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**Submission to the Legal and
Constitutional Affairs Legislation
Committee, Parliament of Australia.**

**PO Box 6100
Parliament House
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Youth Legal Service is a community legal centre serving the young people of Western Australia. We are delighted with the prospect of establishing a Commonwealth Commissioner for Children and Young People. It is our view that the well-being and rights of children and young people requires political action at the highest level.

In 1990, Australia signed the United Nations Convention on the Rights of the Child (CROC), yet 20 years later there is little evidence to suggest that Australia has responded to CROC, thus, we believe that the timing for establishing a commission could not be better than right now. The Gordon Inquiry - the Inquiry into Response by Government Agencies to Complaints of Family Violence and Child Abuse in Aboriginal Communities – Putting the picture together (Western Australian Government, 31 July 2002), highlighted severe deficiencies in responses to very vulnerable children, being our indigenous children and as times change we witness the ongoing deficiencies across Australia in managing refugee children whilst their bids for asylum are investigated.

Furthermore, our national history is littered with examples of the abuse of children's rights as indicated in the Gordon Inquiry (2002), the Commission of Inquiry into Abuse of Children in Queensland Institutions, the National Inquiry into the Separation of Aboriginal and Torres Strait Island Children from Their Families (1997), and so on. What is clearly evident from these inquiries is the lack of processes, and an agency to coordinate policy development and service delivery for children and young people, and to advocate for children and young people as cited in various reports relating to the establishment of Children's Commissions, such as December 1997 NSW Children's Commission Green Paper, Australian Law Reform Commission and the Human Rights and Equal Opportunity Commission's inquiry Seen and Heard: Priority for children in the legal process, Defence for Children International Australia's discussion paper – Towards Taking Australia's Children Seriously November 1998, The Youth Affairs Council Of Victoria's proposal for a Children and Young People's Commission 2001, The National Children's and Youth Law Centre's discussion paper – Why Australia needs a commissioner for children March 1994 and NSW Legislative Council's Standing Committee on Social Issues Inquiry into Children's Advocacy September 1996.

1.2 CROC Obligations

The High Court Decision in the *Teoh Case 1995* suggests that the federal government is obliged to take CROC into account in decision making. The Human Rights and Equal Opportunity Commission has statutory responsibility for promoting CROC via its status as a declared instrument of the *Human Rights and Equal Opportunity Commission Act 1986*, however, there is so much more that needs to be done. The establishment of an Commonwealth Children's Commissioner provides the opportunity for the Australian government to respond in a concrete way to its CROC obligations, and furthermore, has the capacity to ensure that child oriented attitudes and rights are developed in society at large.

According to O'Reilly (the Commissioner for Children In New Zealand), children's rights ensure that the basic needs of children are met, (1995) and that children can move towards autonomy and independence as their capabilities evolve. As is consistently spelt out in CROC, parental rights equate to parental responsibilities, thus ensuring that children's rights are upheld.

(2) The Responsibilities of the Commission

2.1 Checks and balances

The need to provide a series of checks and balances in regards to professionals and others who have the capacity to make decisions about children is of the utmost importance. Such checks and balances will fall within the realm of a Children's Commission, and allows for the future development of national standards and benchmarks for the detention and care of vulnerable children and young people.

2.2 Independence

To safeguard against the potential for conflicts of interest, and to ensure that the Commission remains independent from political influence, we recommend its establishment as a statutory authority via an act of parliament, thus the Commission is independent from a Minister and reports direct to parliament. The need for independence and autonomy for the Commission is based on previous experience of such bodies in other jurisdictions being subsumed within particular government departments.

In some case, a Commission (or its equivalent) has been funded by a particular government department for the purposes of critiquing the operations of the very department that funds it. The risk with this scenario is that the Commission is vulnerable to political opinion and as such can be easily disbanded.

