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**Commonwealth Commissioner for
Children and Young People Bill 2010**

Children with Disability Australia
'A bigger voice for kids'

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Children with Disability Australia

Children with Disability Australia (CDA) is the national peak body that represents children and young people with disability and their families. The organisation is primarily funded through the Department of Families, Housing, Communities and Indigenous Affairs (FaHCSIA) and is a not for profit, community based organisation.

The organisation represents children and young people aged 0–25 as an advocacy body with the mandate of building respect, recognition and inclusion for ‘kids’ with disability. CDA works alongside families of children and young people with disability and has a membership of approximately 5000 members nationally.

Vision

To provide children with disability the opportunity to live meaningful and fulfilling lives within safe, supportive and appropriate environments. CDA achieves this vision by:

1. **Educating** national public policy-makers and the broader community about the needs of children with disability and their families.
2. **Advocating** on behalf of children with disability to ensure individual choices and the best possible support and services are available to them from government and the community.
3. **Informing** families about the rights and entitlements of the child with disability to services and support.
4. **Celebrating** the successes and achievements of children with disability.

CDA acknowledges the critical role that families play in providing the necessary care and support to children with disability and recognises their need to be supported in this role.

Guiding principles

Children the priority: that the safety and well-being of children with disability is paramount and consistent with Australia’s obligations under the Convention on the Rights of the Child and the Convention of the Rights of Persons with Disabilities.

Respect: for the views and interests of children with disability and their families.

Recognition: for contributions made by families to ensure the safety and well being of children with disability.

Inclusion: to ensure that children with all types of disability, from all cultural and religious backgrounds and different family structures are supported by the work of CDA.

Responsiveness: to ensure that full advantage is taken of strategic opportunities that arise from the political and social policy environment that benefit children with disability.

Collaboration: with relevant non-government, government and private sector partners to promote the interests of children with disability.

Transparency: within CDA’s governance structures, decision-making processes, financial expenditure and reporting activities.

A voice for children with disability

Children with Disability Australia was officially incorporated as a company limited by guarantee with ASIC in November 2009. CDA however is not a new organisation. The initial seeds of the organisation were planted in the 1990's. At that time, parents of children with disability were very concerned that they had no national voice. There was recognition that there was limited community awareness of children and young people with disability and that they were an insignificant part of the national political agenda.

A meeting of parent representatives from all states and territories was held in Melbourne in 2002. A decision was taken to proceed in establishing a national organisation. CDA was established because of the recognition of the real need to clearly and collectively communicate the lived experience of children and young people with disability.

This united voice is seen as an invaluable component to achieve:

- greater recognition of rights and equal opportunities for children and young people with disability
- increased community awareness of disability
- better coordinated and consistent levels and quality of service across different service jurisdictions
- provision of a vital link between the direct experiences of children with disability and their families to federal government and other key stakeholders
- acknowledgement of the significant role and importance of families in relation to children with disability.

Overview

Australia is a country which values the contribution of children and acknowledges that they need to be afforded specific rights and protection. This is reflected through general acknowledgement and enjoyment of the contribution of children in our community which most experience directly or indirectly through usual everyday experiences. The value, uniqueness and vulnerability of children is also acknowledged through the strong value the Australian society places on childhood development, education, provision of child specific services and the establishment of a statutory framework which offers protection and specific rights in areas of child protection, family law, and through the establishment of State and Territory Children's Commissioners. Australia, by also being a party to the Convention of the Rights of the Child and Convention of the Rights of Persons with Disabilities, acknowledges its commitment and obligations on an international level to children, including children with disability.

Despite the acknowledgement and protection provided to children generally in the Australian community, children with disability are still too frequently confronted with situations where they are subjected to discrimination, low expectations, limited resources and opportunities and poor quality support in most areas of their lives.

Many of the key issues confronting children with disability and their families are aptly documented in the 'Shut Out' (2009) report by the National People with Disabilities and Carers Council. Significant barriers to full participation in economic and social life were identified in the following areas: social inclusion and community participation; disability services; rights justice and legislation; income support and the cost of disability; employment; accommodation; families and carers; education; transport; health and wellbeing; built environment; disability services — workforce issues; aids, equipment and assistive technologies.

The lived experience of disability for children and their families involves a service maze which has developed over time into an ad hoc and crisis driven system.

It is common place that families of children with disability have to engage in robust advocacy or take legal action to ensure that their child is afforded the same rights and opportunities as other children.

