

15 December 2010

Committee Secretary
Senate Legal and Constitutional Committee
PO Box 6100
Parliament House
CANBERRA ACT 2600

Dear Sir / Madam,

Submission to the Inquiry into the *Commonwealth Commissioner for Children and Young People Bill 2010*

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

Save the Children Australia is a member of Save the Children International, the world's largest independent child rights development organisation, working in more than 120 countries towards a world in which every child attains the right to survival, protection, development and participation.

Save the Children Australia was established in Australia in 1920 as a not-for-profit organisation and has been running child-focused programs since the 1950s. We are based in Melbourne with offices and staff in every Australian State and Territory.

Save the Children strongly supports the establishment of an independent statutory Commonwealth Commissioner for Children and Young People in Australia.

General Comments

1. Internationally, a number of countries around the world including New Zealand, Norway, Sweden and England have markedly improved the situation of children and young people by establishing a national children's commissioner. For example, New Zealand's national children's commissioner, established 20 years ago, has made a significant contribution to preventing violence against children, inviting children to express their views on policies and laws that impact them and supporting important legislative changes, including the ban on corporal punishment in schools in 1990.
2. The need for an independent national children's commissioner is based, in part, on the fact that children are a vulnerable group requiring special safeguards and care including appropriate legal protection. They have little or no political power or influence on government agendas and limited access to complaint mechanisms, legal systems and courts. The establishment of a national children's commissioner to speak on behalf of children and represent their interests to government and policy makers would be a significant step forward towards the achievement of children's rights in Australia.

3. Although children’s commissioners currently exist in some Australian states and territories, their mandates and powers vary greatly – some take a broad focus on enhancing children’s wellbeing while others concentrate solely on child protection and safety. There are also major gaps in coverage for certain groups of children including children in immigration detention.
4. A national children’s commissioner dedicated to protecting children’s rights across the country could significantly improve the situation of children and young people through policy and law reform, legal proceeding, independent inquiries, research and public education and awareness.
5. More specifically, Save the Children believes a national children’s commissioner could:

a) Assist Australia to meet its obligations under international law

As a signatory to the UN *Convention on the Rights of the Child* (CRC), Australia has an international obligation to respect, protect and fulfil the rights of children. These commitments have not yet been fully met. In 2005, the UN Committee on the Rights of Child recommended that Australia should “strengthen its efforts to bring its domestic laws and practice into conformity with the principles and provisions of the Convention...”¹ The Committee also expressed concern regarding the lack of a national children’s commissioner and comprehensive national policy addressing children’s rights.² The establishment of a national children’s commissioner would support Australia’s legal commitment to undertake measures to implement the rights set out in the CRC.

b) Provide national consistency

Australia needs national leadership to ensure the well-being of all children and young people across the country. A Commissioner with a broad mandate could recommend measures to coordinate policies, programs and funding between different levels of government to ensure that all children in Australia, regardless of residence or citizenship, are treated equally and do not fall through gaps in differing or absent state or territory government policy.

c) Be an independent voice for children

Children have a right to be heard. The CRC recognizes the right of children to express their views and have them taken seriously in matters which affect them. A Commissioner could ensure that children’s opinions are taken into account in developing and reviewing policies and legislation. The role would both improve the quality of law and policy in Australia as well as facilitate children’s important participation in public life.

d) Represent and advocate on behalf of children

A Commissioner could represent and be a national advocate for children and young people. This would include supporting and intervening in legal cases involving the rights

¹ UN Committee on the Rights of the Child, 40th Session, *Concluding observations: Australia*. (CRC/C/15/Add.268), 20 October 2005, at para. 10.

² *Ibid.*, paras. 11 and 15.

of children and young people and ensuring that they have an effective means of redress when their rights are violated. This function would be particularly critical for children who have no real support or access to legal challenge or recourse such as unaccompanied children in immigration detention.

e) Monitor and Report

A Commissioner could monitor the welfare and well-being of children in Australia. He or she could also monitor laws, policies and practices impacting children and young people including the Australian Government's compliance with the CRC. As an independent office, a Commissioner should be required to report and make recommendations regularly to Parliament on the status of children in Australia.

