



Mission Australia

**Mission Australia's contribution to the Standing Committee on Legal and  
Constitutional Affairs' Inquiry into the  
*Commonwealth Commissioner for Children and Young People Bill 2010***

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## Key points and recommendations

- Mission Australia strongly supports the establishment of a Commonwealth Commissioner for Children and Young People and applauds the introduction of a Bill that will achieve this. We also support the focus of the Bill on assisting Australia to fulfil its international obligations under the United Nations Convention on the Rights of the Child (UNCRC) and believe that the establishment of a statutory Office of Commonwealth Commissioner for Children and Young People will signal that Australia is serious about its responsibilities to children and young people. We are of the view that much of the content of the *Commonwealth Commissioner for Children and Young People Bill 2010* (the Bill) is fundamentally sound.
- However, Mission Australia cautions that the interests of the Commonwealth Commissioner may be far broader than is immediately apparent, especially if the Office is to take an interest in ‘upstream’ policy interventions as we suggest it must if it is to have an impact on the wellbeing of the future generations of Australia’s children. This raises the critical matter of resourcing if the Office is to be more substantial than a symbolic gesture and fulfil its potential by making a tangible difference to children and young people. We argue that although an adequately-resourced Commissioner’s Office may be costly, this is a cost worth prioritising and bearing. In the long run, stimulating the conditions needed to fully realise the suite of rights specified in the Convention on the Rights of the Child will *save* rather than cost money.
- While we believe that the Commonwealth Commissioner should promote the rights of *all* children and young people, we feel strongly that there are especially vulnerable populations which require particular attention if they are to enjoy the same rights and access to social goods as their more fortunate peers. To this end, we strongly support the special status accorded Aboriginal and Torres Strait Islander children and young people in the Bill. Attending to the needs, rights and interests of these young people as a national priority is manifestly right and just. In particular, we believe that special attention must be paid to the assertion of these children and young people’s cultural rights.
- Mission Australia is also of the firm view that if the Act is to explicitly mention particular cohorts then the needs of young people in contact with or at risk of coming into contact with the criminal justice system must also be enshrined in the legislation so that their needs, rights and interests are not overlooked but are accorded an appropriate profile and priority. Further, in view of recent commentary which suggests there has been a discernible rise in more punitive youth justice policies at the expense of more rehabilitative approaches, we believe that monitoring this area, bringing pressure to bear on sentencing and other related policy, and educating the community regarding the necessity of a rehabilitative approach ought to be an urgent priority for the new Commonwealth Commissioner.
- We support the Commissioner’s powers to investigate and intervene in specific legal cases however we strongly suggest that the Commissioner have a focus on interrogating and resolving systemic issues. In this regard, while we support the range of functions and powers of the Commissioner detailed in the Bill as they imply a focus on systemic issues, we suggest that Section 9, *Functions and powers of Commissioner* would be strengthened by making explicit mention of such a focus.
- Mission Australia views the need for prevention and early intervention initiatives as a matter that is equally as pressing as the need to respond to more immediate imperatives such as those concerned with keeping Australia’s children safe. This is critical if the wellbeing of disadvantaged and vulnerable children and young people is to be enhanced

in the long-term and their social outcomes improved. We recommend that Section 9, *Functions and powers of Commissioner* be further strengthened by elevating the important role that prevention and early intervention initiatives play in upholding the rights of children and young people and incorporating explicit mention of this in the Act.

