

Monday 28 February 2011

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

Dear Sir / Madam,

Letter in support of the Australian Youth Affairs Coalition's joint submission in response to the *Commonwealth Commissioner for Children and Young People 2010 Bill*

The Youth Affairs Council of Victoria (YACVic) is the peak body and leading policy advocate on young people's issues in Victoria. Our vision is for a Victorian community that values and provides opportunity, participation, justice and equity for all young people. YACVic welcomes this opportunity to write a letter in support of the Australian Youth Affairs Coalition's (AYAC) joint submission in response to the *Commonwealth Commissioner for Children and Young People 2010 Bill*.

YACVic welcomes the establishment of a federal Commissioner for Children and Young People. As a member of AYAC, YACVic contributed to the submission developed by AYAC in collaboration with a number of organisations, including the peak youth organisations in New South Wales, Western Australia, Tasmania, South Australia, the Australian Capital Territory, Queensland, and Victoria.. YACVic has done significant policy work exploring and promoting the establishment of a Commissioner for Children and Young People in Victoria¹ and, in drawing from that work would like to make further comment, on a number of issues raised in the AYAC submission.

YACVic strongly supports the recommendations made in AYAC's submission in relation to the establishment of a national Commissioner for Children and Young People, in particular the following recommendations:

- S3(2)(b): Emphasis should be placed on making recommendations in addition to monitoring the development and application of laws affecting children and young people.
- S3(2)(a) & S5(1): Extend the age limit to 25, in line with the current '*National Strategy for Young Australians*'.

¹ YACVic 2001 report *Are You Listening Are You Listening to Us? The Case for a Victorian Children and Young People's Commission*, can be downloaded from the YACVic website at <http://www.yacvic.org.au/policy/items/2009/01/256894-upload-00001.pdf>

- S4(b): the term ‘family’ should be more clearly defined to avoid ambiguity and the potential for discrimination by exclusion.
- S8(2)(b): Ensure a Deputy Commissioner is appointed whose sole focus is Closing the Gap. S8(2)(b) should be amended to read ‘A Deputy Commissioner will be appointed under section 22 whose sole mandate is to represent the rights and interests of Aboriginal and Torres Strait Islander children and young people’.
- S9(1)(a): Amend statement to ‘all children and young people in Australia, including those who are seeking asylum’.
- S9(1)(c): ‘Amend statement to ‘Advancing the status of children and young people in Australia, including Aboriginal and Torres Strait Islander children and young people...’
- S9(1)(c): A separate item should be included to provide the Commissioner with the mandate to initiate reviews/inquiries.
- S9(1)(e): This item should be amended to ensure the workload of the Commissioner is not compromised.
- S9(1)(f): This statement should be strengthened to include all developmental stages of children, including the middle years (9-14 years) and later teenage years.
- S10(a)(b)(c): These points are too general and need clarification.
- S13(2): The recruitment process should involve young people.
- S25(3): The Commissioner should report directly to Parliament, as an independent officer of Parliament.

YACVic’s report, *Are You Listening to Us? The Case for a Victorian Children and Young People’s Commission (Are You Listening to Us?)*², considered the principles that should underpin such a Commission, as well as the duties and functions that a Children and Young People’s Commission should have if it is to best promote the rights and interests of children and young people in Victoria. In the development of *Are You Listening to Us?*, YACVic consulted with a range of individuals and organisations, as well as examined various models of Children and Young People’s Commissions in Australia and internationally.³

The report emphasised the importance of a Commission in “providing a vital mechanism to promote a ‘whole-of government’ approach on issues relating to children and government”⁴. Duties and functions considered desirable for a Commission included: to “involve and engage young people”, “review existing and proposed legislation”, “monitor policies and practices”, “report and make

² Youth Affairs Council of Victoria., *Are You Listening to Us? The Case for a Victorian Children and Young People’s Commission*, June 2001, pp. 1-22.

³ Youth Affairs Council of Victoria., *Are You Listening to Us? The Case for a Victorian Children and Young People’s Commission*, June 2001, pp. 1-22, 6.

⁴ Youth Affairs Council of Victoria., *Are You Listening to Us? The Case for a Victorian Children and Young People’s Commission*, June 2001, pp. 1-22, 4.

recommendations to Parliament”, “research crucial issues” and “initiate and conduct inquiries”⁵.

