



UNITINGCARE NETWORK SUBMISSION

to the

SENATE COMMITTEE PUBLIC INQUIRY

into the

**COMMONWEALTH COMMISSIONER for
CHILDREN and YOUNG PEOPLE BILL 2011**

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Introduction

The UnitingCare network is one of the largest providers of community services in Australia providing services to over 2 million Australians each year, employing 35,000 staff and 24,000 volunteers nationally. A major component of our service network focuses on working with children, young people and families. UnitingCare services are delivered on the premise that everyone has the right to live a decent life, and we prioritise supporting families and communities to contribute to every child in Australia getting access to the means an opportunity for the best start in life and the best chance to fulfil their potential.

This submission represents the views of services in the UnitingCare network that provide services to children, young people and families in communities in every state and territory in Australia.

UnitingCare agencies have a strong presence as providers of services and advocates for children in care that range from respite, temporary OOHC and re-unification programs to foster, residential and kinship care. Specialist wrap-around support services that are specific to the needs of children in care, such as counselling, education assistance and aftercare, are also provided by the UnitingCare network.

Overall Commentary on the draft legislation

Over the past 15 years, and particularly since Australia became a party to the United Nations Convention on the Rights of the Child (CROC), there have been ongoing calls for the establishment of some form of organisation at Commonwealth level to advocate for children and young people. UnitingCare Australia supports the establishment of a Commonwealth Commissioner focussed on Children and Young People because of the need for an independent national entity to investigate, analyse, monitor, evaluate and advocate on issues that affect the wellbeing of Australia's children and young people.

A national level independent advocate for children's rights is necessary because:

- children and young people, while being a large population group, are a uniquely uninfluential group as a result of their age and lack of access to political power;
- monitoring of Australia's compliance with the Convention of the Rights of the Child, and other international legal instruments to which we are a signatory is necessary in order to be clear on the progress made towards implementing our international obligations;

- children and young people's voices need to be sought and actively influence the development of policies and program across Australia;
- research about the impact of early experiences, the role of early intervention and prevention and the possibilities of pathways in reducing abuse and neglect, preventing crime and improving educational outcomes for children is so compelling that a strong lobbying presence with responsibilities across portfolio areas is crucial. A Commonwealth Commissioner for Children would have a vital role in ensuring that such research shapes policy and service delivery in areas such as health, community services, juvenile justice, child protection, income support and education;
- the various State and Territory Commissioners operate differently and independently from each other, where they exist, and they are not truly independent from their State Governments. There is need for a national agency to provide overall leadership and coordination, and ensure a coordinated national approach to policies, programs, services and initiatives.

Operationalising the role of the Commonwealth Commissioner for Children and Young People

We envisage that the Commissioner working as an independent statutory officer, resourced and supported to undertake Inquiries, review legislation and make recommendations. The Commissioner would also need the authority to ensure that the recommendations are responded to by government in a public and timely manner.

The Commissioner should have the capacity to make public reports to government on any areas of potential or proven non-compliance with acceptable standards of human rights in regard to children and young people by both government authorities and non-government agencies. This non-compliance may arise through the complaints system within the Human Rights Commission or through pro-active identification by the Commissioner or their staff of areas of potential systematic abuse. In this role, the Commissioner would proactively monitor and identify areas of potential human rights abuses against children and young people, which may be the result of policy or institutions.

However, rather than working as a distinct Commissioner for Children and Young People, we envisage the Commissioner operating under the auspice of the Human Rights Commission. This Commissioner would subsume relevant aspects of the Commissioner

responsible for Age Discrimination, and be supported by the resources of the Commission, including the human rights complaint system.

It is likely that this would also reduce the cost of operations undertaken by the Commissioner. However, it is essential that the Commissioner for Children and Young People is resourced and supported to undertake independent inquiries, review legislation and make recommendations to Federal Parliament and Government Departments. We believe this is best achieved under the auspices of the Human Rights Commission.

In order to have a Commissioner for Children and Young People under the auspice of the Human Rights Commission, it would be necessary to amend the Australian Human Rights Commission Act 1986 and the current Bill.

In order for the Commissioner to effectively represent Australian children and young people we recommend the establishment of a Parliamentary Committee on Children and Young People.

