



We build strong **PEOPLE**
strong **FAMILIES** strong **COMMUNITIES**

YMCA Australia

Submission to the
Senate Legal and Constitutional Affairs Committee Inquiry
into the
Commonwealth Commissioner for Children and Young People Bill 2010

December 2010

Section 1: Introduction

YMCA Australia welcomes the opportunity to provide our views to the Senate Legal and Constitutional Affairs Committee on the *Commonwealth Commissioner for Children and Young People Bill 2010*.

We strongly support the introduction of the Bill and in this submission we will be discussing a range of issues that are of particular importance and relevance to the work of the YMCA in Australia.

We would also like to provide our support to the submission by Families Australia and we endorse many of the recommendations made.

Section 2: Summary of Recommendations

In relation to the *Commonwealth Commissioner for Children and Young People Bill 2010*, the YMCA recommends that:

Recommendation 1: the function of the Office of the Commissioner include a particular focus on early intervention and prevention strategies that are integrated with our National Preventative Health Framework and Australia's Social Inclusion Agenda;

Recommendation 2: the function of the Office of the Commissioner include a particular focus on vulnerable and at-risk children and young people (to include the groups described in Section 4 (2) of this submission) and that in relation to Aboriginal and Torres Strait Islander children and young people we strongly urge the role of the Commissioner to be closely integrated with that of the Aboriginal and Torres Strait Islander Social Justice Commissioner;

- Recommendation 3:** the current limitation on advocating and acting only for those below the age of 18 years be expanded to include the capacity of the Commissioner to advocate and act on behalf of those who have experienced past abuses (see Section 4 (3)) at the hand of the State even if this result in acting for those above the age of 18 years of age;
- Recommendation 4:** in relation to reporting on the United Nations Convention on the Rights of the Child, the role of the Commissioner should be to provide a report independent to that of Government and this report should be public;
- Recommendation 5:** the Office of the Commissioner be located within the structures of the Australian Human Rights Commission and that the *Australian Human Rights Act, 1986* be amended appropriately to reflect this;
- Recommendation 6:** the inclusion of a principle to ‘promote the wellbeing of children and young people as a national priority’ under: Part 1, 3 Object of the Bill;
- Recommendation 7:** the function of the Commissioner include the development of a strategic and common approach to the implementation, reporting and monitoring of state and territory child protection mechanisms;
- Recommendation 8:** the role of the Commissioner will include a function of monitoring and reporting on the implementation of the National Framework for Protecting Australia’s Children (2009-2020);
- Recommendation 9:** the Bill be amended to reflect a more robust, regular and accountable form of ongoing consultation and engagement with children and young people and that the Office of the Commissioner must report on progress in this regard; and
- Recommendation 10:** the Bill be amended to include a specific reference to the powers of the Office of the Commonwealth Commissioner in relation to initiating inquiries and making recommendations to Parliament.

Section 3: The YMCA in Australia and our work with Children and Young People

Today, the YMCA works in over 500 locations in every state and territory in Australia. Our services and programs are delivered in metropolitan, regional, rural and remote communities. We employ over 7,500 staff and our work is supported by 3,000 volunteers nationally. As one of Australia's largest and most well-established not-for-profit organisations, the YMCA is a respected provider of numerous services, programs and initiatives to strengthen and empower children and young people in our community.

In particular, our **Children's Services** includes the provision of:

- Before School and After School Care in 200 locations;
- Vacation Care in 150 locations;
- Long Day Care services in 22 Child Care Centres
- Over 90 Kindergarten sessions;
- 4 Family Day Care schemes;
- Occasional Care;
- Intensive Support Playgroups in remote communities in the Pilbara

We seek to provide programs that support and strengthen families and nurture the health development of each child involved. We also recognise and value the role that children and families play in building strong communities and the positive impact a caring and connected community has on the welfare of children.

Our support for children and families involves a range of not-for-profit programs and services that includes, but is not limited to:

Early Childhood Education and Care

- Centre Based Long Day Care
- Occasional Care
- In Home Care
- Family Day Care
- Extended Hours Care
- Creche
- Preschool
- Kindergarten

Outside School Hours Care

- Before School Care
- After School Care
- Vacation Care

Early Intervention Developmental Programs

- Playschool
- Ed Gym
- Aquatic Education
- Gymnastics
- Healthy Kids
- School Sports
- Sport Skill Development Programs
- Camping

Family Programs

- Family support programs
- Family education programs
- Family recreation programs

The delivery of programs and services to **young people** has been a core element of the YMCAs work since the organisation began in 1844. Now as then, the YMCA supports a broad based approach to program delivery, one that includes a wide range of activities that targets the diverse range of young people's interests and needs in the communities they live.

