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# Weak powers for Children's Commissioners criticized in Victoria and UK Half-measures fail voiceless children

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The Age editorial

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## Why won't the state accept the need for an independent advocate for all children at risk?

Spot the odd one out: Australians Against Child Abuse, Berry Street Victoria, Foster Care Association of Victoria, Kids First Foundation, heads of the Children's and Family courts, Monash University's child abuse and family violence research unit, Anglicare Victoria, Centre for Child and Family Welfare, Australian Childhood Foundation, Children's Welfare Association, Law Institute of Victoria, Queensland, NSW, Tasmanian and Victorian Labor governments, federal Labor Opposition, state Liberal Opposition and *The Age*. In this by-no-means-exhaustive list, all but one have called for or appointed independent children's commissioners.

The exception is the Bracks Labor Government, so it is no surprise its announcement of the new Advocate for Children in Care has drawn more criticism than praise as a limited reform of the child protection system. It is a step forward, but falls short of what is needed.

This is not a reflection on the advocate himself - Toby O'Connor, a former director of Catholic Welfare Australia, is well credentialled and respected - but the Government has tightly circumscribed his authority and independence. The position covers only the minority of children, about 4000 in all, who are under state care away from the family home.

Each year the Department of Human Services receives about 40,000 reports of suspected child abuse. Although about 60 per cent are repeat notifications, 20 per cent (or 8000 children a year) are substantiated. Most cases are managed without removing children from their families. The advocate is not authorised to act for these children nor the hundreds waiting to be investigated at any time.

He would have had no part to play in most of the tragedies - the deaths of children such as Daniel

Valerio, Dillion Palfrey and Tabitha Cox - that regularly but all too briefly bring the systems failings to public attention. Because the advocate is employed on an executive contract within the Department of Human Services, he reports to the minister rather than the Parliament and is not truly independent, nor likely to have a free hand in making findings public.

Last September, when criticisms of the new position were raised, Community Services Minister Sherryl Garbutt stated, apparently by way of defence, that adopting the NSW model of a children's commissioner would cost \$7 million a year. We note that the Queensland Government says it will spend an extra \$200 million to implement all reforms arising from an inquiry into child protection. By contrast, the Bracks Government seems focused on limiting its political exposure, responsibilities and spending (and potential civil liabilities for children in care).

The Government alone pretends the child protection system is not dysfunctional, and it alone has an unhealthy interest in refusing to appoint a truly independent officer dedicated exclusively to acting as an advocate for all children to the whole of government. Its attitude is a disgrace.

Time for the Victorian Government to Listen and Act Children and Young People's Commission Coalition

The Victorian Government must be feeling increasingly isolated in its resistance to establishing a Victorian Children and Young People's Commission. Community support for a Commission is increasing and *The Age* has joined in the call (Editorial 1/4). So why is the Government resisting the ground swell?

The Government's recent appointment of the Advocate for Children in Care, based in the Department of Human Services, clearly falls short of what is needed - a strong, independent voice for *all* Victorian children and young people.

The Advocate is a departmental employee with a role that is too narrow. Victoria's out of home care system is in need of an overhaul, and the Minister's commitment to review law and practice in this area is a welcome start. But if the Government's objective is

to address the causes of child abuse and neglect then we need to look beyond the out of home care system and address wider social concerns. Sharp-end problems are typically symptoms of more widespread and intrinsic community concerns that require a preventative and early intervention approach.

What Victoria urgently needs is an independent Commission that is accountable to Parliament rather than to the government of the day. It must not have a sole focus on child protection, but have the unique responsibility of advancing and promoting the rights, interests and well-being of *all* children and young people in the State. By doing so, a Commission will become a force for the prevention of abuse and neglect.

A Commission should also have a broad overview of the issues affecting children and young people in government, community and business sectors, as all have an impact on the lives of children and young people. No one body currently has the responsibility to consider this whole gamut of issues.

In 2001, the Youth Affairs Council of Victoria (YACVic) published *Are You Listening To Us?* which outlines a model for a Victorian Commission. The proposal considers what has and hasn't worked in other Australian and international jurisdictions and provides a concrete proposal that is tailor-made for Victoria.

This model has received overwhelming support from the wider community. Building on this support, a Children and Young People's Commission Coalition of over 60 organisations has been set up by YACVic, the Victorian Council of Social Service, Centre for Excellence in Child and Family Welfare, the Law Institute of Victoria, Youthlaw and Defence for Children International – Australia, to support the establishment of a Commission. Membership of this Coalition is steadily increasing, indicating that there is growing recognition that Victorian children and young people deserve more than what's currently on offer.

Six principles are fundamental to this model.

Firstly, it must be an independent statutory body able to make fearless assessments of government and other institutions in our community, and promote change without being subject to political influence or intervention.

Secondly, the Commission must be established by legislation and given the necessary authority to carry out its functions independently. There must be reference to the Convention on the Rights of the Child

(CROC) in the enabling legislation.

