



SNAICC

National Voice for our Children

SNAICC Submission to the Government of South Australia on
the *Children and Young People (Oversight and Advocacy
Bodies) (Commissioner for Aboriginal Children and Young
People) Amendment Bill 2018*

September 2018

About SNAICC

SNAICC – National Voice for our Children (Aboriginal and Torres Strait Islander Corporation) is the national non-governmental peak body for Aboriginal and Torres Strait Islander children.

SNAICC works for the fulfilment of the rights of our children, in particular to ensure their safety, development and well-being.

The SNAICC vision is an Australian society in which the rights of Aboriginal and Torres Strait Islander children, young people and families are protected; our communities are empowered to determine their own futures; and our cultural identity is valued.

SNAICC was formally established in 1981 and today represents a core membership of Aboriginal and Torres Strait Islander community-controlled organisations providing child and family welfare and early childhood education and care services.

SNAICC advocates for the rights and needs of Aboriginal and Torres Strait Islander children and families, and provides resources and training to support the capacity of communities and organisations working with our families.

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Introduction

SNAICC- National Voice for Our Children (SNAICC) welcomes this opportunity to make a submission to the South Australian Government on its *Children and Young People (Oversight and Advocacy Bodies) (Commissioner for Aboriginal Children and Young People) Amendment Bill 2018* (“Bill”). SNAICC has been encouraged by the foresight of the South Australian Government to appoint a Commissioner for Aboriginal Children and Young People (“Commissioner” or “Aboriginal Commissioner”). By specifying this role in legislation with an appropriate mandate, the South Australian Government will be taking a leading role nationally to promote the best interests and protect the rights of Aboriginal and Torres Strait Islander children. Establishing the role is a critical step to ensure a whole of state and systems focus on responding to the needs of Aboriginal and Torres Strait Islander children, which is essential in the context of widely recognised and unacceptable disparities in levels of disadvantage and opportunities for First Nations children to thrive. However, there are aspects of the Bill that SNAICC believes currently fall short of what is necessary to ensure both appropriate requirements for the position and the requisite functions and powers to carry out important work. As such, this submission makes recommendations to strengthen the Bill.

Comments on the Bill

Aboriginal and Torres Strait Islander children are experiencing widespread disadvantage. As you would be aware, the representation of Aboriginal and Torres Strait Islander children in out of home care in South Australia continues to rise year on year. As at 30 June 2017 Aboriginal and Torres Strait Islander children in South Australia were over 11 times more likely than non-Indigenous children to be in OOHC.¹ In addition, between 2016 and 2017, Aboriginal and Torres Strait Islander children between 10 and 17 years of age were 26 times more likely to be under youth justice supervision than their non-Indigenous peers in the state.² Furthermore, in 2015, First Nations children were approximately 2.5 times more likely to experience developmental vulnerability than non-Indigenous children on two or more domains in their first year of full time education.³

These statistics reflect the need for systemic oversight and reform targeted to the specific needs of Aboriginal children. As such, SNAICC considers that the Bill in its intention and focus to establish such oversight is largely appropriate, subject to the matters specified below.

Identified person

We note that the Bill does not mandate that the Commissioner for Aboriginal Children and Young People be an identified position for an Aboriginal person. SNAICC strongly advises that the requisite cultural understanding and relationships to appreciate and promote the best interests of Aboriginal children in the state could only be held by an Aboriginal person. We believe there would be adequately qualified and suitable Aboriginal professionals available to fill this role. To fill the role from beyond the Aboriginal community would undermine relationships essential to its functions.

While it may be possible to ensure that the position is an identified one by way of organisational policy, SNAICC believes that legislatively enshrining this requirement would guarantee that the position is filled

¹ Australian Institute of Health and Welfare, “Child Protection Report 2016-17” (2018) <<https://www.aihw.gov.au/getmedia/66c7c364-592a-458c-9ab0-f90022e25368/aihw-cws-63.pdf.aspx?inline=true>> p 48.

² Australian Institute of Health and Welfare, “Youth justice in Australia 2016-17” (2018) <<https://www.aihw.gov.au/getmedia/19707990-1719-4600-8fce-f0af9d61331c/aihw-juv-116.pdf.aspx?inline=true>> p. 8.

³ Family Matters, “The Family Matters report 2017” (2017) <<http://www.familymatters.org.au/wp-content/uploads/2017/11/Family-Matters-Report-2017.pdf>> p. 47, figure 8.

by an Aboriginal expert who can carry out the responsibilities of the role in a culturally safe manner. It is permissible to create such an identified position, as being of Aboriginal descent is a genuine occupational requirement for the position in accordance with section 56 (2) of the South Australian *Equal Opportunity Act 1984*.

Recommendation 1: Insert a section in the Bill that stipulates that the Commissioner for Aboriginal Children and Young People is an identified position for an Aboriginal person.

Equal standing of the Commissioner for Aboriginal Children and Young People with the Principal Commissioner

Section 20B (2) of the Bill stipulates that “The Commissioner for Aboriginal Children and Young People *is subject to the direction and control of the Commissioner for Children and Young People* [emphasis added], but is independent of direction or control by the Crown or any Minister or officer of the Crown.”

