



**SUBMISSION PREPARED BY
THE SALVATION ARMY AUSTRALIA SOUTHERN TERRITORY**

FOR

**THE SENATE LEGAL AND CONSTITUTIONAL COMMITTEE ON THE
COMMONWEALTH COMMISSIONER FOR CHILDREN AND
YOUNG PEOPLE BILL 2010**

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This submission to the Senate Legal and Constitutional Committee is provided on behalf of The Salvation Army Australia Southern Territory. The Southern Territory includes Salvation Army services across the jurisdictions of Victoria, South Australia, Western Australia, Tasmania and the Northern Territory.

The Salvation Army has been operating in Australia for 130 years and is one of the most recognised and well respected charitable, welfare organisations. As an indication of our reach into the community, each year over a million people in Australia receive assistance from The Salvation Army. A diversity of services are provided, including: addictions, aged care, family support, out of home care, accommodation and homeless services, disability services, emergency disaster responses, employment services, as well as financial assistance and counseling.

The Salvation Army has a long history of assisting the most vulnerable and marginalised in our communities, including groups of at risk children and young people. As such, we welcome the opportunity to provide this submission to the Senate Legal and Constitutional Committee and contribute to its inquiry on the Commonwealth Commissioner for Children and Young People Bill 2010.

The Salvation Army supports the establishment of a national children's and young person's Commissioner to better protect the rights and improve the wellbeing of children and young people. Through the establishment of a national children's Commissioner, the Australian Government would demonstrate a strong commitment to fulfilling its international obligations, especially as a signatory to the *Convention on the Rights of the Child*, and advance the universal realisation of children's rights.

Many children in Australia are able to fully enjoy their human rights. However, for some groups of children, their human rights are particularly vulnerable. These groups include: Aboriginal children, children living in state care, including detention and immigration detention, those that are homeless, experiencing bullying, violence and abuse as well as those living with a disability or mental illness. Special attention must also be afforded to protecting children's rights given that their developmental state makes them particularly vulnerable to human rights violations.

The recent *Report Card on the Wellbeing of Young Australians*¹ produced by the Australian Research Alliance for Children and Youth (ARACY) demonstrated that

¹ *Report Card on the Wellbeing of Young Australians* [viewed on-line 9 December 2010]. Available: http://www.aracy.org.au/publicationDocuments/REP_report_card_the_wellbeing_of_young_Australians_A5.pdf

despite Australia's economic prosperity, when compared on an international scale, the wellbeing of Australia's children did not rate as highly as might be expected.

These issues become more pertinent when considering that children and young people are frequent users of public services including education, health and welfare services. As such, they are more affected by the quality of these services and the decisions of successive governments about how these services will operate². Despite children being service users and citizens in their own right, they have limited avenues to advocate for their needs or have their voices heard in decision making; children have no vote and cannot play a meaningful role in the political process that determines Governments' response to human rights; children encounter significant problems in using the judicial system to protect their rights; and children's access to grievance processes and redress is generally limited³.

The establishment of a Commonwealth Commissioner for Children and Young People would be an important step to promote and protect the rights of children in Australia. It would create an independent body with the power to monitor, analyse issues impacting on children and advocate for their needs and rights.

While all Australian States have a Commissioner, with South Australia being the exception, a Commonwealth Commissioner would allow for the co-ordination of these activities at a national level. Commonwealth legislation and policy has a direct impact on children. Furthermore, the issues that affect children such as homelessness, child protection, disability and mental illness span across Australia. Working closely with States and Territories, a Commonwealth authority would be best placed to take on an overarching co-ordination role, offer leadership and national level responses.

The United Nations Committee on the Rights of the Child⁴ has observed that any independent national human rights institution involved in the promotion and protection of the rights of the child should have the following functions:

² Children and the Law Committee of Law Society of South Australia, *Submission to the Law Council of Australia on the examination of the Commonwealth Commissioner for Children and Young People Bill 2010*, 18 June 2010, p. 3.

³ The Committee on the Rights of the Child, *the Role of Independent National Human Rights Institutions in the Protection and Promotion of the Rights of the Child: General Comment No. 2*, CRC/GC/2002/2, 15 November 2002, p 2.

⁴ The Committee on the Rights of the Child, *The Role of Independent National Human Rights Institutions in the Protection and Promotion of the Rights of the Child: General Comment No. 2*, CRC/GC/2002/2, 15 November 2002.

- Act as a watch dog and monitor children’s rights.
- Receive complaints of breaches of children’s rights.
- Support children in court and intervene in relevant matters before the court.
- Promote public awareness of children’s human rights.
- Provide a voice for children and avenue for participation that gives respect to children’s views.

The functions and powers of the Commissioner provided under Section 9 of the Commonwealth Commissioner for Children and Young People Bill 2010 include the majority of these functions, however, powers to investigate individual complaints is not listed.

It is suggested that the functions of the Commonwealth Commissioner should allow scope for redress in cases where there is a violation or disregard for children’s rights. Even where the role does not have jurisdiction to respond, it should play a part to ensure other adequate responses are available to challenge individual violations of children’s rights. This includes, reviewing children’s access to and effectiveness of the courts and other existing localised complaint mechanisms⁵.

The Salvation Army is pleased to provide this submission to the Senate Legal and Constitutional Committee and contribute to its inquiry on the Commonwealth Commissioner for Children and Young People Bill 2010. It views the establishment of a Commonwealth Commissioner as a fundamental step towards the better promotion and protection of children’s rights. Further to this, it hopes that the promotion and protection of children’s rights can become further “mainstreamed” with human rights institutions and governments working together to ensure children’s rights become an integrated part of organisational practice. Opportunities to discuss the content of this submission are welcome should any further information be of assistance.

⁵ Children and the Law Committee of Law Society of South Australia, *Submission to the Law Council of Australia on the examination of the Commonwealth Commissioner for Children and Young People Bill 2010*, 18 June 2010, p. 9-10.