

Dear Committee Secretary

Australian Children's Commissioners and Guardians' Response to Senate Inquiry Regarding the Commonwealth Commissioner for Children and Young People Bill 2010

Thank you for the invitation to provide a submission to the Senate Inquiry in relation to the Commonwealth Commissioner for Children and Young People Bill 2010 (the Bill).

This submission represents the joint position of the Australian Children's Commissioners and Guardians (ACCG). Most members of the ACCG have a legislative mandate to advocate for, promote and protect the rights, best interests and wellbeing of all children and young people under the age of 18 years, within our respective jurisdictions.

The ACCG has particular regard for children and young people who are vulnerable or disadvantaged for any reason, for example, by virtue of their inclusion in state and territory child protection systems.

A summary table of the roles and legislative mandates of each state and territory Children's Commissioner and Guardian is attached for the Inquiry's reference.

Commonwealth Commissioner for Children and Young People Bill 2010 (the Bill)

The ACCG welcomes the debate about the role of national children's commissioner and the focus the Inquiry places on the rights, views and needs of children and young people at a national level.

The ACCG supports a national rights-based advocate for children and young people conditional on this role working from a national and international perspective and that there is no duplication or overlap of the roles and functions of the state and territory Commissioners and Guardians.

A role with a specific advocacy focus on Commonwealth policy and legislation and children's rights promotion and protection could valuably contribute to a number of areas affecting the wellbeing of Australia's children and young people. These areas could include family law and refugees, as well as matters requiring national and international co-ordination, such as the COAG agenda on Indigenous children and reporting on the United Nations Convention on the Rights of the Child.

The Bill proposes a number of functions which the ACCG supports. These include:

- giving prominence to advancing the status and interests of Indigenous children
- promoting and protecting the rights of children in immigration detention or whose parents are in immigration detention
- strengthening investment in early childhood development, and

- proactively involving children and young people in decisions.

However, because of a number of its other proposed functions, the ACCG does not support the Bill.

The ACCG has significant concerns with the proposed monitoring roles and powers which duplicate the roles of state and territory Commissioners and Guardians. A national commissioner for children would not be able to provide effective and independent oversight of service delivery, particularly for vulnerable children and young people in state and territory child protection and youth justice systems.

A single, central national office would have significant difficulties in effectively monitoring and overseeing the delivery of services to children and young people in all states and territories. This is further complicated as each state and territory has different child protection system and youth justice arrangements.

Most states and territories are equipped to specifically monitor and, where necessary, advocate for children and young people on the ground within their own child protection and youth justice systems, and as such, are best able to provide the most timely responses to different circumstances within which they operate. They are best placed to respond to as well as gather evidence on children and young people's individual health, safety and wellbeing, as well as their actual, lived experiences in the child protection and youth justice systems.

Attempting to replicate this at a national level would be resource intensive, be less effective and increase risks for vulnerable children and young people in each state and territory. The ability to assess and respond to issues affecting the safety and wellbeing of children and young people in each state's and territory's unique child protection and youth justice systems would be significantly eroded if this was a broader and more generic federal oversight mechanism.

On this basis, it is the ACCG's view that states and territories must retain the ability to find out from children and young people what their experiences of the child protection and youth justice systems are in each state and territory.

Other aspects of the model proposed by the Bill that concern the ACCG are the identified functions of:

- a) Providing national leadership in monitoring and advocating for the wellbeing of Australian children and young people*

The ACCG does not support a national commissioner's role extending to monitoring, investigating and reporting on children's rights in state and territory matters, for example, child protection and youth justice. The ACCG agrees that a national commissioner should monitor, investigate and report on the implementation of children's rights in the federal and international context.

- b) Acting as the legal guardian of unaccompanied children and young people who arrive in Australia without the required visa or authority and intervening in legal cases involving the rights of children and young people.*

In the ACCG's view, both of these functions, while vitally important in supporting vulnerable children and young people, require specialist and technical knowledge and legal authority and should be arranged through

agreements with state governments.

- c) *Co-ordinating policies, programs and funding across Australia which impact on children and young people.*

This function is already the responsibility of state, territory and Australian Government agencies. Involving a national commissioner would be likely to lead to increased bureaucracy, additional layers of reporting and accountabilities, inefficiencies and the potential to create poorer outcomes for children and young people.

The best use of federal resources in this sphere would be to have a national commissioner with a specific advocacy focus on Commonwealth policy and legislation and children's rights promotion and protection.

In the ACCG's view, this role could sit within the Australian Human Rights Commission. Further discussion should be undertaken in relation to the merits, costs, functions and practicality of extending the role of the Australian Human Rights Commission to take on this role. Care would need to be taken to ensure that the Australian Human Rights Commission's existing powers and functions regarding children and young people are not reduced or diminished, particularly as they relate to complaint handling and intervention in Court proceedings.

In the ACCG's view, a national advocate could coordinate responses in relation to national level issues affecting children and young people's rights, such as:

- taking measures to ensure that children's views are heard on Commonwealth issues (for example, in furthering Professor Richard Chisholm's work to amplify children and young people's voices in family law matters)
- responding to *United Nations Convention on the Rights of the Child* committees and other international convention committees that are particularly relevant to children and young people
- advocating more globally on broader children's rights such as closing the gap for Indigenous children and the right to be heard
- providing a clear and authoritative voice in relation to issues impacting upon children who fall within the direct jurisdiction of the Commonwealth (for example, the policy areas of immigration, income security and transfers, taxation, family law and national health)
- establishing an avenue for children and young people to make complaints in respect of Commonwealth processes in which they are involved
- reviewing Commonwealth legislation for its impact on children and young people
- conducting and coordinating research on national issues that impact on children and young people
- in consultation with state and territory Commissioners and Guardians, providing advice on Commonwealth laws and policies that impact on children and young people, and
- in consultation with state and territory Commissioners and Guardians, supporting the development of child-centred consultation and research

practices to support children and young people's contributions to policy development.

In conjunction with state and territory Children's Commissioners and Guardians, a national children's rights advocate could present a strong voice on key issues which affect children and young people's rights.

The development of any enabling legislation needs to occur in consultation with state and territory Commissioners and Guardians to ensure, to the extent possible, that the role of a national Commissioner supports and enhances state and territory Commissioners and Guardians, rather than duplicates or confuses existing arrangements.

The ACCG would be happy to participate in further discussions about these matters, to provide additional information about the role and functions of state and territory Commissioners and Guardians, or appear before the Committee to give further evidence, if required.

Should you or your officers wish to discuss any aspect of this joint submission, please contact Elizabeth Fraser on behalf of the ACCG on 07 3211 6992 or via email Elizabeth.Fraser@ccypcg.qld.gov.au.

Yours sincerely

Participating ACCG members:

- Elizabeth Fraser, Commissioner for Children and Young People and Child Guardian (Queensland)
- Alasdair Roy, Children and Young People Commissioner (ACT)
- Pam Simmons, Guardian for Children and Young People (South Australia)
- Michelle Scott, Commissioner for Children and Young People (Western Australia)
- Aileen Ashford, Commissioner for Children (Tasmania)
- Dr Howard Bath, Children's Commissioner (Northern Territory)
- Megan Mitchell, Commissioner for Children and Young People (New South Wales)
- Kerry Boland, Child Guardian (New South Wales), and
- Bernie Geary, Child Safety Commissioner (Victoria).