

Introduction

The Youth Affairs Council of South Australia (YACSA) is pleased to have the opportunity to contribute to the establishment of a Commissioner for Children and Young People in South Australia by providing feedback on the Children and Young People (Oversight and Advocacy Bodies) Bill 2016.

YACSA is the peak body in South Australia representing the interests of young people, youth workers, organisations and networks throughout the non-government youth sector. Policy positions are independent and not aligned with any political party or movement. YACSA supports the fundamental right of all young people to participate in and contribute to all aspects of community life, particularly the decision-making processes that impact them.

Young people are expected to assume many responsibilities in our society, yet the same society can devalue their contribution and fail to recognise their position as stakeholders in civil, political, economic, social and cultural life, simply because of their age. This is especially the case for young people experiencing social disadvantage, whose voices are rarely heard in political debate, and whose interests may be ignored or even denounced for political gain.

YACSA fully supports and welcomes the establishment of a Commissioner for Children and Young People and maintains that this role is crucial to advocate for and protect the interests of all children and young people across the state. YACSA has advocated strongly for the independence of this role and that the role should have robust powers of investigation.

To reiterate our previous response, we are concerned that the current public discussion surrounding the Commissioner for Children and Young People is being subsumed into the child protection reform process. Both the Layton and Nyland reviews recommended the establishment of a Commissioner to engage and advocate with and for *all* children and young people – not just those in the child protection system.

While the commentary and fact sheet provided in this government engagement supports that assertion, it also suggests that the Commissioner's role includes, "...the monitoring, referral and review of child protection matters and system-level issues".

We are deeply concerned that the current discourse creates an unrealistic expectation about the point and purpose of a Commissioner for Children and Young People and urge the Government to reconsider its commentary and confirm its intention before progressing.

Comments regarding the Bill

YACSA's previous submissions have been clear in outlining the elements that we believe are crucial to establishing an effective and independent Commissioner for Children and Young People. The following section of this submission again outlines our previous position and reflects much of the 'essential elements' of the Nyland report compared to the current Bill.

Human rights

YACSA acknowledges and supports Australia's obligations in relation to the United Nations Convention on the Rights of the Child (UNCRC), and we view the Convention as being relevant to the discussion, debate or consideration of any and all issues relating to young people. YACSA maintains that the Convention should be the foundation of this legislation and ensuring that South Australia is complying with the articles of the Convention should be within the remit of the proposed Commissioner. While we are pleased to note that the important role the Commissioner will have in ensuring South Australia is complying with the UNCRC is set out within the legislation (Section 11 (1)(e)), YACSA reiterates the importance of naming the Convention on the Rights of the Child and any other relevant international Conventions and Charters in the legislation as the foundation of the three statutory roles described in the legislation.

Recruitment

In our previous submissions, YACSA stated the importance of a rigorous recruitment process for the Commissioner role. We indicated that the process must be independent of government, include a suitably qualified recruitment panel, be guided by robust eligibility criteria and be advertised widely. Further, we stated that this recruitment process should be set out within the legislation. This, according to the Nyland report¹ is an essential starting point and is central to demonstrating the legitimacy and credibility of the role. However, we again note with disappointment that the detailed recruitment process that was a feature of the previous Child Development and Wellbeing Bill (2014 and 2015) was omitted from the extract and is still omitted from the current Bill.

Independence

Our previous submissions have stated the importance of the Commissioner being completely independent of government. Again this demonstrates the legitimacy of the role and assists in building public confidence in the work of the Commissioner. YACSA has expressed concerns that the recruitment processes, powers and functions set out in earlier Bills did not sufficiently provide for the independence that the role requires.

Section 52AB of the Children's Protection Act 1993 specifically provides for the independence of the Guardian for Children and Young People from direction of the Minister and Government as follows:

- (1) (Independence) In performing and exercising his or her functions and powers under this Act, the Guardian must act independently, impartially and in the public interest.
- (2) The Minister cannot control how the Guardian is to exercise the Guardian's statutory functions and powers and cannot give any direction with respect to the content of any report prepared by the Guardian.

YACSA recommends a similar inclusion in the legislation making clear that the Commissioner can undertake their role unfettered by government.

¹ Ibid, p. 596.

The functions of a Commissioner for Children and Young People

YACSA supports the Nyland review's² recommended functions of a Commissioner for Children and young people. These recommendations comprised the following themes:

- Advocate for the rights and interests of *all* children and young people in South Australia
- Promote the participation by children and young people in making decisions that affect their lives and in the performance of the Commissioner role
- Advise, and make recommendations to, Ministers, state authorities and other bodies (including nongovernment bodies) on matters related to the rights, development and wellbeing of children and young people at a systemic level
- Ensuring that South Australia satisfies its international obligations to children and young people including the UNCRC
- Inquire into and investigate topics concerning the rights, development or wellbeing of children and young people at a systemic level, including individual cases which have the capacity to identify systemic issues
- Prepare and publish reports and undertake research on matters related to the rights, development and wellbeing of children and young people

Again YACSA emphasises that the role for Commissioner for Children and Young People should be underpinned by the UNCRC and principally focused on the rights and interests of all children and young people in South Australia.

