



Protecting the rights of children and young people

12 January 2011

Brenda Bailey, Senior Policy Officer

Introduction

The Public Interest Advocacy Centre

The Public Interest Advocacy Centre (PIAC) is an independent, non-profit law and policy organisation that works for a fair, just and democratic society, empowering citizens, consumers and communities by taking strategic action on public interest issues.

PIAC identifies public interest issues and, where possible and appropriate, works co-operatively with other organisations to advocate for individuals and groups affected. PIAC seeks to:

- expose and redress unjust or unsafe practices, deficient laws or policies;
- promote accountable, transparent and responsive government;
- encourage, influence and inform public debate on issues affecting legal and democratic rights; and
- promote the development of law that reflects the public interest;
- develop and assist community organisations with a public interest focus to pursue the interests of the communities they represent;
- develop models to respond to unmet legal need; and
- maintain an effective and sustainable organisation.

Established in July 1982 as an initiative of the (then) Law Foundation of New South Wales, with support from the NSW Legal Aid Commission, PIAC was the first, and remains the only broadly based public interest legal centre in Australia. Financial support for PIAC comes primarily from the NSW Public Purpose Fund and the Commonwealth and State Community Legal Services Program. PIAC also receives funding from the Industry and Investment NSW for its work on energy and water, and from Allens Arthur Robinson for its Indigenous Justice Program. PIAC also generates income from project and case grants, seminars, consultancy fees, donations and recovery of costs in legal actions.

PIAC's work with children and young people

PIAC welcomes the opportunity to comment on the Bill to establish an independent statutory Office of Commonwealth Commissioner for Children and Young People. PIAC has several ongoing projects that aim to improve outcomes for young people in contact with the criminal justice process and draws on this experience to inform this submission.

Projects focussing on youth issues include:

- the Children in Detention Advocacy Project (CIDnAP). This is a partnership with the Public Interest Law Clearing House and Legal Aid NSW. The project aims to challenge the unlawful and unnecessary detention of young people through policy work and litigation, and find appropriate solutions to systemic problems that contribute to the over-representation of juveniles in the criminal justice system. CIDnAP provides legal representation on a pro bono or legal aid grant basis to young people who may have a cause of action arising from a false arrest, unlawful detention, malicious prosecution and/or the use of excessive force by police, transit authorities and/or private security companies. The project also works with relevant organisations to identify and rectify the causes of these detentions;

- a joint project with the Youth Justice Coalition to produce the report *Bail Me Out*, which compiled and analysed data about bail conditions imposed on young people.¹ The report identified the many ways young people's rights lack protection in the criminal justice system;
- joint coordination of a project with the youth social service sector that reached consensus on a policy for accommodation models for homeless young people on remand;²
- the Mental Health Legal Services Project, a pilot project that includes the employment of a social worker located at the Shopfront Youth Legal Centre, Darlinghurst. The social worker provides case management and care coordination for Shopfront's homeless and mentally ill clients. The project supports the lawyers by negotiating and coordinating non-legal essential services for their clients, such as housing, medical and employment support which are critical to achieving positive, sustainable outcomes for young people in contact with the criminal justice system; and
- extensive work to increase the understanding about human rights in Australia, as part of a human rights training program that has been underway since 2003. This work promoted community discussion and political engagement with human rights. Youth services were among the many sectors that PIAC made presentations about Australia's obligations under the international human rights framework.

Response to the Bill to establish the Office of Commonwealth Commissioner for Children and Young People

Fulfilling Australian's international obligations

PIAC supports the functions and powers of the Commissioner described in c 19 of the Bill. The establishment of the Commissioner for Children and Young People is an important step in acknowledging the rights of young people and giving those rights a national focus. In establishing the Commission, Australia would be supporting the recommendations made by the United Nations Committee on the Rights of the Child in its concluding observations of Australia's periodic reports to improve the national development, coordination and monitoring of law and policy 'throughout the country'.³ The functions of the Commission could also provide support to progress other recommendations made in the same report, in particular the recommendation to implement a 'National Plan of Action for Children',⁴ the need to strengthen national data collections,⁵ raise public awareness of human rights conventions among children and parents,⁶ provide an avenue for children to express views to government,⁷ and work to bring juvenile justice in line with 'United Nations standards'.⁸

¹ Katrina Wong, Brenda Bailey, Dianna Kenny, *Bail Me Out*, September 2009, Youth Justice Coalition.

² UnitingCare Children, Young People and Families, *Releasing the Pressure on Remand*, March 2009.