We are specifically interested in ensuring oversight and leadership on:

- Australia's adherence to the Convention on the Rights of the Child;
- The National Framework for the Protection of Australia's Children, and various elements of this, for example the development and implementation of the national out-of-home-care standards;
- The protection and promotion of the interests of children and young people in immigration detention, juvenile detention and in out-of-home care, enhancing the protection of children and young people's rights and entitlements, as well as supporting Government and service providers to meet standards of care;
- The identification of systemic barriers to enhancing the health and wellbeing of Australia's children and young people, particularly those who come from communities or areas that are particularly disadvantaged or at risk;
- The provision of a coordinated national approach to policies, programs, services and initiatives, including across portfolio areas and across state boundaries (including overseeing State legislation and investigating State decisions about outcomes for children as necessary);
- Conducting independent reviews and inquiries, which may be beyond the role and scope of the state-based Commissioner, Child Guardian and/or Ombudsman.
- The work of State and Territory Commissioners are constrained by the limits of the Acts under which they are constituted, and tend to focus on promoting the interests of all children rather than having a specific focus on those children who are most

disadvantaged or marginalised. We believe the Commonwealth Commissioner should have a strong focus on children at risk of lifetime disadvantage.

The role of a Commonwealth Commissioner for Children and Young People in Australia's federal system of government

Each state in Australia has differing roles and responsibilities for its Children's Commissioner and/or Children's Guardian and each of these positions is enacted through state legislation.

The roles and responsibilities of the Commonwealth Commissioner need to be clearly defined with regard to the State/Territory Commissioners for Children/Child Guardians. Each of these statutory officers have different responsibilities and legislative frameworks that guide their operations.

For example, some state and territory Commissioners do not have the capacity to review or investigate legislative and institutional breaches of children and young people's rights. In these circumstances it would be appropriate for the Commonwealth Commissioner to receive information from state Commissioners where appropriate in order to undertake this role.

Another concern is that some jurisdictions do not have an equivalent Commissioner for Children and Young People. For example, in South Australia there is a Guardian who has a comparatively limited scope of authority. UnitingCare Australia would like to see how children and young people in these jurisdictions will have their interests represented to and overseen by the Commonwealth Commissioner.

As the state and territory Commissioners meet regularly to discuss issues related to child protection, children and young people's rights and advocacy campaigns around these issues, it would be appropriate for the Commonwealth Commissioner to attend these meetings and receive information and advice.

Specific comments on the draft legislation

UnitingCare Australia agrees with Part One, Section Three - the Object of the Act - which outlines the broad objectives of the Commissioner, and Section Four, which states the principles underlying the Act.

Part Two, Section Nine identifies the functions and powers of the Commissioner.

UnitingCare Australia is largely in support of these functions, but would like to make

reference to a number of the specific functions, and note what we believe are omissions or concerns:

(a) refers to “*providing national leadership in monitoring and advocating for the wellbeing of Australian children and young people*”. While this would cover such initiatives as the National Framework for the Protection of Australia’s Children, and various elements of this such as the development and implementation of the national out-of-home-care standards, we would like to see this specifically listed as a function in the Bill under this point.

(d) refers to “*promoting and protecting of the rights of children and young people in immigration detention, or whose parents are in immigration detention*”.

We believe that the Commissioner should also promote and protect the rights of children and young people in State care: in Out-of-Home-Care and Juvenile Detention, and would like to see these listed as two separate functions specifically in the Bill. While these are State responsibilities, there is need for an independent national body to oversee State legislation and decisions about outcomes for children in these areas.

(e) refers to the Commissioner acting as a legal guardian of unaccompanied children. This is a role of Government, and is currently generally delegated to a Minister. Giving the Commissioner this role potentially compromises the independence of the Commissioner. It could prove problematic for the Commissioner to advocate independently for an individual child/young person’s interests if they also have a duty to provide guardianship and may be compromised in that role as a result of capacity or specific laws governing how such children are to be treated. This needs to be carefully considered in the Bill.

Point (i) refers to the Commonwealth Commissioner co-ordinating policies, programs and funding which impact on children and young people, between federal, state, territory and local governments. There are no details around this, and this is a complex and political area.

While the role of the Commissioner regarding enhancing the protection of children and Young People’s rights and entitlements is clearly stated, it is also important that the Commissioner is resourced to support Government agencies and other service providers to meet standards of care.

Part 4, Section 26 discusses the presentation of the Commissioners Annual Report to parliament. The report currently details. “*the actions of the commissioner and their office during the year*”.

UnitingCare Australia would like this section amended to include information and commentary on the following issues in the Commissioner's Annual Report:

- A quantitative and qualitative analysis of the status and progress of children and young people as a vulnerable group in Australia, with attention paid to those groups of children and young people facing multiple vulnerabilities and significant barriers to fulfilling their potential;
- Progress or barriers to progress on the rights of children and young people, including through key Commonwealth Government policies – Protecting Children is Everyone's Business - National Framework for Protecting Australia's Children, The Road Home – A National Approach to Reducing Homelessness, Belonging, Being and Becoming – the early years learning framework, Investing in the Early Years – A Early Childhood Development Framework and the Australian Government Compact with Young Australians – National Partnership on Youth Attainment and Transitions.