Further support for AYAC’s Recommendations

- *S3(2)(b): Emphasis should be placed on making recommendations in addition to monitoring the development and application of laws affecting children and young people.*

In *Are You Listening to Us?*, YACVic emphasises the need for a Commission for Children and Young People to be an independent office, “able to make fearless assessments of government and lobby for change without being subject to political pressures”.⁶ In order for a national Commissioner to best ensure the rights of children and young people in Australia are upheld, it is critical that the office be able to “examine and analyse existing and proposed laws, policies and practices as to their impact on children and young people and be proactive in lobbying for change”.⁷ The power to make recommendations would ensure that a national Commissioner was able to undertake such critical analysis of governmental laws and policies and put forward proposals as to how children and young people’s rights and interests might be better taken account of.

- *S3(2)(a) & S5(1): Extend the age limit to 25, in line with the current ‘National Strategy for Young Australians’.*

YACVic notes AYAC’s recommendation that the Commissioner consider the rights and interests of children and young people up to the age of 25 years. YACVic sees value in increasing the perspective of the Commissioner to consider young adults as well as children and young people under 18 years of age. In *Are You Listening to Us?*, YACVic notes that “many of the issues affecting children and young people are not restricted to those under the age of 18...”⁸. The report proposes that a “Commission...be responsive to issues occurring in networks of children and young people of varying ages”.⁹

- *S4(b): the term ‘family’ should be more clearly defined to avoid ambiguity and the potential for discrimination by exclusion.*

Are You Listening to Us? notes that “arguments against the establishment of a Children and Young People’s Commission typically relate to the fear that a Commission may undermine the role of the family”.¹⁰ However, the report notes that the “Convention on the Rights of the Child calls on governments to ‘respect the responsibilities, rights and duties of parents’ (article 5) and to recognise that

⁵ Youth Affairs Council of Victoria., *Are You Listening to Us? The Case for a Victorian Children and Young People’s Commission*, June 2001, pp. 1-22, 5.

⁶ Youth Affairs Council of Victoria., *Are You Listening to Us? The Case for a Victorian Children and Young People’s Commission*, June 2001, pp. 1-22, 14.

⁷ Youth Affairs Council of Victoria., *Are You Listening to Us? The Case for a Victorian Children and Young People’s Commission*, June 2001, pp. 1-22, 9.

⁸ Youth Affairs Council of Victoria., *Are You Listening to Us? The Case for a Victorian Children and Young People’s Commission*, June 2001, pp. 1-22, 15.

⁹ Youth Affairs Council of Victoria., *Are You Listening to Us? The Case for a Victorian Children and Young People’s Commission*, June 2001, pp. 1-22, 15.

¹⁰ Youth Affairs Council of Victoria., *Are You Listening to Us? The Case for a Victorian Children and Young People’s Commission*, June 2001, pp. 1-22, 10.

'parents or...legal guardians, have the primary responsibility for the upbringing and development of the child' (article 18.1).¹¹ Given the Convention on the Rights of the Child's strong emphasis on the importance of family in the lives of children and young people, YACVic supports AYAC's recommendation that the term 'family' be explicitly defined in a broad and inclusive way to prevent the "potential for discrimination by exclusion".¹²

- *S8(2)(b): Ensure a Deputy Commissioner is appointed whose sole focus is Closing the Gap. S8(2)(b) should be amended to read 'A Deputy Commissioner will be appointed under section 22 whose sole mandate is to represent the rights and interests of Aboriginal and Torres Strait Islander children and young people'.*

YACVic strongly supports this recommendation, as a measure that would assist the Commissioner's Office to maintain both cultural relevance to Aboriginal and Torres Strait Islander children and young people and the necessary focus required on the needs and experiences of Aboriginal and Torres Strait Islander Children and Young people given the significant disadvantage experienced within their communities.

- *S9(1)(a): Amend statement to 'all children and young people in Australia, including those who are seeking asylum'.*

YACVic strongly supports amending s9(1)(a) to 'all children and young people in Australia, including those who are seeking asylum', in order to ensure that a national Commissioner will monitor the wellbeing of all children and young people in Australia and advocate on their behalf.