- As a national organisation with services in all states and territories, we note that some jurisdictions with a Commissioner for Children and Young People undertake consultation with children and young people particularly sensitively and well. Mission Australia suggests that a critical priority for the Commissioner's Office might be to identify effective consultation networks and practices across the country, to incorporate these into some form of practical consultation framework, and to contribute to dialogue about best practice in this regard. We underscore the importance of effective consultation as it is a precondition of "proactively involving children and young people in decisions that affect them" (9, (1), g), it will presumably help frame other priority areas of the Commissioner's work, and – critically – effective and respectful consultation is key to obtaining the diverse views of Australia's most vulnerable children, children from culturally and linguistically diverse backgrounds, and indeed Aboriginal and Torres Strait Islander children.
- Mission Australia recommends that Item 10, *How the Commissioner is to perform functions*, be amended to include a specific reference that the Commissioner must also consult with the NGO sector and academic experts and research institutions.
- Mission Australia concurs with the view of others and those enshrined in the Bill that it is appropriate that the Commissioner for Children and Young People promote, monitor and protect the rights of children and young people in immigration detention and those whose parents are in immigration detention. We also believe it is appropriate for the Commissioner to monitor the level and quality of care which is provided, particularly as these children and young people remain the responsibility of federal authorities but have little recourse beyond the responsible Minister. In our view, this highlights the importance of maintaining the Commissioner's independence and we suggest that the proposed function of the Commissioner to act as "the legal guardian of unaccompanied children and young people who arrive in Australia without the requisite visa or other authority for entry" (Item 9 (1) e) be reconsidered as this would compromise the capacity of the Commissioner to scrutinise the quality of this guardianship.
- We add our voice to others who have noted that the preparation of reports *on behalf of Australia to the United Nations Committee on the Rights of the Child* is inappropriate, irrespective of the clause in the Bill which enables the Commissioner to prepare other reports for the Secretary-General of the United Nations. This would place the Commissioner in the difficult position of reporting on matters which it is also responsible for monitoring and critiquing.
- Mission Australia recommends that the Bill be amended to instil in the Commissioner the power to *initiate* inquiries, to review *proposed* laws (as well as existing laws), and to also to review existing policy (as well as proposed policy) – refer to Item 9 (1) c.
- Mission Australia recommends that the Act specify that the Commissioner will have the capacity to monitor the development and application of *Commonwealth and State and Territory* laws affecting children and young people (Item 3 (2) b).

## Mission Australia

Mission Australia is a national, not for profit organisation that works within the community,

employment and training sectors. Our services provide pathways away from homelessness, pathways through a successful youth, pathways to strong families and happy, healthy children, pathways for life and work-ready skills, and pathways to sustainable employment. In 2009-2010, our services supported more than 300,000 Australians in need; Mission Australia Community Services helped 91,329 families and individuals across the country, while our Employment Solutions team supported almost 155,000 people to train for and gain employment.

We have been working for 150 years with people experiencing disadvantage and exclusion, motivated by a vision for a fairer Australia where all people feel included and valued and enjoy the support of their families and communities to realise their potential. We work with a diverse range of children, young people and their families across Australia in a variety of settings. While many of the programs Mission Australia delivers might be classified as being of a 'tertiary' nature in that they provide support to individuals and families in crisis and/or dealing with chronic disadvantage and entrenched problems, a significant amount of our work is focused on early intervention – increasingly we seek to make a difference in the early years.

For example, Mission Australia owns and operates 29 Early Learning Centres – predominantly in areas of disadvantage – which work with families and their communities to provide high quality education and care with an emphasis on supporting children to make a successful transition to school. In 2009, Mission Australia was involved in establishing *GoodStart* childcare centres, a consortium and social enterprise also involving the Brotherhood of St Laurence, the Benevolent Society and Social Ventures Australia. Through its network of approximately 650 centres, *GoodStart* aims to achieve social change by providing high quality, accessible, affordable, community-connected childcare that promotes children's development and learning.

Mission Australia also delivers *Pathways to Prevention*, an innovative crime prevention and early intervention partnership between Mission Australia and Griffith University. Operating as a family support service, *Pathways* supports families with children aged 4-12 in the Inala and Carole Park areas of Brisbane. We are also involved in delivering *Communities for Children*, both as a facilitating partner and direct service delivery agency, which is a prevention and early intervention program for families with children up to 12 years of age who are at risk of disadvantage and who remain disconnected from childhood services.

