



9th December 2010

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

BY EMAIL: legcon.sen@aph.gov.au

Dear Colleagues,

**RE: INQUIRY INTO THE COMMONWEALTH COMMISSIONER FOR CHILDREN
AND YOUNG PEOPLE BILL 2010**

We thank you for the opportunity to provide a submission on the abovementioned Bill.

Background – preliminary consideration

The Aboriginal and Torres Strait Islander Legal Service (QLD) Ltd (“ATSILS”) provides legal services to Aborigines and Torres Strait Islanders throughout mainland Queensland. Our primary role is to provide criminal, civil and family law representation. We are also funded by the Commonwealth to perform a State-wide role in the key areas of: Law and Social Justice Reform; Community Legal Education and Monitoring Indigenous Australian Deaths in Custody. As an organisation which, for a number of decades has practiced at the coalface of the justice arena, we believe we are well placed to provide meaningful comment. Not from a theoretical or purely academic perspective, but rather from a platform based upon actual experiences. We trust that our submission is of assistance.

Introduction

We welcome the opportunity to make submissions on the establishment of a Commonwealth Commissioner for Children and Young People (hereinafter referred to as “the Commissioner”) and acknowledge the potential betterment that could be realised for some of the most vulnerable members of our society.

Our Comments

Firstly, we wish to express our support for a Commonwealth Commissioner for Children and Young People. It is now 21 years since the adoption of the Convention on the Rights of the Child (CROC) by the United Nations General Assembly. It is important that children and young people have a voice at all levels, including at a national and international level. Such is not only because of Australia’s obligations under the CROC, but because of their vulnerability; lack of political power and persuasion; as well as the important and valid role that they have to play in our communities. We acknowledge that at this point in time there is no single body in Australia capable of speaking on behalf of children and young people generally, and able to address Australia’s obligations under the CROC, despite the Convention being signed some 20 years ago. **We also submit that the Commission should report on Australia’s obligations in respect to other relevant Conventions which relate to children and young people.**

We submit that many Aboriginal and Torres Strait Islander children are amongst the most marginalised members of our society. Key warning indicators in areas such as health (in particular infant mortality), occur at a far higher rate for Aboriginal and Torres Strait Islander infants. It is important for the Commissioner’s role to be expansive in terms of the areas that are to be overseen in order to ensure a holistic approach in relation to children and young people. The most important aspect of the Commissioner’s role will be to safeguard the rights of children and young persons and to advocate and promote their rights and interests.

We view the role of the Commissioner as one that will cover diverse subjects, ensuring that the needs, views and rights of children and young people are acknowledged and presented in an appropriate manner to bring about change for

the betterment of children and young people. The Commissioner's role must be proactive, rather than simply reactive. Whilst we agree that the Commissioner should have the power to examine existing and potential laws and policies that affect children and young people (s 3(2)(b) of the present Bill), **a significant emphasis should be placed upon the related aspect of making suggestions and recommendations to relevant Ministers in respect of potential legislation or legislative amendments. It is submitted that should be specifically reflected in the functions and powers of the Commissioner at s 9 of the Bill.** The Commission will be in the best position to make these recommendations and should be anointed with the specific authority to conduct these tasks. In this regard, it is noted that at this time the Bill only allows for the Commissioner to "monitor the development and application of laws affecting children and young people" (s 3(2)(b) of the Bill) and to "co-ordinate related policies, programs and funding across Australia, which impact on children and young people: (s 3(2)(c) of the Bill).

Independence of the Commissioner from Government is integral to the success of the role. It is inevitable that the Commissioner will at times criticise the actions, policies and practises of Government (or those in opposition). The present Bill goes some way to allowing for independence in terms of the appointment of the Commissioner by the Governor-General (s 13(1) of the Bill)). The wording in the Bill (especially s 11 of the Bill) indicates an understanding of the importance of an independent Commissioner.

We also submit that the challenges that the Commission focuses upon **must be determined by the Commissioner** him/herself. Although, the Government or Parliament could of course provide feedback to the Commission on what it perceives to be relevant issues.

