



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

17 December 2010

Dear Sir/Madam

Re: Submission to the Senate Inquiry into the *Commonwealth Commissioner for Children and Young People Bill 2010*

The South Australian Council for the Care of Children appreciates the opportunity to provide a submission to the Inquiry, and thanks the Secretariat to the Inquiry for the extension of time afforded to the Council to allow it to do so.

The Council was established by legislation in early 2006 and is an independent advisory body reporting directly to the Minister for Families and Communities in South Australia. The Council's purpose is:

- to keep under review the operation of the *Children's Protection Act 1993* and the *Family and Community Services Act 1972* so far as it affects the interests of children and young people;
- to provide advice to the government and promote the rights and interests of children and young people and report on how children and young people are faring in this State;
- to advocate for or on behalf of all South Australian children and young people, including Aboriginal and Torres Strait Islander children and young people, children and young people with disabilities, and children and young people under the Guardianship or in custody of the Minister for Families and Communities;
- to inform the South Australian community about the best care and support for children and young people.

The Council for the Care of Children would welcome the establishment of a national Children's Commissioner. South Australia currently is the only jurisdiction without a Children's Commissioner and to date, the State Government deems the Council for the Care of Children to be the body which fulfils aspects of this role in South Australia.

However, the Council does not have the legislative authority nor the resources and capacity to advocate on behalf of individual children and young people, nor to fulfil many of the other functions of a Children's Commissioner. The Council is not resourced to conduct research and has limited capacity to examine and make recommendations concerning legislative and policy change to ensure the rights of children and young people are considered and protected.

Despite this, the Council has a strong commitment to its advocacy and monitoring roles and to increasing the participation of children and young people in decision making, community planning and design, and policy development in South Australia. The Council also has an interest in the capacity building of families with infants and children to raise awareness of the importance of the early years on the development of the child across all life domains. Other areas of focus for the Council currently are building child and youth friendly communities, better supporting children who are disadvantaged (Aboriginal and Torres Strait Islander children, those living with a disability and their siblings, those under guardianship or in the custody of the Minister, and young carers) and

promoting effective services for vulnerable families and children living in socioeconomically disadvantaged circumstances.

The establishment of a national Children's Commissioner would support and enhance the work of the Council for the Care of Children in South Australia, to advance the rights and wellbeing of children and young people in this State and indeed, across the nation.

Please find the Council's more detailed comments on the *Commonwealth Commissioner for Children and Young People Bill 2010* attached.

With kind regards,

Yours sincerely

Dr Diana Hetzel

Chair

The Council for the Care of Children

Submission regarding the *Commonwealth Commissioner for Children and Young People Bill 2010*

December 2010

Overview

The Council agrees with the view of the Australian Human Rights Commission that, whilst Australia can be a great place to live for children and young people, there remains a significant number who do not enjoy the basic human rights of shelter, adequate food and material support, protection from harm and abuse and who are being denied the opportunity to grow and be the best they can be.

The Council also believes that in general, because of the perception that all Australians enjoy a high standard of living under a democratically elected government, the matter of the rights of children and young people to contribute fully as citizens tends to be overlooked, or assumed. Adults, especially those who are in positions to influence decision-making concerning policies and programs which affect the health and wellbeing of children and young people, need to work actively to promote their greater inclusion.

The Council agrees that a national 'independent body with the power and the mandate to listen to, understand and advocate for children in Australia would make an important contribution to the protection and promotion of children's rights in Australia.'¹ The Council would seek to work collaboratively with a national Children's Commissioner to advance the rights of children and young people in South Australia, should one be appointed.

Like many children in Australia, there is a growing group of children and young people in South Australia who are not faring well. For example, the Guardian for Children and Young People in South Australia, Ms Pam Simmons, in her latest Annual Report² provides the following information:-

- There is a '33% rise since 2004-05 in notifications of concern about children and a 52% rise in the number of children in state care over that same period.
- In South Australia, in a class of 17 and 18 year olds, more than one in four of these young people are likely to have been the subject of a child abuse or neglect report.
- The child protection and alternative care expenditure in South Australia has increased 83% in the five years to 2008-09 with most of this in the provision of alternative care. This 2008-09 expenditure is still only 89% of the national average spent per child because South Australia started from such a low base.
- The expenditure on intensive family support services remains low, at \$3.6m in 2008-09. Real expenditure per child in South Australia on intensive family services in 2008-09 was only 20% of the national average.

¹ Australian Human Rights Commission, October 2010, 'An Australian Children's Commissioner' Discussion paper.

² Guardian for Children and Young People Annual Report 2009-10, page 4.

These statements from the Guardian highlight some of the reasons why children and young people need a powerful advocate for their rights and interests. Whilst the Council does all within its limited resources, working in partnership with a national Children's Commissioner would provide a strong foundation and network for the Council to improve the lives of those children and young people in South Australia, especially those for whom life is a challenging struggle.