### ***The focus of this submission***

As an organisation that has worked for 150 years with some of the most vulnerable and disadvantaged populations across Australia, our staff members are reminded on a daily basis that further work must be done at a national level if the needs, views and rights of all Australia's children and young people are to be respected, attended to and upheld. As noted in the Australian Human Rights Commission's recent Discussion Paper (2010), this situation was observed some time ago by the United Nations Committee on the Rights of the Child, which noted that Australia had yet to integrate the United Nations Convention on the Rights of the Child (UNCRC) into domestic law. It saw as an important barrier the absence of a national Children's Commissioner "with a specific mandate for monitoring children's rights" and, the important work of the Australian Human Rights Commission notwithstanding, the absence of a supporting unit devoted to monitoring and upholding children's rights (Australian Human Rights Commission, 2010, p. 3).

Support for the establishment of an independent, Commonwealth body dedicated to furthering the interests of children and young people has grown over the past decade with a number of child-rights focused groups, including the Australian Human Rights Commission, UNICEF, Save the Children and the National Children's and Youth Law Centre lobbying in this regard.

These groups and many others recognise that an 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. Mission Australia welcomes the formal opportunity to add its voice to those of our peers.

We note that others have pointed to some concerning indicators (including those cited in the ARACY *Children and Young People Report Card*, the Second Reading Speech, and the initiating document developed by The Greens) that confirm the need for this Office and its importance, and hence we do not repeat them in this submission as it is clear that there is no contention in this regard. Indeed, we welcome the spirit of unity between Government and community and the shared conviction that children and young people's rights is a matter that must have a prominent place on the national agenda.

We are of the view that much of the content of the *Commonwealth Commissioner for Children and Young People Bill 2010* (the Bill) is fundamentally sound. Mission Australia strongly supports the establishment of a Commonwealth Commissioner for Children and Young People and we applaud the introduction of a Bill that will achieve this. We also support the focus of the Bill on assisting Australia to fulfil its international obligations under the United Nations Convention on the Rights of the Child (UNCRC) and believe that the establishment of a statutory Office of Commonwealth Commissioner for Children and Young People will signal that Australia is serious about its responsibilities to children and young people.

As we support much of what is proposed within the Bill, we confine our submission to the following: voicing our support for matters we feel are of particular importance even though this may mean that some recommendations in this document will seem self-evident; identifying what we feel are critical omissions in the Bill; pointing to some of the ramifications of establishing a Commonwealth Commissioner as these will have significant resource implications; and given that the newly established Office will need to prioritise its efforts, offering our views in this regard.

For convenience, key points and recommendations are highlighted at the end of each section.

#### ***Key points and recommendations***

- Mission Australia strongly supports the establishment of a Commonwealth Commissioner for Children and Young People and applauds the introduction of a Bill that will achieve this. We also support the focus of the Bill on assisting Australia to fulfil its international obligations under the United Nations Convention on the Rights of the Child (UNCRC) and believe that the establishment of a statutory Office of Commonwealth Commissioner for Children and Young People will signal that Australia is serious about its responsibilities to children and young people. We are of the view that much of the content of the *Commonwealth Commissioner for Children and Young People Bill 2010* (the Bill) is fundamentally sound.

### ***Potential priority functions and areas of concern for the new Commissioner's Office***

The holistic nature of Mission Australia's work is reflected in two of our *Outcomes Hierarchies: Pathways through a successful youth* and *Pathways to strong families and healthy, happy children* (attached). These provide an overview of the foundations necessary for young people, children and their families to lead healthy, fulfilling lives, and for children and young people to negotiate safe and successful transitions into adulthood. We attach these as they demonstrate the many domains in which Mission Australia and other community agencies work and are reflective of the broad policy areas affecting children and young people. While Mission Australia typically draws on these outcomes hierarchies as a type of social inclusion framework to guide our work, we believe they also make for a useful lens through which to analyse the types of outcomes that need to be achieved if children and young people are to realise the full set of rights enshrined in the United Nations Convention on the Rights of the Child (UNCRC). They are therefore pertinent to the *Commonwealth Commissioner for Children and Young People Bill 2010* (the Bill) as they highlight the breadth of policy and practice areas that will potentially fall under the purview of the office of the Commonwealth Commissioner if it is serious about upholding the full suite of rights specified under the UNCRC. We raise this for two reasons: the first is simply to note that the interests of the Commonwealth Commissioner may be far broader than is immediately apparent, especially if the Office is to take an interest in 'upstream' policy interventions (interventions which seek to tackle the deeply embedded, structural factors which give rise to poor social outcomes, such as societal attitudes and policies related to welfare expenditure, childcare, and connectedness to family and community, Vimpani, 2005), as we argue it must if it is to have an impact on the wellbeing of Australia's children. Our second observation is that this has clear implications for resourcing and, in turn, the maintenance of the Office's independence.