- *S9(1)(c): A separate item should be included to provide the Commissioner with the mandate to initiate reviews.*

YACVic strongly supports AYAC's recommendation that "a distinct item for initiating reviews...be included in Section 9(1)(c)".¹³ In *Are You Listening to Us?*, YACVic noted the critical importance of a Commission for Children and Young People having "the power to initiate and conduct inquiries that relate to the status of children and young people in Victoria", as this power is "integral to evaluating and improving the extent to which children and young people enjoy their rights".¹⁴

- *S9(1)(e): This item should be amended to ensure the workload of the Commissioner is not compromised.*

YACVic notes that many organisations consider it to be a substantial conflict of interest for the Minister for Immigration to be the legal guardian of unaccompanied minors seeking asylum in Australia. While YACVic believes that the provisions regarding legal guardianship of unaccompanied minors seeking asylum in Australia

¹¹Youth Affairs Council of Victoria., *Are You Listening to Us? The Case for a Victorian Children and Young People's Commission*, June 2001, pp. 1-22, 10.

¹²AYAC's joint submission p. 11.

¹³AYAC's joint submission, p. 14

¹⁴Youth Affairs Council of Victoria., *Are You Listening to Us? The Case for a Victorian Children and Young People's Commission*, June 2001, pp. 1-22, 17.

and the Minister for Immigration must be reviewed, YACVic shares AYAC's concern about the resourcing of the national Commissioner if he or she is to have legal guardianship.

YACVic notes the critical importance of a legal guardian having the ability to act and make decisions in the best interests of the children for whom he or she is guardian. We refer to General Comment No. 6 (2005) of the Committee on the Rights of the Child regarding the role of a legal guardian of an "unaccompanied or separated child". The Committee notes that "*the guardian should be consulted and informed regarding all actions taken in relation to the child. The guardian should have the authority to be present in all planning and decision-making processes, including immigration and appeal hearings, care arrangements and all efforts to search for a durable solution*".¹⁵

Were the Commissioner to be given legal guardianship of unaccompanied minors seeking asylum in Australia, YACVic emphasises the importance of detailed consideration of the time and resources required for the Office of the Commissioner to fulfil the duties of legal guardianship. We submit that further consideration needs to be given to the resources required by the Office were it to be the legal guardian of unaccompanied minors seeking asylum in Australia, as well of the powers required by the Office to fulfil the duties and act in the best interests of the children for whom it is the legal guardian.

In addition, regarding workload and resourcing of a national Commissioner, *Are You Listening to Us?* also emphasises the importance that a Children and Young People's Commission having sufficient resources and independence so as to be "maintained through changes of government and policy...".¹⁶ YACVic highlights the importance of a national Commissioner being adequately resourced, in order for it to fulfil all of the functions and duties contained in Section 9 and work to advance and protect the rights and interests of children and young people in Australia.

- *S9(1)(f): This statement should be strengthened to include all developmental stages of children, including the middle years (9-14 years) and later teenage years.*

YACVic believes that it is critically important that a Commissioner for Children and Young people places equal focus on the developmental stages of the early years, 'middle years', adolescence and young adulthood. It is the experience in Victoria that the early years of childhood have received significant policy and research focus, with less attention directed at the other critical stages of young people's development.

The 2006 joint report by YACVic and VCOSS *Who's Carrying the Can? A report into young service gaps in Victoria* highlighted that '(a)dolescence and young adulthood are critical stages for emotional, social and physical growth and development, including brain development....It is a time during which young people can be particularly vulnerable and require appropriate support to ensure that they have every chance to reach their full potential.'¹⁷ The report also revealed however, that

¹⁵ Committee on the Rights of the Child, *Treatment of Unaccompanied and Separated Children Outside their Country of Origin*, General Comment No. 6(2005), Thirty-ninth session, 17 May-3 June 2005 at [33].

¹⁶ Youth Affairs Council of Victoria., *Are You Listening to Us? The Case for a Victorian Children and Young People's Commission*, June 2001, pp. 1-22, 15.

¹⁷ Youth Affairs Council of Victoria, & Victorian Council of Social Service. *Who's Carrying the Can? A report into youth service gaps in Victoria*, 2006, p7.

there are a range of gaps in current youth support services which need urgently to be addressed.

