner and its reporting to Parliament, rather than a specific Minister. As such, and in view of our comments in the previous paragraph, we would also advocate for the same reporting line at State and Territory level – i.e.

State-based positions reporting to their parliaments, rather than to a Minister of the State.

Finally, as evidence to support the Centre's position, we would point out that the CREATE Foundation in Victoria (and no doubt in other States) are regularly contacted by young people in State care who have concerns which they are unaware of how to manage. These concerns include feeling the need to inform someone of friends or other young people in danger, or that they themselves are not being listened to on issues important to their case plan, and where attempts to talk to their case worker, or Child Protection worker have resulted in little action and provided little support.

Victoria's CREATE team also tell us that they receive frequent queries from carers, workers and occasionally even Departmental staff who want advice on the best thing to do for a young person or client where they can see decisions have been made that are not in the best interests of that young person.

An independent Children's Commissioner should have the capacity to assist with these individual concerns by communicating with State/Territory counterparts, as well as examining and recommending on issues of systemic concern. Furthermore it should have the power to investigate, resolve, and report on complaints about services provided to children in the protective system, examine whether their individual needs are being met in care, and represent the interests of individual children and young people, advocating on their behalf where they have no one else to do so.

In conclusion, as we hear from many sources¹, children and young people want to have their voices heard. The Centre is particularly pleased with the number of references in the Bill to consulting with, listening to and acting upon what children and young people have to say. It is important to note however, that the most vulnerable in our midst seldom have the capacity and confidence to speak out. The Office of any Independent Children's Commissioner must work closely with our most vulnerable children and young people to ensure that their voices are heard and their needs addressed.

¹ For example, McDowall, J.J. (2009). *CREATE Report Card 2009, Transitioning from Care: Tracking Progress*. Sydney: CREATE Foundation; *BeHeard: Feedback from children and young people about their experiences in out-of-home care (Hume and Southern Metropolitan Regions of Victoria)*. Victoria: CREATE Foundation 2009.