The issue of resourcing is a critical matter if the Office is to be more substantial than a symbolic gesture and fulfil its potential by making a tangible difference to children and young people. In view of the above and the competing priorities with which the newly established Office will have to contend, we offer our views on the various vulnerable populations which the Commissioner's Office might take an especial interest in, and the nature of the work the Commissioner's Office might prioritise.

While we concur with others who have expressed the view that the Commonwealth Commissioner should promote the rights of *all* children and young people, we feel strongly that there are especially vulnerable populations which require particular attention if they are to enjoy the same rights and access to social goods as their more fortunate peers. We note, however, that in drawing attention to these groups it is not our intention to discount other high-needs and especially disadvantaged populations which are the focus of other community organisations' work.

In view of this, we strongly support the special status accorded Aboriginal and Torres Strait Islander children and young people in the Bill. These children and young people fare significantly less well than other non-Indigenous young Australians on almost every national indicator of health and wellbeing (Australian Institute of Health and Welfare, 2009). We also note that a truly alarming proportion of young people in detention are of Aboriginal and Torres Strait Islander descent. Indeed, the imprisonment rate of Aboriginal and Torres Strait Islander young people is 28 times higher than that of their non-Indigenous counterparts (Taylor, 2009). These and other statistics demonstrate that attending to the needs, rights and interests of Aboriginal and Torres Strait Islander young people as an urgent national priority is manifestly right and just. In particular, we believe that special attention must be paid to the assertion of these children and young people's cultural rights, as a strong sense of attachment to a cultural community is a key focus of the UNCRC and a known protective factor that supports the development of self-esteem and positive social norms and behaviours, and

promotes wellbeing. We therefore suggest that the Commissioner's Office has an important role to play in critiquing policy frameworks that impact on Aboriginal and Torres Strait Islander children and young people and facilitating dialogue to establish the extent to which such frameworks recognise and respect differences in Aboriginal people's aspirations and needs, and promote the best interests of these children and young people.

Another particularly vulnerable population with which Mission Australia works is young people involved in the criminal justice system and a significant part of our work involves supporting the rehabilitation and reintegration of these young people. In our experience, young people who come into contact with the juvenile justice system do not have the foundations in place that assure their physical, emotional and mental wellbeing, and afford them the opportunities and confidence to engage with others and to learn, develop and grow in a way that benefits themselves, and also society. Unlike their contemporaries, they are a long way from social and economic participation and are at risk of long term exclusion.

Drawing connections between criminal justice systems and social justice systems is not a new idea and there is now a large body of research that compellingly demonstrates the links between the two (see for example Mullis et al, 2005; Goldson and Muncie, 2006; and Cunneen and White, 2006). Attention has been drawn to this recently by the Council of Europe Commissioner for Human Rights, which states that "the judicial body is the last link of the chain, and we should try to do everything we can to prevent cases coming that far" (Hammarberg, 2008, p. 195). Mission Australia concurs with this view and, while we firmly believe that in the long run it is likely to be more cost-effective – and humane – to invest resources in universal early childhood, early intervention programs with young people and other strategies that change the status quo, we believe that the Commonwealth Commissioner has an important role to play in influencing outcomes for the young people who are in detention or the community corrections system, or at risk of coming into contact with these systems. We hold that this is critical given recent commentary that has flagged a discernible rise in more punitive youth justice policies, with increasing emphasis placed on the need for young people to take responsibility for their actions (Kemshall, 2008; Goldson and Muncie, 2006) at the expense of more rehabilitative approaches. The existing evidence and Mission Australia's experience indicates that the best interests of children and young people are not served through close supervision or detention, especially if this is not coupled with the provision of holistic services that build their capacity and prospects for the future.

