



## **Submission made by Julia Farr Association**

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

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## **Table of Contents**

<b>1.0 INTRODUCTION .....</b>	<b>2</b>
<b>2.0 OPENING COMMENTS .....</b>	<b>3</b>
<b>3.0 PROTECT AND PROMOTE THE RIGHTS OF CHILDREN AND YOUNG PEOPLE LIVING WITH DISABILITY .....</b>	<b>3</b>
3.1 <i>Include focus on meeting obligations under the United Nations Convention on the Rights of Persons with Disabilities.....</i>	<i>4</i>
- Recommendation 1 .....	5
3.2 <i>Include focus on supporting children and young people living with disability within the functions and powers of the Commissioner .....</i>	<i>5</i>
- Recommendation 2 .....	5
<b>4.0 INVOLVE CHILDREN AND YOUNG PEOPLE LIVING WITH DISABILITY IN DECISION MAKING AND CONSULTATION .....</b>	<b>5</b>
- Recommendation 3 .....	6
<b>5.0 CONCLUSION .....</b>	<b>6</b>

## 1.0 INTRODUCTION

The Julia Farr Association makes this submission to the Legal and Constitutional Affairs Legislation Committee's inquiry into the Commonwealth Commissioner for Children and Young People Bill 2010.

The Julia Farr Association and its predecessor organisations have been involved with the disability community for over 130 years. The Julia Farr Association is an independent, non-government entity based in South Australia that fosters innovation, shares useful information, and promotes policy and practice that support people living with disability to access the good things in life. We are not a conventional service provider – we deliver research, evaluation and information services that are anchored upon the stories shared by people living with disability, family members and other supporters. As such, we feel we are in a good position to offer comment and analysis without vested interest.

The Julia Farr Association believes that the present inquiry into the establishment of a Commonwealth Commissioner for Children and Young People is necessary to respond to the particular vulnerability of children living with disability to maltreatment<sup>1</sup> <sup>2</sup> due to factors such as:

- Insufficient social and community supports being available for the child and their family resulting in increased stress on the family unit<sup>2</sup>. The Julia Farr Association has identified through extensive consultation with the disability community using our **tellus**© disability survey<sup>3</sup>, that 89% of families who responded to the survey and provided informal support to a loved one living with disability aged under 18 years, highlighted that this had a direct impact on their lifestyle which led to stressful experiences;
- Insufficient financial resources available to the family unit<sup>1</sup>. Evidence suggests there is “a strong association between the prevalence of disability and low income”<sup>4</sup>;
- Children living with disability being perceived as easy targets due to impaired decision-making and communication barriers<sup>2</sup>;
- Children living with disability being reliant on others to provide the support they need<sup>2</sup>.

This inquiry is also timely in the current environment. There is national commitment on “improving life for Australians with disability, their families and carers”<sup>5</sup> through the National Disability Strategy. Further, there is international acknowledgement of the social

<sup>1</sup> Australian Institute of Health and Welfare 2009, A picture of Australia's children 2009, Cat. No. PHE 112, <<http://www.aihw.gov.au/publications/phe-112-10704/phe-112-10704.pdf>>.

<sup>2</sup> Hibbard, RA, Desch, LW, Committee on Child Abuse and Neglect, Council on Children With Disabilities 2007, ‘Maltreatment of children with disabilities’, in *American Academy of Paediatrics*, vol. 119, No. 5, pp. 1018 – 1025, <<http://aappolicy.aappublications.org/cgi/reprint/pediatrics;119/5/1018.pdf>>.

<sup>3</sup> Our qualitative and quantitative research with the disability community has included feedback from over 540 participants in our 2010 **tellus** survey (the survey is still open) - Information about the **tellus** survey can be found at: [http://www.surveymonkey.com/s/JFA\\_Living\\_with\\_Disability\\_Survey](http://www.surveymonkey.com/s/JFA_Living_with_Disability_Survey).

<sup>4</sup> Australian Institute of Health and Welfare 2004, *Children with disabilities in Australia*, AIHW cat. no. DIS 38, p. 44. <<http://www.aihw.gov.au/publications/dis/cda/cda.pdf>>.