Specific comments

Division 2: Section 9 - Functions and powers of the Commissioner

- (e) The Council does not support the Commissioner acting as the legal guardian of unaccompanied children and young people. The Council believes that the Commissioner should be in the position to be able to comment independently on their care and wellbeing, and that being their guardian would compromise the ability to do this.
- (i) While the Council endorses the creation of a national Commissioner, it has reservations about the extent to which the respective roles of the national Commissioner, existing jurisdictional Commissioners and federal and State and Territory Governments will interact under the proposed legislative framework. To enable the national Commissioner to carry out the functions of office, it is vital that the roles and responsibilities of National and State Commissioners are clearly defined and agreed, to ensure effective collaboration and partnership, avoid confusion and duplication of effort, and to maximize outcomes for such an investment. This is of particular concern to South Australia because South Australia is the only jurisdiction without a State Commissioner for Children in place.

Division 2: Section 10 - How the Commissioner is to perform functions

The Bill proposes a number of strategies, for state and national commissioners to work together on and endorses that state commissioners use their established partnerships with government and non government agencies / organisations and their consulting networks to inform collaboration at the national level. To realistically and effectively perform the functions as listed in this section, each jurisdiction would be required to have a Commissioner advocating for children and young people. South Australia is without one. The Commonwealth Commissioner is responsible for distilling the requirements of States and Territories following consultation, and identifying issues that require a national approach.

Division 2: Section 11 - The Commissioner must act independently

The Council endorses the independent role of the Commissioner, as independence from government is critical to enable the Commissioner to perform the duties of office. However, to meet the responsibilities of the position, the Council acknowledges that the Commissioner must work closely and often in concert or collaboration with all tiers of government to effect reforms that enhance the lives of children. The Commissioner must be adequately resourced and funded to

ensure the effective functioning of the role.

APPENDIX: INFORMATION ABOUT THE COUNCIL FOR THE CARE OF CHILDREN

The Council for the Care of Children is an independent statutory body working to ensure children and young people in South Australia are safe and have the best possible start in life. Ten Council members are leaders from the community, including an Aboriginal leader and two young people who are youth advocates. The Minister for Families and Communities names the state government departments to be on the Council and the heads of those departments also sit on the Council.

Our vision

The Council's role is to advocate for South Australian children to ensure that they are cherished, nurtured and respected. We want South Australia to be a child- and youth-friendly state that acknowledges children's rights and seeks to ensure that children are:

- safe
- happy
- healthy
- confident and secure, and
- supported to learn and develop.

What Do We Do?

In South Australia, the Council works to advocate for the wellbeing of children and young people and inform others about children's rights by:

- providing information and advocating for children's rights;
- informing relevant bodies about the opinions of children and young people concerning issues that affect them; and
- advising government and those who work with children and young people concerning services needed to ensure the protection of children's rights and the provision of appropriate supports to help children develop and be the best that they can be.

Why do we have a Council?

Many South Australians have campaigned for children to have an independent body to speak up for children's rights and help to protect them. The Council was set up by the South Australian Government in 2006 to monitor how children and young people are progressing in South Australia. We also advise government on what is needed to give them a good start in life.

We bring government and the community together to encourage everyone to do their best for children and young people by:

- understanding that children and young people are citizens;
- doing more to promote wellbeing, and to help children and young people to feel good about themselves; and
- making sure that children and young people have help to achieve their hopes and goals.

Our Legislation

Part 7B of the *Children's Protection Act 1993* sets out our responsibilities:

- advising government about the rights and interests of children and young people
- reporting to government about the wellbeing of children and young people, the services to support them, and the ways in which they are helped to reach their full potential
- looking at the *Children's Protection Act 1993* and the *Family and Community Services Act 1972* to make sure that they are meeting children and young people's needs
- promoting the safe care of all children and young people, and in particular:
 - children and young people with disabilities
 - Aboriginal children and young people
 - children and young people under the guardianship, or in the custody, of the Minister for Families and Communities
- reporting to the Minister for Families and Communities on:

- environments which are safe for children and young people
- raising community awareness of children's and young peoples issues
- research priorities in relation to children and young people.

Working Together

Many people and organisations look out for children and young people. The Council works hard to bring them together. We keep a close eye on what is happening around the world, in Australia, and in different parts of South Australia, both in the country and the city.

We belong to many networks for children and young people, in South Australia, Australia and overseas, and we encourage others to join us.

The Council is a member of the Australian Research Alliance for Children and Youth (ARACY). ARACY is a not for profit organisation which brings researchers, policy makers and service providers together to improve the lives of children and young people.

The Council has signed the *ARACY Commitment to Young Australians*. The Commitment was written by ARACY members who consulted with children and young people. The Commitment has seven principles to guide decision making about and with children:

- The wellbeing of children and young people needs to be a national priority
- The whole community is responsible for the wellbeing of children and young people
- Families need support and resources to nurture children and young people
- Children and young people should grow up in a safe environment
- Children and young people should be valued and respected
- Children and young people should have learning and development opportunities to realise their potential
- The capacity of children and young people to contribute to the community should be enabled.

The Council's membership provides an expert reference group from which a national Children's Commissioner could gain high level advice and information. The members of the Council include two

youth advocates, ten community members, and the Chief Executives of SA Health, Department of Families and Communities, Department of Education and Children's Services, and Aboriginal Affairs and Reconciliation, Department of Premier and Cabinet. Their details are on the Council's website at www.childrensa.sa.gov.au .