



Premier & Cabinet

Senator Trish Crossin
Chair
Senate Standing Committee on Legal and Constitutional Affairs
PO Box 6100
Parliament House
CANBERRA ACT 2600

Dear Senator Crossin

I refer to your letter to the Premier inviting a submission to the Senate Inquiry into the Commonwealth's *Commissioner for Children and Young People Bill 2010*.

Attached is a NSW Government submission, prepared by the NSW Commission for Children and Young People in consultation with relevant human services and justice agencies.

For further information about this submission, please contact the NSW Commissioner for Children and Young People Ms Megan Mitchell on (02) 9286 7278 or at Megan.Mitchell@kids.nsw.gov.au.

Yours sincerely

Brendan O'Reilly
Director General



SUBMISSION TO THE SENATE INQUIRY INTO THE COMMONWEALTH COMMISSIONER FOR CHILDREN AND YOUNG PEOPLE BILL 2010

A Commitment to the Well-being of Children in NSW

The NSW Government is committed to supporting the well-being of children and young people. More than half of the priorities contained in the NSW State Plan, which guides the delivery of government services in NSW, are relevant to children and young people.

The NSW Government also supports the well-being of children and young people through the work of the NSW Commission for Children and Young People and the NSW Children's Guardian.

The NSW Commission for Children and Young People was established in 1999 under the *Commission for Children and Young People Act 1998*. The Commission advocates for the well-being of children and young people. It does this by working with NSW Government agencies and non-government organisations to provide policy advice, undertake research, support the development of child-safe organisations, monitor the NSW Working With Children Check and convene the NSW Child Death Review Team. The Commission's independence within government is supported by a governance model through which it reports to a Parliamentary Joint Committee.

The NSW Children's Guardian regulates the provision of out-of-home care services to promote the best interests of all children and young people in out-of-home care in NSW and to ensure that their rights are safeguarded. The NSW Children's Guardian also regulates non-government adoption services, and paid employment of children under 15 years of age in entertainment, exhibition, still photography and door-to-door sales, and children who are under 16 years of age in modeling.

Commonwealth Commissioner for Children and Young People Bill 2010

General Comments

The NSW Government supports the creation of a Commonwealth Commissioner for Children and Young People to promote and enhance the rights, interests and well-being of all children and young people living and working in Australia, from a national and international perspective.

However, it is critical that there is no duplication or overlap of the roles and functions of the state and territory Commissioners, Guardians and/or government agencies.

In addition, the NSW Government expects that there will be no financial or budgetary implications as a result of the creation of a Commonwealth Commissioner. Should any implications arise, the NSW Government expects that consultations will take place with state and territory governments.

A Commonwealth Commissioner should have a broad mandate to advocate on issues affecting children and young people and should seek their views in the exercise of its functions, consistent with the principles contained in the United Nations Convention on the Rights of the Child.

The NSW Government supports a role for the Commonwealth Commissioner focusing on vulnerable children and young people and, in particular, Aboriginal children and young people. In this context, an additional dedicated office to specifically represent and advocate for Aboriginal children and young people should be considered. This would complement current Commonwealth policies and action plans, such as the Council of Australian Government's *National Framework of Principles for Delivering Services to Indigenous Australians* and the *Aboriginal and Torres Strait Islander Education Action Plan 2010-2014*.

The NSW Government recommends that the Committee consult with key Aboriginal groups such as the Aboriginal Child, Family and Community Care State Secretariat (AbSec), the Secretariat of National Aboriginal and Islander Child Care (SNAICC) and the NSW Aboriginal Education Consultative Group (AECG) for their views and expertise in relation to these issues.

Specific Issues and Concerns

The NSW Government has concerns about a number of the proposed functions contained in the Bill as it is currently drafted.

Potential duplication of state and territory roles

The NSW Government is of the view that a Commonwealth Commissioner should support and enhance the role of state and territory Commissioners and Guardians, rather than duplicate or confuse existing arrangements. It is of concern that a number of the functions described in the Bill are already undertaken by state and territory Commissioners and Guardians and/or government agencies and are not appropriate for a Commonwealth Commissioner.

The NSW Government therefore does not support a Commonwealth Commissioner with the function to monitor and oversight service delivery in states and territories. This duplicates the role and function of state and territory Commissioners, Guardians and Ombudsman.

In addition, co-ordinating policies, programs and funding which impact on children and young people is already the responsibility of state, territory and Commonwealth government agencies. The involvement of a Commonwealth Commissioner is highly likely to lead to inefficiencies and potentially dilutes the advocacy role of the Commissioner.

To avoid duplication, the NSW Government considers it necessary that further consultation take place with relevant state and territory Commissioners, Guardians and government agencies to more clearly define the role and functions of a proposed Commonwealth Commissioner.

Guardianship of unaccompanied minors

The NSW Government supports a Commonwealth Commissioner advocating for the rights and interests of unaccompanied minors. While recognising the importance of making available a legal guardian for unaccompanied minors who arrive in Australia without the required authority, the NSW Government does not support a Commonwealth Commissioner undertaking a guardianship role.

Given the differing roles of a Commissioner and Guardian, it would be difficult for a Commonwealth Commissioner to discharge the dual functions of an advocate and a guardian.

A number of NSW Government agencies have expressed concern about the inherent conflict that already exists as a result of the Minister for Immigration and Citizenship acting as a legal guardian of unaccompanied minors while making determinations about their detention and immigration status.

In addition, there are other administrative and practical issues that arise as a result of the Minister being the legal guardian of unaccompanied minors. For example, there have been difficulties in enrolling these children in school and also accessing services because of the requirement for a legal guardian to accompany the child or young person.

The NSW Government recommends that the Committee undertake further consultations with state and territory government agencies about legal guardianship and the provision of support to unaccompanied children or young people arriving in Australia.

Investment in early childhood

A specific function focused on supporting a continued investment in early childhood in line with current Commonwealth, state and territory developments, is supported.

Additional functions

In order to enhance its role, the NSW Government supports the inclusion of the following additional functions for consideration:

- Focusing on vulnerable children and young people and, in particular, Aboriginal children and young people.
- Conducting and coordinating research on national issues that impact on children and young people.
- Establishing processes for children and young people to make complaints about Commonwealth agencies and government funded organisations.
- Advocating on behalf of children and young people in relation to the impact of proposed federal legislative changes.
- Making recommendations to government agencies and non-government organisations about federal legislation, policies, practices and services affecting children and young people.
- Supporting the development of child-centred consultation and research to support children and young people to contribute to the development of federal government policy.

Preferred model

Ideally, a Commonwealth Commissioner should be able to act independently from government, have statutory authority, security of tenure and be provided with appropriate resources. The NSW Government would not be opposed to the location of a Commonwealth Commissioner within the Australian Human Rights Commission.

Further Consideration

The NSW Government welcomes further opportunities for discussion to contribute to the establishment of a Commonwealth Commissioner with a particular focus on how it can enhance the role of the current state and territory Commissioners and Guardians. We would be pleased to provide additional information to the Committee if required.

The NSW Government also supports the Committee undertaking consultations with children and young people about their views on the creation and potential functions of a Commonwealth Commissioner. The NSW Commission for Children and Young People would welcome the opportunity to provide advice and information to the Committee on this issue.