

WEAVE (Inc)

Women Everywhere Advocating Violence Eradication (Australia)

Marie Hume
Secretary, WEAVE Inc
PO Box 380
Mannum
SA 5238

Commonwealth Commissioner for Children and Young People Bill 2010

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

Email: legcon.sen@aph.gov.au

15th November 2010

Dear Secretary

Please find attached WEAVE's submission to the inquiry into the Commonwealth Commissioner for Children and Young People Bill 2010

We would be pleased to provide oral evidence in support of the submission.

Yours sincerely

Marie Hume

Secretary

WEAVE (Women Everywhere Advocating Violence Elimination) Inc.

WEAVE Inc Australia

Women Everywhere Advocating Violence Eradication (Australia)

Women Everywhere Advocating Violence Eradication (WEAVE), formed in 2009, is a National Women's Alliance that aims to eradicate gendered violence (including sexual assault, domestic violence, stalking, sexual exploitation and trafficking). As a non-partisan coalition WEAVE brings together groupings that have sometimes worked separately from one another, such as sexual assault services, women's health services, women's legal services, domestic and family violence services, organisations working against trafficking. In drawing together key stakeholders that make up the 'violence sector' as well as survivors, and activist and interest groups, WEAVE embeds a wealth and diversity of experience and expertise within a single body.

WEAVE Vision

To ensure that all women and children are able to live free from all forms of violence and abuse.

WEAVE Values and Principles

HUMAN RIGHTS

WEAVE employs a human rights framework that recognises that gender violence is one of the most serious and widespread violations of fundamental human rights, in particular, the right not to be treated in an inhuman and degrading way, the rights to respect, physical, sexual and psychological integrity.

FEMINIST FRAMEWORK

WEAVE works within a feminist framework that recognises that gender violence is both a consequence and cause of gender inequity, embedded deeply within all levels of our society, and that efforts to end such violence must be accountable to women and promote women's empowerment and gender equality.

EQUITY, DIVERSITY & INCLUSIVITY

WEAVE is committed to representing and working respectfully with the diversity of women in Australia. WEAVE recognises, and seeks to advocate and lobby for, the particular and urgent needs of Indigenous women, women from immigrant, refugee and/or non-English speaking backgrounds,, women with disabilities, as well as the challenges faced by young women, older women and women in rural and remote areas.

WEAVE Objectives

- (a) To provide leadership and advocacy at state and national levels in relation to all aspects of gendered violence.
- (b) To bring together in a single body the key stakeholders concerned with all aspects of gendered violence in order to access and disseminate the wealth and diversity of knowledge within the sector as a whole.
- (c) To contribute to and monitor policies, legislation and programs which impact on women and children experiencing gendered violence.
- (d) To promote and prioritise equity of access to services for all women including Aboriginal women, Torres Strait Islander women, women from immigrant, refugee and/or non-English speaking background, women in rural and isolated areas, older women, young women and women with disabilities.
- (e) To promote greater community awareness of gendered violence and its personal and social consequences using community development and educational strategies.
- (f) To build and promote alliances and collaborative relationships with other key stakeholders and networks.
- (g) To promote, further develop and disseminate 'cutting edge' knowledge of gendered violence arising from practice, research, community and activism.
- (h) To connect with international developments in advocacy, research and practice concerning gendered violence.

Preamble

Commonwealth Commissioner for Children and Young People Bill 2010

The Explanatory Memorandum has stated that:

The Commonwealth Commissioner for Children and Young People Bill 2010 seeks to establish an independent statutory office of Commonwealth Commissioner for Children and Young People, to advocate at a national level for the needs, rights and views of people below the age of eighteen.

Along with promoting the rights of children and young people, the Commission would monitor and review laws, policies and practices which impact on service provision. The establishment of a Commonwealth Commissioner for children and young people will also help move the approach beyond a narrow focus only on neglect and abuse to encompass broader concepts of overall safety and wellbeing for children and young people.

As a signatory to the UN Convention on the Rights of the Child, Australia has a responsibility in upholding the full range of human rights—civil, cultural, economic, political and social rights, which are essentially underpinned by four paramount principles. By cementing our international obligations in legislation, the Bill provides a clear framework of minimum human rights standards to ensure the wellbeing of our children and young people.

