



# **A National Children's Commissioner Discussion Paper**

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## Children with Disability Australia

Children with Disability Australia (CDA) is the national peak body that represents children and young people with disability and their families. The organisation is primarily funded through the Department of Families, Housing, Communities and Indigenous Affairs (FaHCSIA) and is a not for profit, community based organisation. Additional funding is also received by the Department of Education, Employment and Workplace Relations (DEEWR). CDA has a national membership of 5000 with the majority being families.

### Vision

CDA's vision is that children and young people with disability living in Australia are afforded every opportunity to thrive, achieve their potential and that their rights and interests as individuals, members of a family and their community are met.

### CDA's Role

CDA has the mandate to advocate for children and young people with disability living in Australia and undertakes the following to achieve its purpose:

1. **Education** of national public policy-makers and the broader community about the needs of children and young people with disability.
2. **Advocacy** on behalf of children and young people with disability to ensure the best possible support and services are available from government and the community.
3. **Inform** children and young people with disability, families and care givers about their rights and entitlements to services and support.
4. **Celebrate** the successes and achievements of children and young people with disability.

### Guiding principles

**Children the priority:** the rights and interests of children and young people with disability are CDA's highest priority consistent with Australia's obligations under the UN Conventions, Convention on the Rights of the Child and the Convention on the Rights of Persons with Disabilities.

**Right to childhood:** children and young people with disability are children first and foremost and have a right to all aspects of childhood that children without disability are afforded.

**Right to participation:** children and young people with disability have the right to participate, in whatever capacity, in the decisions that impact on their lives.

**Inclusion:** children and young people with all types of disability, from all cultural and religious backgrounds and all geographic locations are supported by the work of CDA.

**Recognition:** for the contributions made by families and care givers to support the rights and interests of children and young people with disability.

**Partnerships:** CDA works collaboratively with relevant government, non-government and private sector agencies to promote the rights and interests of children and young people with disability.

**Transparency:** CDA is accountable, effective and ethical as the national peak body charged with the mandate of advocating for children and young people with disability.

## Overview

Children with Disability Australia (CDA) welcomes this opportunity to provide further comment on the proposal to establish a National Children's Commissioner. This is an initiative which CDA welcomes and strongly supports. This submission has a predominant focus on what are seen as relevant considerations in relation to children with disability when considering the establishment of this statutory authority.

CDA has also contributed to and endorsed the Non-Government Organisations' sector position paper. This paper outlines key agreed principles which the sector proposes for the establishment of an effective and independent National Children's Commissioner.

## Comments On The Discussion Paper

### Who should a National Children's Commissioner represent?

CDA supports the establishment of a National Children's Commissioner to represent all children in Australia. Priority should be provided to specific groups who are vulnerable and at risk, including children with disability.

Despite the acknowledgement and protection provided to children generally in the Australian community, children with disability are still frequently subjected to discrimination, low expectations, limited resources and opportunities and poor quality support in most areas of their lives.

It is envisaged that the office of a National Children's Commissioner could contribute to creating greater awareness of the inequities of participation and opportunities which presently exist for children with disability and could further progress affirmative action in these areas.

### What should the functions of a National Children's Commissioner be?

#### Promoting cooperation between the Commonwealth, states and territories

CDA supports the proposal that a National Children's Commissioner should have a role promoting cooperation between the Commonwealth, states and territories on systemic issues affecting children. This function could greatly assist with enabling relevant issues to be better identified, reported on and responded to in an efficient and timely manner.

Currently, in some instances, issues affecting children with disability in Australia remain unresolved for many years because of the uncertainty regarding intergovernmental responsibility. An example is issues regarding transport of students with disability to specialist schools.

For a number of years Children with Disability Australia & the Disability Discrimination Legal Service in Victoria have raised issues regarding extremely serious alleged breaches of human rights in relation to bus transport. Similar systemic issues have been raised in relation to other jurisdictions. Individual cases can be presented to the Australian Human Rights Commission and some families have pursued this avenue. However these cases have not been an impetus for systemic change.

These issues have also been raised at the state and federal level. Resolution of the issue is greatly hampered because there is a discord between the States responsibility for service delivery and the Commonwealth's responsibility as a signatory to relevant Human Right's Conventions.

Meanwhile, literally years have passed whilst many children with disability endure what is perceived to be completely unacceptable conditions whilst being transported to and from school.

It is envisaged that the Commission could greatly assist with identification, research and provision of advice to government regarding such issues to prevent the unacceptable languishing of children with disability in circumstances such as these.

It is essential that agreements are established between the National Children's Commissioner and state and territory commissioners and guardians to clearly define roles and responsibilities of each office to ensure that any issues are responded to in an efficient manner and duplicity of roles is avoided.

### **Promoting public education and community awareness of children's rights, wellbeing and development**

CDA supports the proposal that a National Children's Commissioner should have a role in promoting public education and community awareness of children's rights, wellbeing and development.

