

**UnitingCare Burnside Response:**

# **ALP Proposal for a National Commissioner for Children**



August 2002



because  
**children**  
matter

## **Introduction**

UnitingCare Burnside (Burnside) is one of the largest non-government providers of child and family services in New South Wales. As an agency of the Uniting Church in Australia, Burnside stands within the Church's concern for justice, particularly in relation to children, young people and families affected by disadvantage. We provide innovative and quality programs and advocacy to break the cycle of disadvantage that affects children, young people and their families in New South Wales. Our Social Justice and Research Program demonstrates Burnside's commitment to a more just, compassionate and inclusive society by influencing social policy, undertaking research and resourcing practice across the agency.

In 1997 Burnside published a proposal for a commissioner for children. While some of the issues have since moved on, this proposal argued for clear legislation and broadly based responsibilities for the Commissioner that are still applicable (a summary of the proposal is attached). The underlying reasons for a National Children's Commissioner are still very relevant. An independent advocate for children's rights is necessary because:

- children and young people, while being a large population group are a uniquely uninfluential group as a result of their age and lack of access to political power,
- monitoring of Australia's compliance with the Convention of the Rights of the Child, and other international legal instruments to which we are a signatory is necessary in order to be clear on the progress made towards implementing our international obligations,
- the need for children's voices to be influential in the development of policies and program across Australia is urgent,
- research about the impact of early experiences, the role of early intervention and prevention and the possibilities of pathways in reducing abuse and neglect, preventing crime and improving educational outcomes for children is so compelling that a strong lobbying presence with responsibilities across portfolio areas is crucial. A National Commissioner for Children would have a vital role in ensuring that such research shapes policy and service delivery in areas such as health, community services, income support and education.

A National Commissioner for Children and Young People would need to be focussed on the broad range of issues that impact on children and young people. A positive focus on children's rights and making those rights a reality would be critical to ensuring that the Commission remained relevant and accessible to all children and young people.

Ensuring that children and young people's views, experiences and understandings were central to the work of a Commissioner for Children and Young People would have to be the first priority of such a Commission. The experience of state based Commissioners would be particularly helpful in progressing this work.

A National Commissioner for Children and Young People would be highly effective if it worked closely with the non-government community sector on a range of issues and strategies to promote children's rights and innovative approaches to working with children and young people. The development of relationships and consultation mechanisms between the Commissioner and non-government child, youth and family services would need to be a priority of a National Commissioner.

## **Response to Specific Consultation Questions**

### **Q1 The best structure for the Commissioner's Office**

A National Commissioner for Children and Young people should be an independent statutory office, resourced and supported to promote the health well being of all children and young people children across Australia. Such an office should be structured in such a way as to be independent and to be seen to be an independent advocate within government for children and young people.

There are a myriad of jurisdictional issues that are problematic for national agencies in our federal system. In order to deal with these issues it may be useful for a National Commissioner for Children and Young People to work towards a National Strategy for Children. This would involve working with the Federal Government and state governments towards a commitment to some agreed upon outcomes for children and particular types of strategies in order to achieve agreed such outcomes, with in built reporting mechanisms. Such a process, perhaps similar to the National Mental Health Strategy of the early 1990's, can offer a way through the difficult issues of jurisdiction and differing issues for each of the states and territories.

It is important that, should the Commission have the power to undertake Inquiries, review legislation and make recommendations, that it is incumbent on government departments to respond to those in a public, timely manner. The credibility of the Commissioner would be largely judged by it's ability engage both government and non-government stake holders.

The role of the Commission should be defined very broadly to ensure that non-government organisations, which have an important role in many children and young people's lives have an influential voice through regular consultation and resources/acknowledgment of implementation of best practice initiatives.

### **Q2 The development of a national 'Working with Children Check'**

In principal, the development of a National Working with Children Check could be a positive step for protecting children. The development and implementation of such a check could divert resources from other important issues for children and young people. Also, our experience of the Working with Children Check in NSW shows us that:

- the Working with Children Check cannot comprehensively guarantee that people who have offended against children will be recognised by the system. This is because many perpetrators of child abuse, particularly child sexual abuse, have never been charged or been the subject of disciplinary proceedings in organisations. Also, where such matters have gone to court, they have been dismissed due to lack of evidence or because of issues with the evidence of child witnesses. There have certainly been situations in NSW in recent times where child sex offenders known to people in their community are in paid or unpaid positions where they have unsupervised contact with children.
- Criminal record checks in NSW have not been extended to unpaid staff or volunteers in organisations. This is problematic, given that many non-government agencies rely of the unpaid labour of volunteers to provide, augment and support services to children and young people. Burnside currently pays for such checks for all volunteers who have contact with children. This is a cost that directly reduces our resources for providing services to children, young people and families. Unless a National Working with Children Check included the resources and workable legislation to include both paid and unpaid staff, it would be significantly flawed. The resources required for checking of volunteers nationally would be considerable.

- The costs of compliance (transaction costs and financial costs) can be particularly difficult for smaller organisations with limited infrastructure.

While systems such as the Working with Children Check can be immensely helpful in screening out unsuitable applicants for positions in child focussed agencies, they are not a panacea. They cannot replace good supervision, a focus on hearing and taking seriously children's experiences of the staff who work with them and a willingness to reshape services in children's best interests. These conditions only exist in a climate that has a focus on raising the profile of children's rights and developing child and young person centred services.

**Q3 The use of clauses within government contracts to ensure all funded organisations have appropriate strategies in place to prevent child abuse and handle any complaints**

The use of government contracts to ensure organisations funded by government have particular checks and balances or strategies in place is a useful strategy for ensuring that these programs deliver positive outcomes for children and young people. We recommend that this strategy be extended to include all government contracts and not be limited to 'funded agencies'.

While it is helpful to focus on ensuring strategies are in place to deal with allegations of abuse, such a strategy could be utilised for a range of other positive outcomes for children as well. In addition to the suggested clause, government contracts for programs focussed on children and young people should contain clauses that ensure, for example:

- the meaningful participation of children and young people in planning, implementation and evaluation,
- a commitment to an outcome evaluation that helps build on knowledge about 'what works' with children and young people,
- are focussed on positive outcomes for children and young people.

With reference to ensuring that programs targeted at children and young people have appropriate strategies to prevent abuse and deal with complaints, unless the National Commissioner for children had a role and the resources to enforce such agreements, it would be little more than tokenistic.

**Q4 A national code to protect children?**

As outlined in our response to Q1, we believe that an effective way for a federal government advocacy agency to work with the states to achieve better outcomes for children and young people would be through a National Children's Strategy. A narrow focus on child protection does not deal with the myriad of issues that impact on children and young people. It is important that a Commission for Children should have a positive, capacity building focus with a focus on children's health and well being and developing life opportunities for all children and young people.

A National Children's Strategy could include a statement of general principles and be an embodiment of our commitment to the UN Convention on the Rights of the Child. Such a Strategy would state what outcomes for children all state and the federal government would be striving towards in a range of areas including health and wellbeing, cultural and recreational opportunities and other areas of mutual concern. All parties would make a commitment to funding and implementing consistent mechanisms for monitoring and data collection.

**Q5 Appropriate ways to work with or support a national youth peak advocacy body**

Burnside supports the reinstatement of a national youth advocacy peak, with recurrent, guaranteed funding and a broad agenda. A national youth peak would need to work closely with a National Commission for Children, particularly on issues of concern for people in the 12 years and over age group.