



people with disability

ABN 98 879 981 198

People with Disability Australia Incorporated

Postal Address: PO Box 666
Strawberry Hills NSW 2012

Street Address: Ground Floor, 52 Pitt Street
Redfern NSW 2016

Phone: 02 9370 3100

Toll Free: 1800 422 015

Fax: 02 9318 1372

TTY: 02 9318 2138

Toll Free TTY: 1800 422 016

Email: pwd@pwd.org.au

TIS: 13 14 50 **NRS:** 1800 555 677

NGO in Special Consultative Status with the
Economic and Social Council of the United Nations

17 December 2010

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

Dear Committee Members:

Inquiry into the Commonwealth Commissioner for Children and Young People Bill 2010

People with Disability Australia (PWD) welcomes the opportunity to provide a submission to the Committee's Inquiry into the Commonwealth Commissioner for Children and Young People Bill 2010. PWD has strongly advocated for many years for the establishment of a national Commissioner for Children and Young People to advocate, promote and protect the rights of all children and young people in Australia.

PWD is a national peak disability rights and advocacy organisation that is governed entirely by people with disability. We exist within the international human rights framework and provide a number of activities, which include representation, individual, group and systemic advocacy, complaints handling, information, education and training. Individuals with disability and organisations of people with disability are our primary voting membership. We also have a large associate membership of people and organisations committed to the disability rights movement. We have a fundamental commitment to self-help and self-representation for people with disability by people with disability.

PWD has significant experience in using international human rights mechanisms. We continue to participate in NGO Shadow Reporting processes, including for the Convention on the Rights of the Child (CRC), the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and we are currently involved in coordinating the development of the Shadow Report for the Convention on the Rights of Persons with Disabilities (CRPD). We are also currently a member of the NGO Working Group that has prepared the NGO Report for the January 2011 Universal Periodic Review (UPR) of Australia by the UN Human Rights Council.

PWD also played a key NGO role at several of the UN Ad Hoc Committee meetings convened to draft the CRPD. We made a number of interventions during this time, and strongly supported the inclusion of a specific Article addressing the rights of children with disability (Article 7, Children with disabilities).

Our strong support over many years for the establishment of a national Commissioner for Children and Young People is based on our individual and systemic advocacy undertaken with and on behalf of children and young people with disability. Our advocacy has provided us with expertise in identifying and advocating about the many human rights abuses and discrimination that children and young people with disability face in Australia in a range of areas. In particular:

- Education: children and young people with disability are still not supported adequately to be fully included into mainstream education facilities, resulting in discrimination, bullying and in some cases, degrading treatment of children and young people with disability.
- Child focussed services: children and young people with disability are reliant on a disability service system that does not have child-focused or age-appropriate Disability Service Standards, and where the focus is on 'disability' rather than the child or young person and their needs.
- Legislative protections: children and young people with disability are reliant on a disability service system that does not have the same legislative protections afforded other children and young people receiving services from the mainstream children's service sector.
- Protections from abuse and neglect: children and young people with disability are over-represented as victims of violence, abuse and neglect, yet Child Protection Frameworks often omit the specific forms of abuse and neglect that are specific to the experience of children and young people with disability because of their reliance on services, such as personal care support and nursing staff and out of home facilities, such as respite centres.
- Family life: most children and young people with disability live with their families in the community, but there is significant unmet need for specialist and generalist support services for families to maintain this situation, with many families experiencing undue stress, dysfunction and crisis that results in families viewing out-of-home care as their only option.
- Community living: while most children and young people with disability live with their families in the community, some still spend significant amounts of time in institutional environments, including long periods in successive respite placements and drifting for long periods in care arrangements while waiting for long-term support arrangements.
- Juvenile justice: children and young people with disability are over-represented in the juvenile justice system, with little attention being paid to this issue by the justice system.
- Sterilisation: despite recommendations from both the UN CRC Committee and the CEDAW Committee, Australia has still not prohibited the non-therapeutic sterilisation of children, regardless of disability except where there is a serious threat to health or life.
- National rights protection: despite Australia's ratification of CRC and CRPD, there is no designated figure or office that specifically promotes, advocates or enquires into the rights of children and young people in Australia, such as is the case for the national Commissioners responsible for race, sex and disability discrimination within the statutory authority of the Australian Human Rights Commission (AHRC).

PWD has highlighted these and other issues through submissions to national and State-based inquiries, through our election platforms, at meetings with Members of Parliament and senior bureaucrats and in NGO Shadow Reports to UN Treaty bodies.