It is the experience of CDA that many families of children with disability have limited knowledge of human rights, in particular the Convention on the Rights of Persons with Disabilities and the Convention on the Rights of the Child. Families are often either unaware of their children's rights or how they apply to 'everyday situations'. Many are under the mistaken impression that to have a child with disability means accepting inadequate solutions that compromise their child's quality of life and undermine their human rights. It is too often just seen as "part of the deal".

It is also the experience of CDA that awareness about disability, social inclusion and knowledge regarding the rights and entitlements of children with disability in the general community is extremely poor. For example students, families, teachers and principals are often unaware of the existence of the Disability Standards for Education and thus usually ignorant regarding the rights and protection afforded to students with disability though the Standards.

Education and awareness programs on relevant human rights, legislation and standards and how they can assist children in vulnerable groups should be provided to government departments, local communities and stakeholder groups including school councils and boards. CDA also believes that education and awareness about disability and social inclusion should be included as a compulsory subject in the national curriculum.

Through this role a National Children's Commissioner could assist to:

- Create a greater understanding of the experiences of children with disability and their families in Australia
- Create a greater recognition of the rights of children with disability to equal participation as community members and the application of these in key areas such as education.

### **Conducting research and undertaking inquiries on systemic issues which affect the rights, wellbeing and development of children**

CDA supports the proposal that a National Children's Commissioner should have a role in conducting or sponsoring research and inquiries on systemic issues which affect the rights, wellbeing and development of children. In many areas there is a great deal of anecdotal evidence which indicates that significant challenges facing children with disability in certain areas. However, typically there is a paucity of research and statistics regarding these issues. It is the view of CDA that a National's Children's Commissioner could greatly enhance the better identification of such issues through conducting, sponsoring or advocacy regarding the need of related research and data collection.

For example, abuse of children with disability is an area which warrants further attention. Presently there is no national data on the prevalence of abuse of children with disability in Australia. It is unclear what proportion of children currently involved with our child protection system have disabilities. What is clear however, from international research, is that children with disability are an extremely high risk group where child abuse is concerned. (Briggs, F -2007, Hibbard & Desch - 2007, Kennedy - 1990, Knutson & Sullivan - 2004, Stalker & McArthur - 2010 and Baines – 2004).

Evidence from research in the USA and UK suggests children with disability are more than three times more likely to be abused than other children. Research suggests three factors make children with disability more vulnerable to abuse, namely: society's attitudes and assumptions; inadequate services; and factors associated with impairment.

A key study shows that most children with disability who were abused endured multiple forms of abuse, neglect being the most common. Although no association was found between type of impairment and form of abuse, findings suggest that children with communication difficulties and behavioural disorders have a much heightened risk of maltreatment, between 5 and 7 times that of children without disability (Sullivan & Knutson 2000).

To date, the issue of abuse of children with disability has received little specific attention in research, data collection and government policy. Research available and anecdotal experiences suggest that the experience of children with disability in Australia is parallel to the international experience. A National Children's Commissioner would be an ideal and powerful vehicle to pursue the conducting of relevant research regarding abuse of children with disability and in turn pursue any outcomes that should inform future policy and practice.

### **Engaging with and consulting with children**

CDA strongly supports the proposal that a National Children's Commissioner would have a positive responsibility to engage with and consult with children.

It is imperative however that consideration is given to how children with disability whose disability has a significant impact on communication and/or cognitive ability can also be involved in decision making. In these instances the role of the family, or other significant people, is imperative in articulating the needs and wishes of the child. Some children will require supported decision making and be dependent on others for identification and expression of their view but this should not preclude them from participating in decision making and providing their views.

It is imperative that a National Children's Commissioner recognise a child's right to family. This relationship should be respected and supported and families should be provided the opportunity to advocate on behalf of their child. Unless there is evidence to the contrary, the usual parental decision making role must be recognised. This role should not be compromised because a child has a disability.

It is the usual experience that families of children with disability are extremely strong advocates for their child, have an intimate knowledge and expertise regarding their child's needs and wishes. The role of a National Children's Commissioner should not negate this role but rather enhance and allow collaboratively advocacy to occur which enhances the realisation of children's rights and expression of their opinions and opportunities to participate .

**Monitoring the development and application of Commonwealth legislation, policies and programs**

CDA supports the proposal that a role of a National Children's Commissioner would include monitoring the development and application of Commonwealth legislation, policies and programs. CDA believes this would be an essential role of a National Children's Commissioner in order to ensure that the rights of children in Australia are recognised and considered in the development of any new legislation, government policies or programs. The rights of children from vulnerable and at risk groups, including children with disability, should be a priority under this role.

**Providing advice, comments and recommendations to Government**

CDA is of the view that a National Children's Commissioner should have a role in providing advice, comments and recommendations to Government. CDA also believes that a National Children's Commissioner should be a recognised authority within this role. The government should be required to respond to matters raised within a set and reasonable time frame to reports provided by the Commissioner which are deemed as essential for safeguarding and upholding the rights of children in Australia.

Thank you for the opportunity to provide a submission to A National Children's Commissioner Discussion Paper. We are happy to provide more information on request if required.

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