Thirdly, the Commission must have a focus on children and young people up to the age of 18. It would be a key source of planning advice in improving the many systems that affect young Victorians.

Fourthly, the Commission must have adequate resources to do its job well. Funding should not be determined by differing government's priorities.

Fifthly, the Commission must have a broad jurisdiction that takes into account all levels of government, community and business organisations that impact on children and young people.

Finally, the Commission should be required to recognise the diversity of children and young people, and to be accessible to all children and young people. The Commission should be first and foremost a place where children and young people can expect to be heard.

The Victorian Government has voiced two key objections to establishing a Commission in Victoria.

Firstly, the Government argues that the role of a Commission is already covered by various government bodies such as the Ombudsman, the Auditor General and the Equal Opportunity Commission.

However, none of these agencies have the sole mandate to champion the rights and wellbeing of children and young people in Victoria. They have limited ability to address systemic issues impacting on the rights of children and young people. A Commission would complement and strengthen, not duplicate, the work of these existing bodies. It would help children and their families use existing complaint mechanisms more effectively. Knowledge of systematic failings is essential for improving systems

Secondly, the Government estimates that a Commission would cost approximately \$7 million per year based on the NSW model. The proposed Victorian model is not identical to the NSW and Queensland models. For example, it does not include employment checks for people working with children and young people. Our Coalition believes that if the Victorian Government is serious about its commitment to the wellbeing of children and young people in this state, cost should not be the primary consideration.

There is also a concern held by some members of

the community. Unfortunately children's rights can be wrongly understood as undermining the role of families. A Commission that espouses the principles of CROC places a high value on the importance of the family. CROC calls on governments to '*respect the responsibilities, rights and duties of parents*' (article 5), and to recognise that '*parents or, as the case may be, legal guardians, have the primary responsibility for the upbringing and development of the child*' (article 18.1). There is evidence that other Commissions have developed strong partnership with parents. Families are forceful allies, not antagonists, in the pursuit of a just society for children and young people.

The establishment of a Children and Young People's Commission will provide a clear signal that the Victorian Government is serious about its commitment to promoting and supporting the wellbeing of children and young people. The recognition that children and young people require specialist advocacy should be a source of pride for Victoria. Other Australian and international jurisdictions have acted. Why is it taking so long for the Victorian Government to Listen and Act?

Further information about the proposed Victorian Children and Young People's Commission model can be found at [www.yacvic.org.au/coalition](http://www.yacvic.org.au/coalition)

**Paula Grogan**  
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## **UNITED KINGDOM: Stronger Powers Needed for Children's Commissioner**

Save the Children announced their disappointment that the Commissioner model proposed in the *Children Bill* is weaker than the posts that are already up and running in the other three UK countries - children in England deserve a Commissioner with strong powers to pursue action with real authority.

The Programme Director, John Errington said: "It is crucial that the Commissioner is able to initiate formal investigations and has the powers to require witnesses, access documents and institutions and take legal action on behalf of children. We are particularly concerned that under the proposed legislation the Commissioner cannot conduct an investigation into the case of an individual child - unless directed by the Secretary of State. This risks seriously compromising the independence and effectiveness of

the Commissioner - and the Commissioners in both Wales and Northern Ireland already have the power to initiate such investigations."

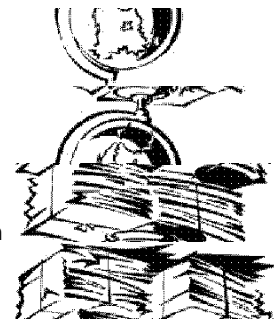
Save the Children is also disappointed that the function of the Commissioner is restricted to promoting the "views and interests of children" - and that the Commissioner "may" have regard to the United Nations Convention on the Rights of the Child.

"We want to see a strong child rights framework for the Commissioner in England, as in each of the other UK countries - in Wales, Scotland and Northern Ireland the general function of the Commissioner is to "promote the rights" of children", continued Errington, "and the Commissioners must have regard to the UNCRC. We hope that the role and powers of the Commissioner for England will be strengthened as the Bill makes its way through Parliament".

[Source: Save the Children UK]

### **Call for Articles**

Australian Children's Rights News depends on the input of members affiliates and subscribers to keep providing you with a wide-ranging and informative update on children's rights issues. Others with a viewpoint on children and young people's rights are also invited to submit.



We are now seeking articles to be considered for the first edition of 2004. Contributions of between 700 and 1500 words are preferred and should be e-mailed with full author details to [judycash@nsw.bigpond.net.au](mailto:judycash@nsw.bigpond.net.au)

Suggested graphics or photos to accompany the article are most welcome. The closing date for receipt of material is 23 June 2004 but please advise the editors as soon as possible if you are planning to submit.

**If you have an idea which you would like to discuss, please phone Judy Cashmore 02 9880 2286**

Articles published in Australian Children's Rights News may also be placed on the DCI-Australia Website: [www.dci-au.org/](http://www.dci-au.org/)