We believe that monitoring this area, bringing pressure to bear on sentencing and other related policy, and educating the community regarding the necessity of a rehabilitative approach ought to be an urgent priority for the new Commonwealth Commissioner. In this regard, we note that while some vulnerable populations are specifically mentioned in the Bill (refer to Section 9, *Functions and powers of Commissioner*), young people in detention and serving community-based orders or at risk of becoming enmeshed in these systems are not identified. This is a notable absence and Mission Australia feels strongly that if the Act is to explicitly mention particular cohorts then the needs of young people in contact with or at risk of coming into contact with the criminal justice system must also be enshrined in the legislation so that their needs, rights and interests are not overlooked but are accorded an appropriate profile and priority.

With regard to the nature and level of the work undertaken by the new Commissioner's Office, while we support the Commissioner's powers to investigate and intervene in specific legal cases and we feel that this will be particularly important where gaps between State and Commonwealth law may result in the exacerbation of some children and young people's vulnerability (see towards the end of this submission for an example of this situation), we strongly believe that the Commissioner ought also have a focus on interrogating and resolving systemic issues. We support the range of functions and powers of the Commissioner detailed in the Bill as they imply a focus on systemic issues (or at least such a focus will be required if

the Commissioner is to fulfil these functions), however we suggest that Section 9, *Functions and powers of Commissioner* would be strengthened by making explicit mention of such a focus.

Similarly, we see a potential tension between the imperative of assuring children and young people's immediate safety, and investing in family and community capacity building measures which may have more distal outcomes and payoffs, but are likely to have the greater impact in the long term. We feel that the need for investment in prevention and early intervention initiatives is an equally pressing matter if the wellbeing of disadvantaged and vulnerable children and young people is to be enhanced and their longer-term social outcomes improved. In addition to the suggestion above, Section 9 might be further strengthened by elevating the important role that prevention and early intervention initiatives play in upholding the rights of children and young people and incorporating explicit mention of this in the Act.

### ***Key points and recommendations***

- Mission Australia cautions that the interests of the Commonwealth Commissioner may be far broader than is immediately apparent, especially if the Office is to take an interest in 'upstream' policy interventions as we suggest it must if it is to have an impact on the wellbeing of the future generations of Australia's children. This raises the critical matter of resourcing if the Office is to be more substantial than a symbolic gesture and fulfil its potential by making a tangible difference to children and young people. We argue that although an adequately-resourced Commissioner's Office may be costly, this is a cost worth prioritising and bearing. In the long run, stimulating the conditions needed to fully realise the suite of rights specified in the Convention on the Rights of the Child will *save* rather than cost money.
- While we believe that the Commonwealth Commissioner should promote the rights of *all* children and young people, we feel strongly that there are especially vulnerable populations which require particular attention if they are to enjoy the same rights and access to social goods as their more fortunate peers. To this end, we strongly support the special status accorded Aboriginal and Torres Strait Islander children and young people in the Bill. Attending to the needs, rights and interests of these young people as a national priority is manifestly right and just. In particular, we believe that special attention must be paid to the assertion of these children and young people's cultural rights.
- Mission Australia is also of the firm view that if the Act is to explicitly mention particular cohorts then the needs of young people in contact with or at risk of coming into contact with the criminal justice system must also be enshrined in the legislation so that their needs, rights and interests are not overlooked but are accorded an appropriate profile and priority. Further, in view of recent commentary which suggests there has been a discernible rise in more punitive youth justice policies at the expense of more rehabilitative approaches, we believe that monitoring this area, bringing pressure to bear on sentencing and other related policy, and educating the community regarding the necessity of a rehabilitative approach ought to be an urgent priority for the new Commonwealth Commissioner.
- We support the Commissioner's powers to investigate and intervene in specific legal cases however we strongly suggest that the Commissioner have a focus on interrogating and resolving systemic issues. In this regard, while we support the range of functions and powers of the Commissioner detailed in the Bill as they imply a focus on systemic issues, we suggest that Section 9, *Functions and powers of Commissioner* would be strengthened



by making explicit mention of such a focus.

