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

Catholic Social Services Australia submission on the Senate Inquiry into a
Commonwealth Commissioner for Children and Young People Bill 2010

Catholic Social Services Australia (CSSA) is the national network of Catholic social services across Australia. The 69 CSSA member agencies provide a diverse range of community services to children, young people and their families across all regions of Australia.

General comment

The draft Commissioner for Children and Young People Bill 2010 is a good start toward a national, systemic, rights-based approach to valuing and supporting children in Australia. CSSA supports in principle the establishment of an independent Commissioner who would be accountable to the Federal Parliament. With appropriate powers and adequate resourcing, the position of Commissioner could make a significant difference to the way children's wellbeing is supported by governments and the wider community.

CSSA is pleased to offer the following comments and suggestions.

Role and responsibilities

The actual role of a national Commissioner, and how it complements the roles of state and territory Commissioners (or their equivalents), is not always clear in the Bill. We refer the drafters back to the wording of the October 2010 discussion paper by the Australian Human Rights Commission, which has greater clarity about key national responsibilities, i.e. to:

Advocate nationally for children, with a mandate to speak on behalf of children and represent their interests to government and policy makers

Ensure participation by children in decisions and issues that affect their lives

Facilitate a coordinated national approach to the promotion and protection of children's rights and have the capacity to harmonise (but not be responsible for) the work of the states and territories

In relation to this point, we note that the draft Bill has used the words 'coordinating policies, programs and funding which impact on children and young people, between federal, state territory and local governments'. How can the Commissioner remain

‘independent’ when he or she is expected to have an active role in coordinating policies, programs and funding and be accountable for the success or failure of that coordination? Monitor, investigate and report on the implementation of children’s rights under the UN Convention on the Rights of the Child. This would include monitoring national legislation, federal policy and achievement of wellbeing targets
Build community understanding about children’s rights
CSSA does not support a specific legal guardianship role for the national Commissioner. Existing federal, state and territory guardianship legislation should be upheld and supported.

Scope

The national Commissioner’s portfolio should cover national issues, not state-specific issues. Concern should be given to the rights of all children, with particular emphasis on those children who are most vulnerable and least likely to enjoy fulfilment of their rights. Singling out particular groups such as ‘children and young people in immigration detention’ risks excluding other groups children who rights are being violated and indeed, constraining the Commissioner from attending to the needs of other vulnerable groups.

Relationships

The state and territory Commissioners/equivalents all operate differently and have different authority and lines of accountability. They are already endeavouring to work together as a group – how would a national Commissioner relate to state-territory equivalents as individuals and as a group?

Accountability

Lines of accountability need to be unambiguous. We believe the national Commissioner should be independent, and accountable to the federal parliament (i.e. created through an Act of Parliament).

Closing comment

A perusal of submissions lodged to date suggests that there is some way to go before the Bill will be ready for parliamentary debate. We recommend a facilitated consultation process to more intentionally engage key stakeholders, including but not limited to current state and territory Commissioner-equivalents and non-government agencies working with children across a range of sectors and disciplines. Such a process could result in consensus for high level principles to provide the framework for the Commissioner’s national roles, responsibilities and relationships with state and territory counterparts.

Yours sincerely,

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