The object of this Bill is to establish an independent Commissioner for children and young people to advocate on a national level for the needs, views and rights of people under eighteen; to monitor the development of laws affecting children and young people; coordinate related policies, programs and funding; and proactively engage children and young people in the decisions that affect them.

Some of the key functions of the Commissioner in relation to all children and young people in Australia include:

- Providing national leadership in monitoring and advocating for the well being of Australian children and young people

- Reviewing existing laws; proposing new policies; and conducting research
- Promoting and protecting the rights of children and young people in immigration detention, and acting as the legal guardian of unaccompanied minors who arrive in Australia without the requisite visa;
- Promoting strong education programs.

The role, responsibilities and function of the Commissioner and guidelines on how their tasks are to be carried out include:

- Consult with children and young people, their parents and guardians, and their educators;
- Adopt work practices that ensure the Office of the Commissioner is accessible to children and young people and encourages their participation;
- Consult with relevant agencies, bodies and organisations.

The Commissioner will also report to the United Nations Committee on the Rights of the Child

WEAVE (Inc) believes that the children of Australia should be entitled to fully exercise their human rights. The establishment of the office of a National Commissioner for Children and Young People can play a vital role in ensuring that children's rights are upheld.

Australia is a signatory to the United Nation's Convention on the Rights of the Child, which carry with it particular obligations to children under international law. There are aspects of these obligations which Australia has not implemented.

*“One of the gaps in implementation is the absence of a national Children's Commissioner. The United Nations Committee on the Rights of the Child has raised two concerns in this regard in its concluding observations on Australia's efforts to protect the rights of children. First, the Committee has expressed concern that there is no national commissioner with a specific mandate for monitoring children's rights. Second, while acknowledging the valuable work of the Australian Human Rights Commission in the area of children's rights, the Committee has noted that there is no unit devoted to children's rights at the Commission.” (Australian Human Rights Commission **An Australian Children's Commissioner**, Discussion paper – October 2010)*

National Advocacy

An important role of a national Children's Commissioner would be as an advocate for the protection and promotion of children's rights in Australia.

In particular, children at risk would have access to greater opportunities to have their voices heard and their concerns raised through the office of the Children's Commissioner.

The Australian Human Rights Commission has identified the following concerns for children:

- homelessness,

- children experiencing violence, bullying or harassment
- children who live with a disability, including those living with mental illness.
- Aboriginal and Torres Strait Islander children;
- children in out of home care;
- children in detention, including those in immigration detention;
- and children living in rural and remote areas of Australia.

These vulnerable children are most in need for a national, independent advocate listening, understanding and promoting their interests.

A Commissioner for Children would provide the important opportunity for children's views to be heard on issues that affect their lives and their human rights. A Commissioner for Children would also ensure that the voices of children are respected by those involved in decision and policy development as it relates to children's best interests.

Monitoring Role

One of the important roles of the Commissioner for Children could be monitoring current and future laws in relation to children; the development of policy and how it affects children; ensuring that children's rights are upheld; and that children's interests are taken into account in legal and policy decision-making and comply with the UN Conventions on the Rights of the Child.

The Human Rights Commission has highlighted some of the monitoring role that Commissioner for Children could be involved in. These include:

- reviewing proposed and existing laws, policies and resource allocations, and practices relating to children and young people

- making recommendations to relevant Ministers about laws which should be made or amended to ensure that the rights of children and young people are considered and protected
- conducting inquiries and reporting to Parliament about children's rights issues
- establishing ongoing dialogue with providers of public services to families, children and youth to ensure that services are delivered in a way that protects the rights of children
- advocating for effective data collection on children's health, wellbeing, development and participation in order to measure the impact of laws, policies and programs upon children and accurately monitor progress towards implementation of children's rights.

*(Australian Human Rights Commission **An Australian Children's Commissioner**, Discussion paper – October 2010p.5-6)*

A National Approach

Australia is in the situation where laws and policies in relation to children's rights and protections cur across state, territory and commonwealth jurisdictions.

State and territory responsibilities to children include education, health, welfare and child protection services.

The Federal government also has responsibilities in relation to children including child support, income support and family law.

It is reasonable to expect that the most important role for the National Commissioner for Children and Young People would be at the point at which state and federal systems overlap or at the point where poor coordination of state and federal responsibilities leave children vulnerable to poor outcomes. Children deserve to be protected from harm. In 2002, the Family Law Council first highlighted the significant problems between the two tiered system of state child protection authorities and the federal family law system.