The need for a strong focus on the needs of 'middle years' children and young people aged 8-14 years is also increasingly acknowledged. In their submission to the NSW Parliamentary Inquiry into Children and Young People Aged 9-14 years, the NSW Commission for Children and Young People submitted that this age bracket has received "less attention from policy and research because the middle years are perceived as a less dramatic period of development."¹⁸ YACVic and the Inner City Regional Youth Affairs Network have explored these issues in more detail and advocated for stronger attention to the wellbeing and educational engagement of young people in this age cohort in a joint 2010 report *Mapping the Middle Ground: Supporting the Educational Engagement of Young People aged 10-14 years*.¹⁹

- *S10(a)(b)(c): These points are too general and need clarification (with regard to the participation of children and young people).*

YACVic's report, *Are you listening to us?* emphasises the importance of the Commission for Children and Young People "[having] the opportunity to provide direct input into the Commission's work...[to] ensure that their views are heard on all issues which affect them. Consultative mechanisms need to be accessible to all children and young people". Specific strategies proposed by *Are you listening to us?* include:

- 'state or national forums for children and young people where their concerns and the work of the Commission could be discussed'
- 'The setting up of advisory groups of children and young people to discuss priorities for the work of the Commission and the stance it could take on various issues'
- 'The establishment of specialist advisory groups (e.g. children with disabilities, children in care, etc.)'
- 'Dedicated telephone lines to provide a point of access and to provide expert referral and support'
- 'Email access and interactive homepage'
- 'Maintaining close contact with children and youth groups operating in various states and territories'
- 'Employing appropriate strategies to consult and involve children and young people in rural and regional areas'

- *S13(2): The recruitment process should involve young people.*

YACVic would like to highlight that involving children and young people in the recruitment and selection of children's commissioner roles is acknowledged as good practice internationally. In Scotland, this practice is imbedded in legislation pertaining to the establishment of the Commissioner for Children and Young People:

"The Commissioner for Children and Young People (Scotland) Act 2003 requires the commissioner to 'encourage the

¹⁸ NSW Commission for Children and Young People, 'Submission to the NSW Joint Parliamentary Committee on Children and Young People: Inquiry into children and young people 9-14 years in NSW, Submission no. 90, June 2008, pp. 1-23, 3.; see also NSW Parliamentary Committee on Children and Young People, *Children and young People Aged 9-14 years, in NSW: the Missing Middle*, Vol 1, Report No. 5/54, September 2009, 3.

¹⁹ This report is available for download from the YACVic website at <http://www.yacvic.org.au/policy/items/2010/11/356732-upload-00001.pdf>

involvement of children and young people in the work of the commissioner', including consulting 'children and young people on the work to be undertaken by the commissioner'. Children and young people are also actively involved in the recruitment of the commissioner."²⁰

Ultimately, *Are You Listening to Us?* notes that a Commission for Children and Young People would have the ability to “examine and analyse existing and proposed laws, policies and practices as to their impact on children and young people and be proactive in lobbying for change”, “undertake systemic advocacy on behalf of groups of children and young people who are particularly vulnerable and disempowered”, and “initiate and advocate best practice models of children and young people’s consultation and participation for all levels of government, business and nongovernment agencies”²¹.

YACVic welcomes the establishment of a federal Commissioner for Children and Young People. YACVic believes that a national Commissioner would assist to ensure that the rights and interests of children and young people in Australia are taken account of and upheld in the development of Australian policies and laws as well as provide children and young people with an increased ability to participate to ensure the furtherance of their human rights and interests.

We are happy to provide further information in relation to any of these issues should that be of assistance. Please do not hesitate to contact Jen Rose, Manager of Policy and Projects on 9267 3799.

Yours sincerely

Georgie Ferrari
CEO

²⁰ Action for Children, *The right choice: involving children and young people in recruitment and selection*. p. 7. Available for download from <http://www.actionforchildren.org.uk/uploads/media/29/7856.pdf>

²¹ Youth Affairs Council of Victoria., *Are You Listening to Us? The Case for a Victorian Children and Young People’s Commission*, June 2001, pp. 1-22, 4.