This approach enables the YMCA to engage large numbers of young people in communities all across Australia, where we aim to maximise participation of all members of the youth community in programs that have a strong early intervention and preventative focus. For us, maximised participation refers not only to the large numbers who participate, but importantly to the depth of participation - ensuring young people occupy leadership roles and have a role in all levels of decision making.

Youth programs developed and delivered by the YMCA are strengths-based and underpinned by strong planning and research drawn from the most contemporary approaches to youth development. A youth program delivered by the Y has specific and intentional strength building outcomes in mind, and our staff plan to ensure the young people they work with receive the full benefit of every program they participate in.

The YMCA consults with local communities to identify need, and sets about building appropriate and meaningful programs and services in response to those needs. This locally driven responsiveness is a particular strength of the YMCA, which results in communities getting what they most need from their YMCA.

Whilst the local footprint of programs and services will vary based on the needs of the local community – Australia-wide the YMCA has expertise and a strong history in all of the following:

- Youth Counselling and Support
- Youth Sport and Fitness
- Youth Mentoring
- Youth Justice
- Education Training and Employment
- Outreach
- Leadership and Personal Development
- Youth Music and Arts
- Skateboarding and Skate Culture
- Homework Clubs
- Teenage Holiday Programs
- Youth Parliament
- Mobile Youth Services
- Youth Recreation

The YMCA regularly contributes to national policy discussions affecting children and young people including:

- Submission regarding the Australian Youth Forum (2008);
- Submission on the development of the National Child Protection Framework (2008);
- Submission on the National Quality Framework for Early Childhood Education and Care (2008);
- Submission to the Social Inclusion Board on 'Breaking the Cycles of Disadvantage' (2010).

YMCA Australia is also an active member of:

- the Coalition of Organisations Committed to the Safety and Wellbeing of Australia's Children;
- the Australian Council of Social Service;
- the Community Council of Australia; and
- the Australian Youth Affairs Coalition.

Section 4: General Discussion Points and Recommendations

We would like to express our support and endorsement of the recommendations made by Families Australia in relation to:

1. the model under which the Office of the Commissioner will be developed. We support the recommendation to develop and implement the role of the Office of the Commissioner under a public health model and the YMCA would also urge the role be developed with a particular focus on early intervention and prevention strategies that are integrated with our National Preventative Health Framework;
2. the capacity of the Office of the Commissioner to have a particular focus on the needs and interests of particularly vulnerable children and young people. We support the recommendation from Families Australia for the role of the Commissioner to have a particular focus on the distinct issues facing Aboriginal and Torres Strait Islander children and young people. In order to achieve lasting and meaningful change in this regard, the YMCA would strongly urge the role of the Commissioner to be closely integrated with that of the Aboriginal and Torres Strait Islander Social Justice Commissioner. There are several other groups of high vulnerability within our community that should form a particular area of focus for the role of the Commissioner including:

- children and young people in immigration detention¹;
- unaccompanied refugee minors;
- child asylum seekers living in the community;
- children and young people with disability;
- those living with mental illness (whether experiencing mental illness themselves or living with parents/carers experiencing mental illness);
- those in out-of-home care;
- those within or transitioning from the juvenile justice system;
- children and young people who are the victims of trafficking;
- children and young people who are the victims of pornography and prostitution; and
- children and young people living in poverty;

YMCA Australia would strongly recommend that the role of the Office of the Commission include a particular focus on vulnerable and at-risk children and young people to include the abovementioned groups;

3. the current limitation of the powers of the Commissioner in advocating for people below the age of 18 years. YMCA Australia would reiterate the concerns of Families Australia that there are a number of circumstances that would warrant continued advocacy and attention for those above the age of 18 years. These circumstances include, but may not be limited to:
 - young people transitioning from the juvenile justice system at the time of reaching 18 years of age;
 - young people who transition from out-of-home care into independent living;
 - members of the Stolen Generations, Forgotten Australians and former Child Migrants;
 - young people in immigration detention at the time of reaching 18 years of age;

We would urge that the current limitation on advocating and acting only for those below the age of 18 years, be expanded to include the capacity to advocate and act on behalf of those who have experienced past abuses at the hand of the State even if this result in acting for those above the age of 18 years of age;

¹ In this submission 'immigration detention' refers to all on-shore and off-shore immigration detention facilities for which the Australian Government has responsibility or contributes financially or otherwise to the operation of facilities. This also includes children and young people residing in alternative places of immigration detention within the community.