For example, the Children's Interest Bureau of South Australia was established within the Department for Family and Community Services, and reported to the Minister of Family and Community Services. The Bureau's mandate included informing the public about the rights of children and monitoring the policies of the Department for Family and Community Services. The Bureau was criticised for not being independent, and its Executive Officer noted that its location within the Department constrained the Bureau, as did the lack of definition around the powers of the Bureau and its lack of capacity to initiate inquiries.(Inquiry into Children's Advocacy,1996)

2.3 Powers of the Commission

Accordingly, the question arises as to the powers of the proposed Commission. It would be very important not to restrict the role to an adjudicative or investigative approach but rather free up the role to encompass comment on wider policy issues, thus allowing neither a legal or welfare approach to dominate the work of the Commission.

Indeed, Youth Legal Service recommends that the Commission does not get involved in the receipt of individual complaints or family conflicts. Such matters have the potential to bog down the Commission and can severely constrain the Commission in respect to the requirement to remain impartial whilst investigating complaints of this nature. Rather the role of the Commission should be to advocate for systemic (big picture) change in legislation, administrative procedures and policies, whilst maintaining a clear allegiance with children and young people.

2.4 Functions of the Commission

The Children's Commission should perform a number of discrete functions:

- Acting as a voice for children and young people in Australia.
- Promoting CROC in Australia as a means of improving the status of children and young people via increased understanding of the rights and needs of children and young people.
- Promoting the interests of children and young people to ensure government and non-government accountability in regards to monitoring and reviewing the adequacy and standards of children's services.
- Scrutinising Commonwealth legislation, policies and programs to ascertain the impact of such on children and young people, and providing advice on such to decision making forums.
- Regular consultation with government agencies, peak bodies and stakeholder forums.
- Facilitating research to promote best practice in relation to children and young people.

- Conducting inquiries into areas of concern for children and young people with the aim of affecting systemic change.
- Developing structures that enable children and young people to participate in governmental decision making, as a fundamental principle of natural justice, thereby creating a peer advocacy function within the Commission.

To carry out the aforementioned functions, the Commission must have the capacity to work across a number of professional areas - education, health, legal and social work, hence our preference for a commission rather than a commissioner. We believe that the role is multifaceted, involving the dissemination of information across the full gamut of children's services, thereby enabling the whole of government approach that is a critical component to enshrining children's rights into the national political spectrum.

Youth Legal Service recommends that consideration is given to developing a network of Commission staff across Australia to allow for local input on the special needs of young people in Aboriginal communities, children in detention, children from non English speaking backgrounds, and all children living in rural, remote and regional settings.

2.5 The Priorities for the Commission

With respect to the priorities of the Commission, Youth Legal Service recommends that the first priority of the Commission will be an audit of the key policy areas of health, education, justice and the care and protection of children. With respect to these policy areas specific areas of deficiencies in relation to the rights of children and young people include but are not limited to the following matters:

Health

- The health risks for children living in low socio economic circumstances because their needs for good nutrition and medical care are not a priority. That is, children have the right to a healthy lifestyle in order to achieve their fullest potential.
- That the health status of the majority of Aboriginal children is unacceptable.
- That mature young people have the right to access health care without parental permission.
- That training is provided, on a national level, to those working with young people to recognise the onset of mental illnesses.

Education

- That children and young people should have the right to appeal and representation within education processes.
- That many children and young people feel unsafe in schools due to the presence of bullying.

Justice

- That Aboriginal young people are over presented in the juvenile justice system.
- That alternative dispute mechanisms are made available to young people across Australia.
- That the majority of children and young people, in Family Court Matters, do not have representation.

Care and Protection

- That children and young people in the care and protection system are the most vulnerable and the most silent.

Pre-Requisites for a Children's Commission

Youth Legal Service recommends that an Act of Parliament be enacted to establish a Commonwealth Children's Commissioner. Such a Commission will;

- be apolitical,
- report direct to parliament,
- be independent of any government department or minister,
- and will carry out the functions listed under Section 2.4 of this submission.

Cheryl Cassidy-Vernon

Director

6 December 2010