- Mission Australia views the need for prevention and early intervention initiatives as a matter that is equally as pressing as the need to respond to more immediate imperatives such as those concerned with keeping Australia's children safe. This is critical if the wellbeing of disadvantaged and vulnerable children and young people is to be enhanced in the long-term and their social outcomes improved. We recommend that Section 9, *Functions and powers of Commissioner* be further strengthened by elevating the important role that prevention and early intervention initiatives play in upholding the rights of children and young people and incorporating explicit mention of this in the Act.

### ***Amplifying the voice of children and young people and responding to their views***

Mission Australia notes and strongly supports the weight that is placed on children and young people's right to participate in decision-making as it affects them, and the clear intention of the Bill to ensure that the Commissioner's Office proactively seeks the views of young people and accords these due regard. In our experience, children and young people have perspectives that are unique and separate from those of their carers, have sage and policy-relevant advice to offer, and a strong desire to be heard:

*I believe that as part of the future generation, I should get more chances to speak up and change the world. (16 years, female, Mission Australia, 2010, National Survey of Young Australians)*

The results of Mission Australia's 2010 *National Survey* are testament to this. In 2010 we included for the first time a question seeking young people's views on what they see as the three most important issues facing Australia today, and their advice about what might be done about their top issue of concern. It is evident through the qualitative responses that young people have clear views on issues affecting them personally and those issues affecting Australia more broadly, and an impressive depth of insight into potential remedies that – critically – will resonate with young people and are therefore likely to be effective. Nationally, the young people who responded to the survey (this year more than 50,000 young people participated) see the top four most important issues facing Australia today to be: the environment; alcohol and drugs; crime, safety and violence; and equity and discrimination. With regard to issues personally affecting young people and those within their close circles, body image, family conflict, coping with stress, and school or study problems are of major concern. It is also clear from the 2010 survey results that young people are able to understand the causal connections between their personal experiences and concerns and societal forces.

*As a young person, I am concerned about the increasing use of drugs & all the social issues that arise from this use & abuse. (22 years, female)*

*I am becoming seriously concerned with the amount of female friends around me who have incredibly negative opinions about their weight, and who persist in unhealthy ways to achieve the 'ideal' skinny body, such as by starving themselves. I believe the media has a huge amount of responsibility for this problem and do not seem to care about the millions of people they affect, and are not trying hard enough to stop the obsession almost all young women have about being thin. Today's perception of a 'healthy' or 'attractive' body is now so distorted, and yet nobody is approaching this issue head-on with enough success. I think fashion magazines need to stop using underweight models and stop using digital enhancements in their images. Enough is enough. People's mental and physical health is more important than a creative license to promote unattainable beauty. I also think that with today's technology and various*

*methods to get people to 'slim down' and/or interrupt the natural functioning of their bodies, the whole world needs to slow down and take a step back and see what they have done to the minds of its young population. (16 years, female)*

*I think there is a lot of under age drinking and drugs happening around us and not a lot of people, the children's parents or even police or the government is doing anything about it. Especially in such small communities as mine. (14 years, female)*

*Family conflict is a largely underrated problem in our community, due to people being too proud or ashamed to share their problems and get help for them. (14 years, female)*

We believe that the value of Mission Australia's National Survey of Young Australians can largely be attributed to the diversity of views we are able access, including the views of young people who are homeless, young people who are in detention, and young people of diverse cultural backgrounds. The views of these populations are infrequently sought and even less frequently accessed, despite the great deal of good will regarding seeking children's views on decisions which affect them. We attach for the Committee's interest a Snapshot publication drawing on the data collected for Mission Australia's 2009 National Survey of Young Australians, *Hearing directly from vulnerable young Australians*. This publication focuses on the responses of three of the more vulnerable groups of young people who responded to the annual survey: those who were homeless; those in out-of-home care; or those who were in juvenile justice. This reveals notable differences and similarities between the more vulnerable survey respondents and their contemporaries and has important implications for the tailoring of policy solutions. We would be pleased to discuss this in more detail or provide further information if the Committee feels this would be of value.