4. the reporting of the Commonwealth Commissioner in relation to Australia's obligations and responsibilities under the United Nations Convention on the Rights of the Child (UNCRC). As a State party to the Convention, it is the primary responsibility of the Australian Government to report to the United Nations on progress in relation to the UNCRC. The role of the Office of the Commonwealth Commissioner should be to provide a report independent to that of Government and this report should be public;

5. the proposed relationship of the Commonwealth Commissioner within the existing structures of the Australian Human Rights Commission and the frameworks underpinning the *Australian Human Rights Commission Act, 1986*. It is unclear in the Bill as to whether the role of the Office of the Commonwealth Commissioner for Children and Young People would have a formal role or relationship with the Human Rights Commission. Given that the Human Rights Commission under the *Human Rights Act, 1986* provides for particular functions and responsibilities in relation to international human rights instruments including the UN Convention on the Rights of the Child (1990) and the UN Declaration on the Rights of the Child, it would seem appropriate for the Office of the Commonwealth Commission for Children and Young People to reside within this existing structure and legislative framework. Residing within this structure is also important for our responsibilities in relation to reporting directly to the Office of the United Nations High Commissioner for Human Rights and the United Nations Committee on the Rights of the Child allowing for independent inquiry and scrutiny in relation to the role and functions of the Australian Government regarding the UNCRC.

YMCA Australia would strongly recommend that the Office of the Commonwealth Commissioner for Children and Young People be located within the structures of the Australian Human Rights Commission and that the Australian Human Rights Act, 1986 be amended to include the role of the Office of Commonwealth Commissioner;

6. the principles of the UNCRC incorporated in the Bill. The YMCA agrees with Families Australia that these principles would benefit from expansion and in particular to include "the promotion of wellbeing and children and young people as a national priority." Given our recommendations that the Office of the Commonwealth Commission operate within a public health model and a preventative health and social inclusion framework we would strongly urge the inclusion of this principle under: Part 1, 3 Object of the Bill;

7. the relationship between the role of the Office of the Commonwealth Commissioner with regard to state and territory counterparts and the various mechanisms currently operating in different jurisdictions. It will be important to consider how the role of the Office of the Commonwealth Commissioner will act in relation to the improved coordination of and eventual harmonisation, in particular, of child protection mechanisms across Australia. In the long term, YMCA Australia would like to see the role of the Commonwealth Commissioner include that of developing a strategic and common approach to the implementation, reporting and monitoring of state and territory child protection mechanisms;

8. the role of the Office of Commonwealth Commissioner in relation to the National Framework for Protecting Australia's Children (2009-2020). Given the key functions the Commonwealth Commissioner will have in relation to the promotion and protection of child rights, the YMCA would strongly recommend the inclusion in *Part 2, Division 2, 9 Functions and powers of the Commissioner* of the Bill, a function of monitoring and reporting on the implementation of the National Framework for Protecting Australia's Children (2009-2020);

9. the reference in the Bill to:

Part 2, Division 2, 9 Functions and powers of the Commissioner

(g) proactively involving children and young people in decisions that affect them.

The YMCA supports the recommendation of Families Australia that this be amended to reflect a more robust, regular and accountable form of ongoing consultation and engagement with children and young people and that the Office of the Commonwealth Commissioner must report on progress in this regard.

10. the powers of the Office of the Commonwealth Commission with regard to reporting to Parliament and the powers to make recommendations to Parliament regarding legislative and regulatory matters affecting the wellbeing and rights of children and young people. In the current Bill, it is unclear as to the degree to which the Office of the Commonwealth Commissioner has the requisite powers to make legislative and regulatory recommendations to Parliament and what status these recommendations might have in terms of

being drivers for necessary change. This is a particularly important consideration in the circumstance that the Office of the Commonwealth Commissioner might be compelled initiate an inquiry into a function, role or responsibility of the Australian Government that has or may have a deleterious impact on the wellbeing and/or rights of children and young people.

The YMCA would strongly recommend that the Bill be amended to include a specific reference to the powers of the Office of the Commonwealth Commissioner in relation to initiating inquiries and making recommendations to Parliament.

Section 5: Conclusion

YMCA Australia is highly supportive of this Bill and believes that with the appropriate levels of resourcing and appropriate powers, the role of the Office of Commonwealth Commissioner for Children and Young People will provide the foundation and impetus for significant change in Australia in the ways that we approach the promotion of wellbeing and the recognition of the rights of children and young people in our community.

We look forward to further opportunities to participate in discussions regarding the progress of the Bill and would welcome further opportunity to discuss the issues raised in our submission with the Committee.

Please do not hesitate to contact YMCA Australia if any members of the Senate Legal and Constitutional Affairs Committee would like any further information or comment in relation to this submission.

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