

submission

Submission by Privacy NSW to

***The Senate Standing Committee on Legal and
Constitutional Affairs***



privacy**nsw**

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Julie Dennett
Committee Secretary
The Senate Standing Committee on Legal
and Constitutional Affairs
PO Box 6100
Parliament House
Canberra ACT 2600

Enquiries: Siobhan Jenner
Tel: (02) 80191603
Our ref: A10/1066
Your ref:

By email: legcon.sen@aph.gov.au

Dear Ms Dennett

Thankyou for the opportunity to provide a submission on the Commonwealth Commissioner for Children and Young People Bill 2010 (CCYP Bill) which would establish a Commonwealth Office of the Commissioner for Children and Young People to 'oversee the rights of young Australians with the powers to ensure recognition of their needs and views'¹. We note that the Bill is said to 'help ensure the adequate protection for all [children and young people] who are vulnerable and disadvantaged' and that this protection will extend to children and young people who are non-citizens².

We support the Bill and endorse the conferral of powers of a Children and Young Person's Commissioner to provide leadership and the advancement of the status of children and young people, the promotion and protection of the rights of children and young people in detention and to co-ordinate policies, programs and funding which impact on children and young people between federal, state, territory and local governments³.

The NSW Commissioner for Children and Young People (CCYP) which was established by the *Commission for Children and Young People Act 1998* (NSW) has a similar mandate in terms of advocacy and consultation. However the NSW CCYP operates a 'Working with Children Check' (WCC) for individuals who intend to work with children or young people either in a paid or unpaid capacity or to act as a carer of a child or young person. It is this aspect of the CCYP's functions which has the capacity to significantly impact upon the privacy of individuals, particularly if the WCC is undertaken without the knowledge and/or consent of the individual. We note that there is no equivalent provision in the Commonwealth Bill.

¹ Second Reading Speech, Commonwealth Commissioner for Children and Young People Bill 2010, Senator Hansen Young, Senate Official Hansard, No 1 2010, 29 September 2010 (Second Reading Speech)

² Second Reading Speech

³ Clause 9 of the CCYP Bill.



While the privacy principles in both the Privacy Act (Cth) (administered by the Australian Privacy Commissioner) and the *Privacy and Personal Information Protection Act 1998* (NSW) (administered by this Office) refer to the protection of the privacy of children and/or young people⁴ in relation to collection and disclosure of personal information respectively, there is no explicit reference to the protection of the privacy of children or young people in either law.

Article 16 of the United Nations Convention on the Rights of the Child (UNCRC) provides that:

1. No child shall be subjected to arbitrary or unlawful interference with his or her privacy, family, or correspondence, nor to unlawful attacks on his or her honour and reputation.
2. The child has the right to the protection of the law against such interference or attacks.⁵

We suggest that there be legal recognition of the operation of article 16 of the UNCRC by means of the inclusion of a provision in the CCYP Bill empowering the CCYP Commissioner to refer policy matters and complaints relating to the privacy of children and young people to the Australian Privacy Commissioner (now part of the Australian Office of the Information Commissioner). Any such complaint referral provision should include a requirement for the consent of a young person where legally appropriate, or the consent of a parent or guardian of a child.

We hope this submission is of assistance to the Committee.

Yours sincerely

John McAteer
Acting Privacy Commissioner

⁴ NPP2.5 in the Privacy Act, section 9(b) of the PPIP Act.

⁵ Adopted and opened for signature, ratification and accession by General Assembly resolution 44/25 of 20 November 1989. Entry into force 2 September 1990, in accordance with article 49.
<http://www2.ohchr.org/english/law/crc.htm>