Consultation and engagement

Article 12 of the UNCRC³ is clear that children and young people have a right to be involved in the decisions that affect them. Therefore, the Commissioner for Children and Young People's functions and activities should always be guided by the regular participation of children and young people in strategic directions and decision making processes. YACSA is supportive of the inclusion of this obligation in Section 11 (2) but stress that this participation needs to be regular and meaningful and lead to young people feeling ownership and influence over the process.

While we agree that the Commissioner should not be obliged to consult with the families and caregivers of children and young people and relevant peak and non-government organisations, we support Commissioner Nyland's assertion that the Commissioner may choose to as part of their work. We believe there is value in the Commissioner pursuing an effective and productive working relationship with relevant non-government organisations that also promote and support the rights and interests of children and young people.

Staffing and resources

In order for the Commissioner to effectively undertake their role, the office must be adequately resourced. In section 52B of the Children's Protection Act 1993, the staffing and resources of the Guardian for Children and Young People is set out clearly in the following:

² Child Protection Systems Royal Commission, *The life they deserve: Child Protection Systems Royal Commission Report, Volume 1: Summary and Report*, Government of South Australia, 2016, p.598.

³ United Nations Human Rights: Office of the High Commissioner, *Convention on the Rights of the Child*, 1990 <http://www.ohchr.org/en/professionalinterest/pages/crc.aspx> viewed 8 September 2016.

‘The Minister must provide the Guardian with the staff and other resources that the Guardian reasonably needs for carrying out the Guardian’s functions.’

This important legislative provision has been omitted from the current Bill with regards to both the Commissioner for Children and Young People and the Guardian for Children and Young People.

YACSA recommends that a similar provision is included in the legislation to ensure that the role of the Commissioner and the Guardian are adequately resourced to fully undertake their role.

The Relationship between Oversight Bodies

Concurring with the Nyland report⁴, YACSA supports the Commissioner for Children and Young People also being independent from the other statutory bodies referenced in the legislation with a clear delineation of roles. The Child Death and Serious Injury Review Committee (CDSIRC) and the Guardian for Children and Young People (GCYP) already hold statutory authority for specific aspects of child and young person focused oversight. The GCYP’s role is focused exclusively on children and young people in care, and the CDSIRC has a public health focus with no advocacy role.

However, this independence should not limit opportunities for the statutory bodies to work together, co-locate, or share resources to more efficiently undertake their respective functions. We stress though that this collaboration or sharing of resources should be at the discretion of the statutory oversight bodies and should have no impact government resourcing the separate roles adequately.

The Guardian for Children and Young People

We note the exclusion of Division 3 – Charter of Rights for Children and Young People in Care from the draft Bill. As a signatory to the Charter, YACSA believes it is imperative that this provision be retained in the Bill. The Charter has been developed by children and young people in care and should not be dismissed or amended. To do so would suggest that the views of children and young people are not welcome or valid and would therefore be antithesis to good practice and the intention of Articles 12 and 13.

We also note that organisations contracted by government to deliver services to children and young people in care are contractually obliged to endorse and promote the Charter and believe this should be maintained.

We do not support the inclusion of section 23 – Youth Advisory Committee. The Guardian must be compelled to engage and consult children and young people but the method of that engagement should not be prescriptive; best practice dictates that children and young people determine the method of engagement, not adults or systems or structures.

Child Development Council

YACSA does not support the creation of a Child Development Council and instead advocates for the Commissioner to undertake the roles and functions proposed for the Council contained within the Bill, including development and implementation of the Outcomes Framework.

⁴ Child Protection Systems Royal Commission, *The life they deserve: Child Protection Systems Royal Commission Report, Volume 1: Summary and Report*, Government of South Australia, 2016, p. 600.

The consultation process

As expressed in our previous submissions, YACSA is concerned about the sense of urgency by government to establish a Commissioner for Children and Young People, particularly in light of the role being first recommended by the Layton review in 2003. YACSA, as well as many in the community and the non-government sector have been calling on government to implement this recommendation since the release of the Layton report, fourteen years ago. YACSA has also worked closely with the government and opposition on their respective Bills and we have contributed to a raft of consultations and discussions.

Since the release of the Nyland review, the government has worked expeditiously to develop a Bill to establish a Commissioner. Both the release of the extract and the broader Bill has been accompanied by short time-frames to consider, develop and submit a response. The short time frame, particularly when weighed against the time-line since the Commissioner was first called for in 2003 is antithesis to informed debate and the establishment of a considered and effective Commissioner. YACSA urges the Government to allocate sufficient time to effectively consult with the community and to develop and fully consider the complete legislative framework that will support this important role.

South Australia may be the last jurisdiction in Australia to establish a Commissioner for Children and Young People but that does not mean that we have to now rush the process. YACSA urges government to ensure that the process of establishing the office for the Commissioner for Children and Young People is considered, and consultative and has at its core a commitment to establishing an appropriate, strong and effective Commissioner to assist in advocating for and protecting the rights and interests of all children and young people in South Australia.

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