<sup>5</sup> ‘2010-2020 National disability strategy: An initiative of the Council of Australian Governments’, p. 8, <[http://www.billsshorten.com.au/uploads/billsshorten/National\\_Disability\\_Strategy.pdf](http://www.billsshorten.com.au/uploads/billsshorten/National_Disability_Strategy.pdf)>.

disadvantage that children living with disability experience, and emphasis through the United Nations Convention on the Rights of Persons with Disabilities ratified by the Australian Government in July 2008, that measures are put in place to ensure “the full enjoyment by children with disabilities of all human rights and fundamental freedoms on an equal basis with other children”<sup>6</sup>.

This inquiry into the Commonwealth Commissioner for Children and Young People Bill 2010 provides the opportunity to assess ways in which the Australian Government can further its commitment to promoting and protecting the rights and needs of children and young people living with disability.

## **2.0 OPENING COMMENTS**

The Julia Farr Association supports the proposed Commonwealth Commissioner for Children and Young People Bill 2010 which seeks “to establish an independent statutory office of Commonwealth Commissioner for Children and Young People”<sup>7</sup>, as this would provide further protection and promotion of the rights of children and young people through:

- Ensuring their active participation in decisions that affect them;
- Monitoring the establishment of laws and coordinating policies, programs and funding nationwide that impact on their lives;
- Advocating for their needs, views and rights<sup>8</sup>.

We also support that the Bill has a strong focus on ensuring that Australia meets its international obligations under the United Nations Convention on the Rights of the Child (hereinafter referred to as the ‘UNCRC’)<sup>9</sup>.

However, the Julia Farr Association believes that the proposed Bill also needs to have a specific focus on:

- Protecting and promoting the rights of children and young people living with disability;
- Involving children living with disability in decision making and consultation using approaches that are not only appropriate to their age and maturity, but their abilities.

## **3.0 PROTECT AND PROMOTE THE RIGHTS OF CHILDREN AND YOUNG PEOPLE LIVING WITH DISABILITY**

In 2003, around 8%, or 317,900, Australian children aged 0 to 14 years were living with disability<sup>1</sup> with an additional 118,400 children aged 15 to 19 years living with disability<sup>9</sup>.

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<sup>6</sup> United Nations n.d., *Convention on the rights of persons with disabilities and optional protocol*, p. 7, <<http://www.un.org/disabilities/documents/convention/convoptprot-e.pdf>>.

<sup>7</sup> Commonwealth Commissioner for Children and Young People Bill 2010 (Cwth), p. 2.

<sup>8</sup> Ibid.

<sup>9</sup> AIHW 2009, *Australia's welfare 2009*, Cat. No. AUS 117, AIHW, Canberra - Table A4.1: Person aged 0-64 years with disability by age and sex, 2003.

These statistics, although dated, highlight the extent of the need to ensure the rights of children living with disability are appropriately promoted and protected.

As children living with disability are increasingly vulnerable to abuse and neglect<sup>1</sup> there needs to be a specific focus on ensuring they “enjoy a full and decent life, in conditions which ensure dignity, promote self-reliance and facilitate the child’s active participation in the community”<sup>10</sup>, as highlighted in the UNCRC. However, specific reference to enhancing the rights of children and young people living with disability is not included in the proposed Bill.

### **3.1 Include focus on meeting obligations under the United Nations Convention on the Rights of Persons with Disabilities**

The Julia Farr Association believes that inclusion of specific reference to meeting obligations under the United Nations Convention on the Rights of Persons with Disabilities (hereinafter referred to as the ‘UNCRPD’) in section ‘3 (3) Objects’ of the Bill is necessary to ensure the Australian Government also meets its obligations under this international convention. Articles of relevance include:

- *Article 7 - ‘Children with disabilities’* which makes specific reference to ensuring that the fundamental rights and freedoms of children are promoted with a focus on ensuring children are actively and appropriately assisted to express their views.
- *Article 16 - ‘Freedom from exploitation, violence and abuse’* which highlights that “States Parties shall put in place effective legislation and policies, including women- and child-focuses legislation and policies, to ensure that instances of exploitation, violence and abuse against persons with disabilities are identified, investigated and, where appropriate, prosecuted”<sup>11</sup>;
- *Article 23 - ‘Respect for home and the family’* which highlights that “States Parties shall ensure that children with disabilities have equal rights with respect to family life. With a view to realizing these rights, and to prevent concealment, abandonment, neglect and segregation of children with disabilities. State Parties shall undertake to provide early and comprehensive information, services and support to children with disabilities and their families”<sup>12</sup>;
- *Article 30 - ‘Participation in cultural life, recreation, leisure and sport’* which highlights that States Parties need “[t]o ensure that children with disabilities have equal access with other children to participation in play, recreation and leisure and sporting activities, including those activities in the school system”<sup>13</sup>.