Specific Comments

6. Save the Children commends Senator Hanson-Young and the Greens for initiating the *Commonwealth Commissioner for Children & Young People Bill 2010*. Our specific comments relevant to this draft legislation are below.
7. Save the Children strongly supports the intent of the legislation to:
 - a) Establish the Commissioner as an independent statutory office (Section 3(1)) with the Commissioner performing his or her functions without being under the control or direction of the Minister (Section 11(b)). It is imperative that the Commissioner is independent in the exercise of his or her duties and functions.
 - b) Apply the Commissioner's oversight and mandate to all children and young people in Australia, including children in every external territory, regardless of their citizenship or residency status (Section 9(3)(c)).
 - c) Restrict the Commissioner's mandate to focus on people below the age of 18 (Section 3(2)(a)). This is consistent with the legal definition of a child in the CRC which Australia has ratified.
8. However, Save the Children suggests the Bill could be further enhanced to ensure:
 - a) The Commissioner has security of tenure to ensure that he or she can carry out the functions and duties without fear of removal from office except in exceptional circumstances.
 - b) The Commissioner has a broad mandate to determine the agenda and address any issues impacting the lives of children and young people. In this regard, we recommend that Section 9 should have an additional function specifying that "without restricting any of the foregoing, the Commissioner can undertake any other function or activity he or she deems necessary for the fulfilment of his or her duties as Commissioner."
 - c) The Commissioner has the power to receive and investigate complaints of breaches of children's rights under the CRC, from children and young people or their

representatives, by implementing a child-specific complaints system which is accessible to all children and young people.

- d) The Commissioner has the function of monitoring Australia's compliance with the CRC.
 - e) The Office is adequately resourced by Government.
9. Further, we believe that the following aspects of the proposed legislation should be clarified or modified:
- a) Section 9(1) should include a function of the Commissioner to pay special attention to the needs, interests and rights of particularly vulnerable groups of children and young people including Aboriginal and Torres Strait Islander children and children in immigration detention.
 - b) Section 9(1)(a) should be modified to read "providing national leadership in monitoring and advocating for the well-being of *all children and young people in Australia*" rather than "Australian children and young people" to ensure that the legislative intent is consistent with Section 9(3) and not interpreted as only applying to children who are Australian citizens.
 - c) Section 9(1)(c) should be modified to include the monitoring and review of existing or proposed laws, policies, programs and practices that may impact the lives of children and young people. Section 9(1)(c)(iii) also requires clarification on whether the Commissioner can independently initiate research and inquiries and whether the results of such research and inquiries may be published. Clarification is also required regarding the Commissioner's reporting requirements to Parliament including the frequency and type of reporting and whether the Government must respond to the Commissioner's recommendations.
 - d) Section 9(1)(e) specifying that the Commissioner may act as the legal guardian of unaccompanied children and young people who arrive in Australia requires much greater consideration and scrutiny. Such a role would likely be a conflict of interest with the Commissioner's function to independently monitor, assess and report on the well-being of children and young people.
 - e) Section 9(1)(f) should allow the Commissioner to promote public education and awareness of the rights of children generally and not be limited to public education programs related to early childhood development.
 - f) Section 9(1)(h) should specify whether the Commissioner may intervene in all legal cases involving the rights of children and young people as the provision could allow the Commissioner to intervene in individual cases as well as cases where the systemic rights of an identified group of children are affected.
 - g) Section 9(i) should be modified to state that the Commissioner can recommend measures to coordinate policies, programs and funding between different levels of

government as the overall responsibility for the coordination of policies, programs and funding should rest with the Government and not the Commissioner.

- h) Section 10 should provide that the Commissioner must consult with non-government organisations providing services to children and young people.
- i) Section 10(e) should be clarified so that the Commissioner must consult with educators only on matters related to education rather than all matters affecting children and young people.
- j) Section 10(g) should be modified to read “refer any individual matters to the appropriate authority *where the Commissioner deems such referral appropriate*”
- k) Section 25 should be modified as it is not the role of the Commissioner to prepare reports on behalf of the Australian Government to the United Nations Committee on the Rights of the Child. The Australian Government alone is responsible for the preparation of the report which should not be delegated to an independent office whose independence would be undermined by taking on such a role. The Commissioner should however, prepare an independent report on Australia’s compliance with the CRC.

Conclusion

The establishment of a National Children’s Commissioner for Australia is an important and long overdue step to help build a society that both values and protects children and young people. It is also a role that the majority of Australians support. In a survey of nearly 1,200 people conducted by Save the Children in November 2009, 78 per cent of people wanted to see a role in the national capital for a person who stands up for the rights of children and young people.

Save the Children recommends that further consultation and discussion, including consultation with children and young people, be undertaken prior to the Bill being returned to the Senate for further debate.

Thank you for the opportunity to input this information to this inquiry. Should you require any further information, please contact Nicole Cardinal by phone 03 9938 2016 or email nicole.cardinal@savethechildren.org.au.

Yours sincerely,

[SIGNED]

Anna Schulze

Director, Policy, Research and Advocacy