The Commission must be adequately resourced and we suggest this should be at the hands of Parliament, rather than Government. Any budget must align with functions and responsibilities of the Commissioner. The Commission should be able to decide upon the allocation of its funding and resources. Adequate funding and

even greater levels of funding in the initial stages will be required for the implementation and promotion of the Commission. Appropriate funding is also essential for people to gain an understanding of the Commission and its functions, as well as for the Commission to produce quality work and instil faith in the community through quality service provision. Given that the relevant client focus is children and young people, the Commission must use innovative and more sophisticated means to enable children and young people to become aware of the Commission and its functions and to access its services. (for example, via SMS messaging).

In terms of accessibility by Aboriginal and Torres Strait Islander children and young people, the Commission must be culturally appropriate and culturally competent. Such includes being staffed at appropriate levels (and numbers) with Aboriginal and Torres Strait Islander staff. This is particularly important given the extremely high level of disadvantage on most indicators, experienced by many unborn babies, children and young people of Aboriginal and Torres Strait Islander background.

We acknowledge and support the present functions and powers of the Commissioner in the Bill, but suggest that additional functions and powers should be included. **We recommend that due to the high level of disadvantage, the Bill should include a provision (along with (at s 9(1)(c)) that the Commissioner is to place priority in regard to the needs of children and young people who are particularly disadvantaged and/or particularly vulnerable, including Aboriginal and Torres Strait Islander children and young people.**

Also, given the objects at s 3 of the Bill **we also recommend that the following be included as functions and powers of the Commissioner:**

- **examine new and existing legislation and policy affecting children and young people to ensure that children and young peoples rights are respected;**
- **make suggestions and recommendations in respect to potential legislation or legislative amendments that could assist children and**

young people; and

- **providing public education on the rights of children and young people - targeting those most in contact with children and young people, including parents, schools, early childhood centres, youth workers, etc.**

One of the issues that might potentially limit the effect of the Commissioner's role is that many areas pertaining to children fall within the jurisdiction of the States and Territories. Although the Federal Government is a signatory to various international conventions, protocols and the like, the significance of States and Territories in key areas is undeniable. One option would be to consider including as a function of the Commissioner **the ability to receive complaints from and/or on behalf of children and young people in regard to alleged breaches of their human rights; to investigate such complaints; and (where appropriate) to advocate on their behalf.**

Further, given the significance of States and Territories as key influential "players" – we submit that recommendations or feedback from the Commissioner should be incorporated as a **standing agenda item at SCAG Meetings.**

Such would also ideally position the Commissioner whereby he or she could seek to influence Commonwealth, State and Territory Governments in relation to **"national" best practice models.** That is, by investigating what does and does not work – make recommendations for standardised best practices which could (potentially) be adopted across the nation.

We acknowledge the importance of the Commission's role for the betterment of children and young people as a group, but note that there will always be individuals or classes of children and young people who are disadvantaged by laws and policies, requiring an avenue to address these issues. Even though there might be jurisdictional hurdles in respect to responding to complaints, the Commissioner should play a role in ensuring that violations of children and young people's rights are addressed by the appropriate bodies through appropriate mechanisms.

In addition to the **above we also recommend that the Commissioner have the power to conduct inquiries and report to Government on any issues relating to children and young people's rights.** We note that the Australian Human Rights Commission has conducted a number of inquiries and written detailed reports on issues affecting children and young people in the past, but suggest that such inquiries would be better conducted by a specialist Commission. In order to effectively conduct inquiries the Commission will require **the power to access files and records from different department; to require the production of documents etc.** All inquiries and reports should also contain findings and recommendations and be provided to Government (and via Government, to Parliament itself).

Once again I thank you for the opportunity to make submissions on the establishment of a Commonwealth Commissioner for Children and Young People and wish you well in your deliberations. I also take this opportunity to acknowledge the invaluable assistance provided to me by Ms Fiona Campbell (Law Reform – Cairns Office) in compiling our submission.

Yours faithfully,

Shane Duffy

Chief Executive Officer