While we do not argue for any level of detail concerning consultation mechanisms to be included in the Act, we note, however, that different consultation and engagement approaches will be required if the Commissioner is to access the views of Australia's most vulnerable children, children from culturally and linguistically diverse backgrounds, and indeed Aboriginal and Torres Strait Islander children. Through our primary research and service delivery experience we are acutely aware that children and young people live in the context of carers and communities, and that this context must be deeply understood and able to navigated sensitively if the Commissioner's Office is to access a diversity of views, and not just the views of those who are faring well and able to access the more typical channels and platforms of engagement, though we stress that these views are also vital to obtain.

We raise these matters as they have important implications for liaison and connecting into other existing bodies which work with children and young people, and we note that some jurisdictions with a Commissioner for Children and Young People do this particularly well. In Queensland, for example, consultation with hard-to-reach children and young people is facilitated through community visitors who have existing relationships with children and young people, and their carers and/or influential others in their lives. As the Bill quite rightly identifies, the Commissioner's Office will have a role to play in "co-ordinating policies, programs and funding which impact on children and young people". By virtue of these activities it ought also be in a position to weigh different approaches and contribute to dialogue about best practice in this regard, and we therefore believe this Office might realistically take a leadership role in identifying and building on best practice across the country to ensure that equal outcomes are achieved for Australia's children and young people, irrespective of where they live. We suggest an excellent place to commence this work is in identifying effective consultation networks and practices across the country and incorporating these into some form of practical consultation framework. This, we feel, is a critical priority as it is a precondition of "proactively involving children and young people in decisions that affect them" (9, (1), g), and will presumably lead to much input which will help

frame other priority areas of work.

The issue of consultation also serves to highlight the fact that collaboration with the non-government organisation (NGO) sector is essential. The absence of a specific reference to this sector – and to academic experts and research institutions – is notable and we strongly recommend that Item 10, *How the Commissioner is to perform functions*, be amended to include these as bodies with which the Commissioner ought to consult. We note that such an inclusion would be consistent with the proposed reforms to the family law system, where relevant expertise is recognised and sought.

#### ***Key points and recommendations***

- As a national organisation with services in all states and territories, we note that some jurisdictions with a Commissioner for Children and Young People undertake consultation with children and young people particularly sensitively and well. Mission Australia suggests that a critical priority for the Commissioner's Office might be to identify effective consultation networks and practices across the country, to incorporate these into some form of practical consultation framework, and to contribute to dialogue about best practice in this regard. We underscore the importance of effective consultation as it is a precondition of "proactively involving children and young people in decisions that affect them" (9, (1), g), it will presumably help frame other priority areas of the Commissioner's work, and – critically – effective and respectful consultation is key to obtaining the diverse views of Australia's most vulnerable children, children from culturally and linguistically diverse backgrounds, and indeed Aboriginal and Torres Strait Islander children.
- Mission Australia recommends that Item 10, *How the Commissioner is to perform functions*, be amended to include a specific reference that the Commissioner must also consult with the NGO sector and academic experts and research institution

#### ***Other observations and comments***

- Mission Australia is an evidence-informed organisation that conducts primary research and uses this to inform our practice. We therefore have a first hand understanding of the importance of having access to high quality data and can see a potential role for the Commissioner in advocating for effective data collection on children's health, wellbeing, development and participation in order to measure the impact of laws, policies and programs upon children and accurately monitor progress towards implementation of children's rights. However, we also suggest that caution must be exercised in this regard and that the advancement of a data development agenda must be undertaken with and tempered by due regard for children and young people's right to privacy, especially as the implications of data linkage may not be fully understood and agencies are increasingly seeking to access multiple sets of data (for example, in the education system). We stress, however, that we are fully supportive of integrated service delivery and understand that this involves sharing data, and that we do not advocate for any duplication of effort (for example, overlap with Privacy Commissioners). However, we see a potential role for the Commissioner in monitoring large scale data development and linkage projects across the country which have the potential to fundamentally alter the amount and type of data that is collected and able to be accessed, as we foresee that access to such information when combined with discretionary decision-making about access to

social goods may, on occasion, serve to negatively impact on children and young people, for example through exclusion from educational programs or opportunities.