Given the extent of persistent disparities and systemic concerns for Aboriginal children in South Australia, SNAICC believes the role must be established on an equal footing with the Commissioner for Children and Young People (“Principal Commissioner”).

This should be achieved legislatively by amending section 20B (2) of the Bill to guarantee the equivalency and independence of the position of the Commissioner for Aboriginal Children and Young People. The Aboriginal Commissioner has equally important functions and responsibilities to that of the Principal Commissioner. Therefore, the Aboriginal Commissioner should be enabled by legislation to operate on an equal basis and provided with the resources and flexibility to exercise independent leadership while working collaboratively with the Principal Commissioner.

The Australian Human Rights Commission provides a promising precedent of multiple Commissioners having different responsibilities and yet also having equal standing. The *Australian Human Rights Commission Act 1986* (Cth) does not stipulate that Commissioners are subject to the direction and control of other Commissioners.

Recommendation 2: Amend section 20B (2) of the Bill to ensure that the position of Commissioner for Aboriginal Children and Young People is on equal footing to the role of the Principal Commissioner.

Equal functions and powers as the Principal Commissioner

In addition to the role not being on equal footing with the Principal Commissioner’s role, SNAICC also notes with concern that the functions and powers of the Commissioner for Aboriginal Children and Young People outlined in the Bill are not equivalent to that of the Principal Commissioner. In particular, the Bill does not explicitly empower the Aboriginal Commissioner to conduct inquiries into matters affecting Aboriginal children and young people at a systemic level nor to provide recommendations to state authorities in light of inquiry findings. The Principal Commissioner on the other hand is empowered to conduct inquiries pursuant to section 15 of the *Children and Young People (Oversight and Advocacy Bodies) Act 2016* (SA) (“Act”) and provide recommendations to state authorities under section 17.

Given the systemic issues concerning Aboriginal children, including their overrepresentation in OOHC, SNAICC strongly advises that the role of Commissioner for Aboriginal Children and Young People must be established with adequate powers to investigate these issues and recommend reforms to improve outcomes. Establishing an equal and adequate role for the Commissioner for Aboriginal Children and Young People would be achieved by amendment to the Bill to establish legislatively entrenched powers of inquiry and powers to draft and submit recommendations for the Aboriginal Commissioner.

Victoria provides a highly successful recent example of a Commissioner for Aboriginal Children and Young People initiating inquiries and making recommendations on critical matters related to the rights, safety and wellbeing of Aboriginal children. Both the Always was, always will be Koori children inquiry and the In the child's best interests inquiry in Victoria resulted in a total of 131 recommendations that were all accepted and are being progressed by the Victorian Government, highlighting the critical importance of these powers and functions and the high value placed on them by governments. In Victoria, the powers and functions of the Aboriginal Commissioner are not entrenched in legislation, but enabled only by delegation of the Principal Commissioner, leaving them vulnerable to not being sustained in practice. Indeed, in other jurisdictions where an Aboriginal identified Commissioner or Deputy Commissioner has been appointed, we have not seen the exercise of similar, robust powers and an adequate focus emerge on the specific needs of Aboriginal and Torres Strait Islander children.

Thus, if appropriate functions and powers are not legislatively granted to the Aboriginal Commissioner in South Australia, the Government risks creating a position that is not adequately resourced nor empowered to create and foster substantive and meaningful change.

Recommendation 3: Insert sections in the Bill that emulate sections 15-17 of the Act, legislatively empowering the Aboriginal Commissioner to conduct inquiries into matters affecting Aboriginal children and young people at a systemic level and to draft and submit recommendations to state authorities.

Other sections of the Bill

SNAICC acknowledges the functions and powers granted to the Aboriginal Commissioner in section 20D of the Bill, as well as the power to delegate enumerated in section 20E of the Bill. These powers and functions are appropriate in scope and SNAICC is of the view that no amendments are required.

Recommendations

SNAICC recommends the following insertions and amendments to the Bill:

1. Insert a section in the Bill that stipulates that the Commissioner for Aboriginal Children and Young People is an identified position for an Aboriginal person;
2. Amend section 20B (2) of the Bill to ensure that the position of Commissioner for Aboriginal Children and Young People is on equal footing to the role of the Principal Commissioner; and
3. Insert sections in the Bill that emulate sections 15-17 of the Act, legislatively empowering the Aboriginal Commissioner to conduct inquiries into matters affecting Aboriginal children and young people at a systemic level and to draft and submit recommendations to state authorities.

By incorporating these recommendations, the Government of South Australia has the opportunity to be innovative in its approach and to strengthen its ongoing commitment to improving outcomes for Aboriginal and Torres Strait Islander children. SNAICC appreciates the Government's consideration of these matters and would be happy to discuss them further at any time. We look forward to working with the Government as you move into this important phase of leadership to advance the rights, safety and wellbeing of Aboriginal and Torres Strait Islander children in South Australia.