³ United Nations Committee on the Rights of the Child, 40th Session, *Concluding Observations: Australia*, 20 October 2005; Consideration of Reports Submitted by State Parties Under Article 44 of the Convention, paragraph 14.

⁴ *Ibid*, paragraph 12.

⁵ *Ibid*, paragraph 20.

⁶ *Ibid*, paragraph 22.

⁷ *Ibid*, paragraph 30.

⁸ *Ibid*, paragraph 74.

Monitoring and coordination

A national approach could assist in coordinating research and information about best practice for laws and policies that impact on children and young people. This should assist governments and their funded services that have primary responsibility for service delivery, achieve better outcomes for the most vulnerable and disadvantaged young people in their communities.

For example, the existence of separate juvenile justice systems in each jurisdiction results in children detained for different reasons, in different conditions and for differing lengths of time and often with poor access to quality diversion programs or support when exiting detention. The United Nations Committee on the Rights of the Child devotes a section of its report commenting on Australia's juvenile justice systems, listing a number of areas in which Australia is failing to meet its obligations under international agreements. For example, the report highlights the inconsistency between jurisdictions (and breach) caused by Queensland laws that allow 17 year olds to be dealt with in the adult prison system.⁹

The Commission's function to provide leadership, reviewing existing laws, proposing new policies and conducting research¹⁰ could provide a much-needed comprehensive strategic direction in relation to juvenile justice across Australia. For example, the variations between the jurisdictions in the treatment of juveniles is evident when comparing the rate of detention in Victoria and the Northern Territory: for every 1000 young people (aged between 10 and 17) in the Northern Territory, 1.3 are in detention; compared with 0.1 for Victoria. Young people sentenced in the Victorian justice system are 23 times more likely to receive a community-based order than detention. In contrast, young people in the Northern Territory are twice as likely to be remanded in custody and receive a custodial sentence than receive a community-based order.¹¹ National leadership could put all jurisdictions on a path to best practice, improving outcomes for young people by giving evidence-based guidance and setting benchmarks that would reduce such wide discrepancies.

Powers of the Commissioner

The success of the monitoring and coordination function of the proposed Commission will be dependent on the cooperation of the State and Territory governments. In order to fulfil this coordination role, the Commissioner must have powers to initiate and conduct investigations, collect information from jurisdictions for analysis and expect a timely response from government agencies and relevant services to its inquiries. When investigations are complete, the Commission should retain its independence and should not be required to seek approval from the State and Territory governments prior to release of its reports. Goodwill is unlikely to be enough if this function is to be effective. For example, even though State and Territory governments have agreed to provide data to the Australian Institute of Health and Welfare to analyse and report on juvenile justice data, its latest report has been released without NSW data as it 'was unavailable'.¹²

⁹ Ibid, paragraph 74.

¹⁰ *Commonwealth Commissioner for Children and Young People Bill, 2010*, Division 2, Section 9

¹¹ Australian Institute of Health and Welfare, *Juvenile Justice in Australia 2008-2009 Interim report*, Juvenile Justice Series No.6, December 2010, 1.

¹² Ibid, Australian Institute of Health and Welfare, 1.

There should be some responsibility upon all governments in Australia to meet national standards of service delivery, to provide timely and accurate data, and use methods of data collection that are compatible with each other. It should not be up to each government service to decide what information is delivered, when it is delivered and how that data is verified. PIAC recommends that the powers of the Commission be strengthened to allow it to initiate and undertake investigations and encourage cooperation from State and Territory governments through the inclusion of conditions in relevant Commonwealth-State funding agreements. Australia's international obligations to protect and promote the rights of children and young people should also be reflected in Commonwealth-State agreements.

Summary

The proposed Commission could provide an important voice in commenting on Australian jurisdictions' laws, policies and practices that breach those rights. It could also play an important role in providing an avenue for children and young people to contribute to government policy. An independent body that has the resources to initiate and conduct investigations, to monitor results of recommendations and coordinate international and national research outcomes can improve policy and laws for children and young people and make an important contribution to the wellbeing of the most vulnerable young people in the community. To do this, the Commission must be independent, the Commissioner must have security of tenure, be adequately resourced, be accessible to children and have adequate powers.

Recommendations

1. *PIAC supports the establishment of an Office for the Commonwealth Commissioner for Children and Young People and the functions as listed in clause 9 of the Bill.*
2. *PIAC recommends that the powers of the proposed Office:*
 - *be reviewed to ensure it can initiate investigations; and*
 - *include the ability to obtain information in the course of those investigations from Australian governments and related agencies.*