- Mission Australia concurs with the view of others and those enshrined in the Bill that it is appropriate that the Commissioner for Children and Young People promote, monitor and protect the rights of children and young people in immigration detention and those whose parents are in immigration detention. We also believe it is appropriate for the Commissioner to monitor the level and quality of care which is provided, particularly as these children and young people remain the responsibility of federal authorities but have little recourse beyond the responsible Minister. In view of this, we stress that it is vital to assure and protect the Commissioner's freedom to critique the Government's performance in this regard. The maintenance of the Commissioner's independence is therefore critical, and we suggest that the proposed function of the Commissioner to act as "the legal guardian of unaccompanied children and young people who arrive in Australia without the requisite visa or other authority for entry" (Item 9 (1) e) be reconsidered. This is not to suggest that some form of guardianship for these children and young people is not of paramount importance. To the contrary: it is of such importance that it is essential we preserve the Commissioner's capacity to scrutinise the quality of such guardianship.
- On the matter of independence, we add our voice to those of our peers who have noted that the preparation of reports *on behalf of Australia to the United Nations Committee on the Rights of the Child* is inappropriate, irrespective of the clause in the Bill which enables the Commissioner to prepare other reports for the Secretary-General of the United Nations. This would place the Commissioner in the difficult position of reporting on matters which it is also responsible for monitoring and critiquing.
- In keeping with the ideas expressed above, Mission Australia believes that it is important that the Commissioner have the power to *initiate* inquiries, to review *proposed* laws (as well as existing laws), and to also to review existing policy (as well as proposed policy) – refer to Item 9 (1) c.
- With regard to Item 3 (2) b, we recommend that the Act specify that the Commissioner will have the capacity to monitor the development and application of *Commonwealth and State and Territory* laws affecting children and young people. Currently the Bill is silent on which laws will fall within the purview of the Commissioner. In Mission Australia's experience there is a demonstrable need for this power. The recent reform of family law is a case in point, which arguably has not resolved the lack of coordination between the states and territories and the family court system; in some cases it is questionable as to whether the best interests of children are being served. For example, even in cases where abuse has been substantiated by the state authority, the set of criteria upon which the federal court bases its decisions may result in questionable future contact rulings.

#### ***Key points and recommendations***

- Mission Australia recommends that Item 10, *How the Commissioner is to perform functions*, be amended to include a specific reference that the Commissioner must also consult with the NGO sector and academic experts and research institutions.
- Mission Australia concurs with the view of others and those enshrined in the Bill that it is

appropriate that the Commissioner for Children and Young People promote, monitor and protect the rights of children and young people in immigration detention and those whose parents are in immigration detention. We also believe it is appropriate for the Commissioner to monitor the level and quality of care which is provided, particularly as these children and young people remain the responsibility of federal authorities but have little recourse beyond the responsible Minister. In our view, this highlights the importance of maintaining the Commissioner's independence and we suggest that the proposed function of the Commissioner to act as "the legal guardian of unaccompanied children and young people who arrive in Australia without the requisite visa or other authority for entry" (Item 9 (1) e) be reconsidered as this would compromise the capacity of the Commissioner to scrutinise the quality of this guardianship.

- We add our voice to others who have noted that the preparation of reports *on behalf of Australia to the United Nations Committee on the Rights of the Child* is inappropriate, irrespective of the clause in the Bill which enables the Commissioner to prepare other reports for the Secretary-General of the United Nations. This would place the Commissioner in the difficult position of reporting on matters which it is also responsible for monitoring and critiquing.
- Mission Australia recommends that the Bill be amended to instil in the Commissioner the power to *initiate* inquiries, to review *proposed* laws (as well as existing laws), and to also to review existing policy (as well as proposed policy) – refer to Item 9 (1) c.
- Mission Australia recommends that the Act specify that the Commissioner will have the capacity to monitor the development and application of *Commonwealth and State and Territory* laws affecting children and young people (Item 3 (2) b).

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