

SUBMISSION to SENATE INQUIRY ON:

**COMMONWEALTH COMMISSIONER FOR CHILDREN AND YOUNG PEOPLE
BILL 2010**

**A Bill for an Act to establish an independent Office of the Commonwealth
Commissioner for Children and Young People, and for related purposes**

January 2011

1. Introduction

The Multicultural Youth Advocacy Network (Australia)

The MYAN is a nationally recognised body that represents migrant and newly arrived young people, in order to advance their rights and interests. The MYAN is comprised of representatives from each of Australia's states and territories. These representatives are involved in multicultural youth issues at the policy or program levels in their respective states and territories.

The MYAN was established in 2005 in response to an identified need for a coordinated national advisory and advocacy network for multicultural youth issues. The issues and needs of multicultural young people are often overlooked as they are a sub-group of both the broader youth and multicultural sectors and underrepresented in the policy and advocacy work of both the government and non-government sectors. The MYAN is currently funded until July 2011 and auspiced by the Centre for Multicultural Youth.

While the MYAN has a focus on newly arrived young people, particularly those from refugee or humanitarian backgrounds¹, the term 'multicultural' includes international students and young people who were born in Australia to parents who settled in Australia as migrants or refugees².

2. About this Submission

The MYAN welcomes the opportunity to respond to the *Commonwealth Commissioner for Children and Young People Bill 2010*³.

This submission draws on the MYAN's breadth of experience working with young people from refugee and migrant backgrounds, their communities and the youth and settlement sectors.

Given the role and purpose of the MYAN, this submission has a focus on the impact of the legislation on Unaccompanied Humanitarian Minors, Unaccompanied Minor Asylum Seekers, and children of adults seeking asylum.

¹ That is, those arriving in Australia under the Refugee and Special Humanitarian Program.

² Often this group of young people are referred to as 'second generation' migrants.

³ The MYAN has also endorsed the AYAC submission to the Senate Inquiry on a Commonwealth Commissioner for Children and Young People Bill 2010

The MYAN welcomes this Bill and recommends that it is supported by Parliament. In particular, the MYAN commends the specific acknowledgement of the needs of children and young people in immigration detention and those awaiting immigration status resolution in Australia.

3. Key Arguments for the establishment of a Commonwealth Commissioner for Children and Young People

- **Australia's obligations under international law**

A Commonwealth Commissioner would better ensure that Australia meets its obligations under international law - in particular, the Convention on the Rights of the Child and the 1951 Convention on the Status of Refugees.

While the MYAN commends the recent Australian Government decision to expand the residence determination/community detention program as a more humane approach to those seeking asylum in Australia, children still remain in immigration detention centres. The evidence regarding the impact of detention on the health and wellbeing of children is well known⁴ and the Australian Human Rights Commission (AHRC) has raised concerns about the treatment of children in immigration detention on Christmas Island in its 2010 report⁵. Further, as the AHRC notes, the detention of children is a violation of the Convention on the Rights of the Child.

- **The importance of a National Commissioner for Children and Young People**

The establishment of a Commonwealth Commissioner for Children and Young People has been identified by a number of bodies and reports as a significant mechanism for better ensuring that Australia's children and young people have their human rights upheld, promoted and enjoyed. These include: the Australian Human Rights Commission (2010); COAG 's *National Framework for Protecting Australian Children* (2009); and the *Non-Government Report on the Implementation of the United Nations Convention on the Rights of the Child in Australia* (2005).

The MYAN has identified youth settlement and Unaccompanied Humanitarian Minors as policy priorities (*MYAN Briefing Paper*, August 2010) and recommends the establishment of a

⁴ See, for example *A last resort?, National Inquiry into Children in Immigration Detention, Australian Human Rights and Equal Opportunity Commission (HREOC)*, 2004.

⁵ Australian Human Rights Commission (AHRC), 2010 *Immigration Detention on Christmas Island*

Commonwealth Commissioner for Children and Young People to monitor and advocate for the human rights of unaccompanied minors. The MYAN considers unaccompanied minors as a particularly vulnerable group needing targeted resettlement support.

4. Key Recommendations in relation to the Bill

The MYAN recommends the following in relation to specific sections of the Bill:

Section 9

Division 2 - Functions and powers of Commissioner

9 Functions and powers of the Commissioner

9 (1) (a) providing national leadership in monitoring and advocating for the wellbeing of Australian children and young people

- Consistent with the Convention on the Rights of the Child, that “Australian children and young people” be replaced by ‘all children and young people living in Australia’. This would therefore ensure that the functions and powers of the Commissioner pertain to all children and young people regardless of citizenship or residency status. Young people whose residency status is unresolved (e.g. asylum seekers in detention or in the community) and those who have been granted a permanent visa but are not yet citizens, are a particularly vulnerable group of children and young people (because of their visa or citizen status).

9 (1) (e) in appropriate cases, acting as the legal guardian of unaccompanied children and young people who arrive in Australia without the requisite visa or other authority for entry into Australia

- That this be reviewed to ensure there are available resources, including relevant expertise, to adequately perform this function⁶.
- That clarification is required regarding the phrase “in appropriate cases”.
- Notwithstanding the above, the MYAN considers this proposed guardianship role and function as an important step in reviewing and reforming the current guardianship arrangements for unaccompanied minor children and young people seeking asylum in Australia⁷. The existing arrangements, where the Minister for Immigration and Citizenship, as guardian, is both the decision-maker in relation to immigration status

⁶ See also the Australian Human Rights Commission submission to this inquiry, p.10

⁷ See Refugee Council of Australia (RCOA) submission to this Inquiry, p. 2-3

resolution (and therefore detention or return), and also required to act in the best interests of the child presents a possible conflict of interest (regardless of whether the guardianship role is delegated).

9 (1) (i) co-coordinating policies, programs and funding which impact on children and young people, between federal, state and territory and local governments

- The MYAN welcomes this function and power as it is consistent with a number of MYAN policy recommendations - in particular, in relation to children and young people who arrive in Australia under the Unaccompanied Humanitarian Minor program. The MYAN advocates for a coordinated national policy and legislative framework for the delivery of the Unaccompanied Refugee Minor Program (i.e. support to this refugee minors in state care). This should include a review of state/territory care-based models and the legislative framework within which they operate, as well as mechanisms for ongoing monitoring.

10 How the Commissioner is to perform functions

In performing the Commissioner's functions, the Commissioner must:

(a) consult with children and young people in ways appropriate to their age and maturity

- That this statement also include consultation approaches appropriate to young people's "cultural and linguistic background and life experience". This would ensure that the Commissioner consults with young people (i) reflective of Australia's culturally and linguistically diverse youth population and (ii) acknowledging the need for particular consultation approaches with refugee, newly arrived and asylum seeking children and young people. Young people who have arrived in Australia through the Humanitarian Program, have 'refugee-like' experiences or are asylum seekers require particular consultation approaches that take into account their cultural background, pre-settlement experiences and, for asylum seekers, their unresolved immigration status.
- That the Commonwealth Commissioner for Children and Young People engage and utilize agencies and/or young people with expertise in consultation with multicultural young people, including the MYAN.

The MYAN welcomes this Bill and recommends that it is supported by Parliament.