AIFS (Moloney et al, 2007) report draws attention to the problems in the intersection of state and federal legal systems. Lawyers and family relationship sector professionals finding child protection systems difficult to engage with when there are concerns about risks to children (p.15). This has been a longstanding problem.

AIFS (Moloney et al, 2007) report states: *“However, it has been noted that when State and territory authorities become aware that a matter is proceeding in the federal family court, the case is not investigated, or if it is, only to a preliminary stage.”* (p. 75)

The Family Law Council (2009) has also recommended the need for improved collaboration across state/territory child protection agencies and family court Laing (2010) has also highlighted the need for improved responses from state-level agencies

The investigation and resolution of child abuse allegations in family law proceedings involve a complex interaction between the statutory child protection departments (responsible for investigating whether children are safe), the police (responsible for investigating crimes), the Directors of Public Prosecutions (responsible for bringing charges against perpetrators), and the criminal courts (achieving justice for both victims and alleged perpetrators when criminal charges are laid). However, in family law matters involving children, the mandate of the Family Court and the Federal Magistrates Court is to act in the best interests of children. This includes ensuring that children would remain safe under any proposed Orders for them to spend time with either parent.

Consequently, if a statutory child protection department investigates, and assesses that a child—who may or may not have actually been abused—is at risk of abuse by one parent, as long as the other parent is acting protectively (e.g., if they have separated from the potentially abusive parent or ensure that

the child is not left unsupervised), then the state has no grounds for intervention (and therefore, the notification would be coded as 'unsubstantiated'). In other words, a statutory child protection department's case outcome of 'substantiated' or 'unsubstantiated' does not necessarily equate to 'abused' or 'not abused'.

One of the most crucial rights of children is that of the right to protection from violence. This has been seriously compromised by the State/Federal intersection in child protection and family law.

Children's Right to be Heard

Children's right to be heard, to have their views taken into consideration in any decisions affecting them is outlined in Article 12 of the UNCRC. Statutory child protection authorities, the family law system and codes of ethics (e.g. Early Childhood Australia) have enshrined this article as a principle of practice. However, the methods for honouring this principle are not necessarily effective. "There is a lot more talking about children than talking to them"

The Office for the Commissioner for Children and Young People could provide a voice for children, ensuring that their opinions are expressed and heard.

A complaint process

The Office for the Commissioner for Children and Young People would also have the opportunity to establish a complaint process which would allow children and young people the opportunity to raise breaches of their rights. Such an office would thus have the ability to receive and investigate complaints thus addressing infringement of children's rights.

Court support and intervention

The Office for the Commissioner for Children and Young People would be able to advocate for and support children in any court processes and be able to intervene on their behalf in such court processes.

Promotion of Children's Rights

The Office for the Commissioner for Children and Young People would play a vital role in raising public awareness of children's rights. A major role would be to investigate and report on the progression of children's rights and on barriers that children face in achieving their rights.

Conclusion

The vision of WEAVE (Inc) is to ensure that all women and children are able to live free from all forms of violence and abuse. Not only are many Australian children exposed to and victimized by violence and abuse but they also face homelessness and little access to justice. A Commonwealth Commissioner for Children and Young People will provide the opportunity for these issues to be explored and addressed.

We strongly urge the establishment of an independent statutory office of Commonwealth Commissioner for Children and Young People,

Bibliography

Australian Human Rights Commission An Australian Children's Commissioner, Discussion paper – October 2010

Chisholm, R. 2009 *Family Courts Violence Review*, Canberra, Attorney General's Department.

Family Law Council (2009) *Improving responses to family violence in the family law system*. Canberra, Australian Government Attorney-General's Department.

Laing, Lesley (2010) *No way to live : women's experiences of negotiating the family law system in the context of domestic violence*.

South Eastern Sydney Illawawrra Area Health Service. NSW Health; St George Domestic Violence Committee; University of Sydney; Benevolent Society of New South Wales

Moloney, L., B. Smyth, et al (2007) *Allegations of family violence and child abuse in family law children's proceedings: A pre-reform exploratory study. (Research Report No. 15)*. Melbourne, Australian Institute of Family Studies