It is within context that we provide the following comments on the Commonwealth Commissioner for Children and Young People Bill 2010:

- **PWD supports the establishment of an Office of the Commonwealth Commissioner for Children and Young People and the role of Commonwealth Commissioner for Children and Young People.**
- PWD supports the role of the Objects of the Bill as set out in section 3 (2). However, we argue that there needs to be recognition of Australia's international obligations under CRPD in relation to children with disabilities. **We recommend that CRPD, or at least CRPD Article 7 is specifically mentioned in section 3 (3).** While CRC applies to all children and has a specific Article relating to children with disability (Article 23), the CRPD articulates how human rights apply to people with disability, including children with disability. CRPD will provide important interpretative guidance to the Commonwealth Commissioner for Children and Young People in advocating, promoting and monitoring the rights of children and young people with disability.
- PWD supports the principles of the Bill set out in section 4, which are drawn from the CRC. PWD believes that the role of the Commonwealth Commissioner for Children and Young People must be firmly based within a human rights framework. To strengthen the human rights basis of section 4, **PWD recommends including reference to CRPD Article 7, and adding a principle that states: 'every child and young person is entitled to the full enjoyment of all human rights and fundamental freedoms' (from CRPD Article 7).** This principle makes the human rights framework much clearer and avoids the role of the Commonwealth Commissioner for Children and Young People being used to only address issues of child protection, welfare and service requirements.
- A human rights framework will require the Commonwealth Commissioner for Children and Young People to work collaboratively with the existing Commissioners and the AHRC. **We believe that serious consideration should be given to establishing the Office of the Commonwealth Commissioner for Children and Young People within the AHRC.** We argue that this would enable cross-collaboration between the various areas within AHRC and provide support to key aspects of work being conducted by the Commonwealth Commissioner for Children and Young People and the AHRC in relation to children and young people.
- PWD broadly supports the functions and powers of the Commonwealth Commissioner for Children and Young People as set out in section 9.
- Based on the CRC, the Bill should clearly articulate that the role of the Commonwealth Commissioner for Children and Young People is to ensure that children and young people have full enjoyment of their human rights. **We recommend that the word "wellbeing" in section 9 (1) (a) be replaced by the words 'human rights'.**
- Further, **we recommend that a key function of the Commonwealth Commissioner for Children and Young People should be to monitor Australia's compliance with CRC and CRPD, including monitoring compliance with the two existing Optional Protocols to CRC and the Optional Protocol to CRPD as it pertains to children and young people.**

- PWD is concerned that the Bill does not confer powers on the Commonwealth Commissioner for Children and Young People to conduct inquiries and investigations into issues concerning the rights of children and young people. **We recommend that section 9 include a provision that provides powers for the Commonwealth Commissioner for Children and Young People to conduct inquiries and investigations and report to Parliament about children’s rights issues, including through own motion power.**
- PWD is concerned that the Bill does not provide powers for the Commonwealth Commissioner for Children and Young People to receive and investigate complaints from children, their parents or families, their advocates or their representative organisations. Complaints can be made in Australia to the AHRC under other anti-discrimination legislation, and under CRC and more recently under CRPD. The AHRC should retain the role of hearing complaints under CRC. However, **PWD recommends that section 9 include a provision that provides powers for the Commonwealth Commissioner for Children and Young People to receive and investigate complaints, which will be made through the AHRC.** This provision could be practically applied if the Office of the Commonwealth Commissioner for Children and Young People was located with the AHRC.
- The Bill states that “the functions and powers of the Commissioner apply” to all children and young people who are citizens, residents and in Australia, “regardless of their citizenship or residency status” (section 9 (3)). **We strongly support this statement, and believe that this would be clearer if the word “Australian” before the words “children and young people” was omitted (section 9 (1) (a)).**
- **PWD believes that section 10 (a) would be more inclusive of all children and young people if it stated: “consult with children and young people in all their diversity in ways appropriate to their age, maturity and participation needs”.** This emphasises the importance of inclusion for all children and young people regardless of ability, gender, race and cultural or linguistic background, geographical location, gender identity, sexual preference etc. It also places importance on addresses barriers to participation for all children. In the case of children with disability, this would require ensuring that consultation venues were wheelchair accessible and had hearing loops, that information was provided in a range of formats, such as Braille, etc.
- PWD argues that the role of advocates is often critical to protecting the rights of children and young people with disability, and children in general. **We recommend that Section 10 (d) include the words “and advocates” after the word “guardians”.**
- PWD is concerned that the Bill places responsibility “for preparation of reports on behalf of Australia to the United Nations Committee on the Rights of the Child under the terms of the United Nations Convention on the Rights of the Child” (Part 4, section 25). PWD does not agree that this should be the role of an independent, statutory office that also has responsibility for advocating and monitoring the rights of children and young people in Australia. The office and the Commonwealth Commissioner for Children and Young People must be completely independent of Government if it is to implement its powers. Responsibility for the preparation of the Australian Government Reports under CRC must remain with the Australian Government. The Commonwealth Commissioner for Children and Young People should be able to prepare an independent report to the UN CRC Committee, but this report would be equivalent to a report from AHRC or other National Human Rights Institutions located in other countries. **PWD recommends that section 25 be deleted, or be replaced with provisions that enable the Commonwealth Commissioner for Children and Young People to prepare independent CRC reports to the UN CRC Committee.**

PWD would be pleased to clarify aspects of our submission if required, and welcome the opportunity to appear before the Committee at a public hearing that may be associated with this Inquiry.

This submission does not need to be kept confidential.

Yours sincerely

THERESE SANDS

Executive Director, Leadership Team