Equally CDA has observed that families of children with a disability are often either unaware of their children's rights or are under the mistaken impression that to have a child with disability means accepting inadequate solutions that compromise their child's quality of life and undermine their rights for equal opportunities and participation. It is just seen as 'part of the deal'.

Some families tire from their ongoing battle to have their children's rights recognised. Families are often faced with having to continually advocate for their children's rights to access services, resources and opportunities. It is a time consuming and exhausting process. As a consequence, families are often forced to prioritise their issues of concern and acquiesce in some situations thereby forfeiting recognition of their children's rights or opportunities.

CDA strongly supports the establishment of a Commonwealth Commissioner for Children and Young People. It is envisaged that this office could greatly contribute to creating greater awareness of the inequities of participation and opportunities which presently exist for children with disability in Australia and to further progress these areas.

Comments Regarding the Proposed Bill

General comments

Reference to the convention on the rights of persons with disabilities

It is believed that the Bill should acknowledge the specific needs of children with disability. It is proposed that this occurs through reference to the Convention on the Rights of Persons with Disabilities (CRPD) of which Australia is a signatory. The CRPD articulates the necessity of addressing the environmental and social barriers which affect full and equal participation and remedies must be modelled according to the principles enshrined in the convention.

It is noted that specific reference is made to children in Article 3 stating ‘respect for the evolving capacities of children with disabilities and respect for the right of children to preserve their identities’.

Families

Article 23 of the CRPD states that, “State Parties shall ensure that children with disabilities have equal rights with respect to family life”. It is imperative that a child’s right to family is respected and supported. The role of the family and the usual role of parents as decision makers for their children should not be compromised because a child has a disability. Typically the level of decision making and dependence reduces as the child develops and ages. This trajectory can vary when a child has disability depending on the impact of their disability.

As with all children, unless there is evidence to the contrary, it must be acknowledged that parents are the legal decision makers for their children and as such respect that decisions will be made based on their beliefs, desires, preferences, knowledge and access to information.

It is the usual experience that families of children with disability are extremely strong advocates for their child, have an intimate knowledge and expertise regarding their child’s needs and wishes. The role of a National Children’s Commissioner should not negate this role but rather enhance and allow collaborative advocacy to occur which enhances the realisation of children’s rights and expression of their opinions and opportunities to participate.

Australian Human Rights Commission

It would be advantageous for the National Children’s Commissioner to sit within the existing structure of the Australian Human Rights Commission. This would facilitate collaborative work within shared jurisdictions and the existing complaints process could accommodate the proposed functions of a Children’s Commissioner.

Comments on Specific Sections of the Bill

Part 1 — Section 2 — No. 3 Object

2 (d) 'proactively involve children and young people in the decisions that affect them.'

It is imperative that consideration is given to how children whose disability has a significant impact on communication and/or cognitive ability can also be involved in decision making. In these instances the role of the family, in some instance another significant other, is imperative in articulating the needs and wishes of the child. Some children will require supported decision making and be dependent on others for identification and expression of their view but this should not preclude them from participating in decision making. This section of the Bill must incorporate children in these circumstances.

Part 2 — Division 2 — Functions and Powers of the Commissioner

Section 9 — No. 1 (h) 'intervening in legal cases involving the rights of children and young people'

It is unclear what 'intervening' would be and under what circumstances this would occur. This is seen as a particularly broad statement of function and further detail or definition should be provided

Section 9 — No 1 (i) 'coordinating policies, programs and funding which impact on children and young people, between, federal, state and local governments'

The distinction between Commonwealth and State/Territory Commissioners is not clear in terms of role definition, responsibilities and the method and feasibility of how the proposed national commissioner would coordinate policies, programs and funds between all levels of government. Further information and clarity is required regarding these issues.

Section 10 — 'How the Commissioner is to perform functions'

(a) and (b) could be incorporated into one point

(e) A definition of 'educators' should be provided

Thank you for the opportunity to provide a submission to the inquiry on the Commonwealth Commissioner for Children and Young People Bill 2010.

References

Commonwealth of Australia — National People with Disabilities and Carers Council (2009), *Shut Out: The Experience of People with Disabilities and their Families in Australia*.

Office of the United Nations High Commissioner for Human Rights Convention on the Rights of the Child. Viewed 5/6/2010. <http://www2.ohchr.org/english/law/crc.htm>

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