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<sup>10</sup> United Nations 1990 ,*Convention on the rights of the child*, p. 7, <<http://www2.ohchr.org/english/law/pdf/crc.pdf>>.

<sup>11</sup> United Nations n.d., *Convention on the rights of persons with disabilities and optional protocol*, p. 12, <<http://www.un.org/disabilities/documents/convention/convoptprot-e.pdf>>.

<sup>12</sup> Ibid, p. 16.

<sup>13</sup> Ibid, p. 23.

**R1** – The Julia Farr Association recommends:

Inclusion of specific reference to meeting international obligations under the United Nations Convention on the Rights of Persons with Disabilities in section '3 (3) Objects' of the Commonwealth Commissioner for Children and Young People Bill 2010.

### **3.2 Include focus on supporting children and young people living with disability within the functions and powers of the Commissioner**

Section '9 (1)(c) Functions and powers of Commissioner' of the Bill highlights that a function of the Commissioner is to advance the status of children and young people including Indigenous children and other groups of children considered at risk.

The Julia Farr Association believes that this section of the Bill also needs to specifically reference 'advancing the status' of children and young people living with disability who are recognised as being increasingly vulnerable to maltreatment<sup>14</sup>. This would ensure further acknowledgement of the rights and needs of children and young people living with disability and also assist the Australian Government in meeting its obligations under the UNCRPD through the Commissioner.

**R2** – The Julia Farr Association recommends:

Inclusion of specific reference to advancing the status of children and young people living with disability in section '9 (1) (c) Functions and powers of the Commissioner' of the Commonwealth Commissioner for Children and Young People Bill 2010.

## **4.0 INVOLVE CHILDREN & YOUNG PEOPLE LIVING WITH DISABILITY IN DECISION MAKING AND CONSULTATION**

The proposed Bill emphasises that the Commissioner must encourage the participation of children and young people and consult "in ways appropriate to their age and maturity"<sup>15</sup>.

The Julia Farr Association believes that in order for the Commissioner to effectively consult with children and young people there also needs to be consideration of their abilities. Given that children and young people will vary widely in their capacity to understand and convey information, for example because of cognitive or communication issues, there needs to be consideration of the provision of responsive supports to assist children to make decisions and express their views.

<sup>14</sup> Watson, J 2005, *Child neglect. Literature review*, NSW Department of Community Services, Ashfield, [http://www.community.nsw.gov.au/docswr/assets/main/documents/research\\_child\\_neglect.pdf](http://www.community.nsw.gov.au/docswr/assets/main/documents/research_child_neglect.pdf).

<sup>15</sup> Commonwealth Commissioner for Children and Young People Bill 2010 (Cwth), p. 7.

This focus is reinforced in the UNCRPD which states that children are to be “provided with disability and age-appropriate assistance”<sup>16</sup> to realise their right to express their views on an equal basis with other children.

**R3 – The Julia Farr Association recommends:**

Section 10(a) of the Bill to be changed to include reference to abilities:

- ‘consult with children and young people in ways appropriate to their age, maturity and abilities’, so that all children and young people, including those living with disability, have the opportunity to express their views.

## 5.0 CONCLUSION

The Julia Farr Association asserts that through promoting the rights of children and young people living with disability within the proposed Bill, the Commissioner for Children and Young People will not only advance the status of *all* Australian children but assist the Australian Government to meet its obligations under both the United Nations Convention on the Rights of the Child and the United Nations Convention on the Rights of Persons with Disabilities.

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<sup>16</sup> United Nations n.d., Convention on the rights of persons with disabilities and optional protocol, p. 8, <<http://www.un.org/disabilities/documents/convention/convoptprot-e.pdf>>.