

Children's Commissioner

By Frankie Rodney

The State election campaign is in full swing. Promises abound, but one campaign promise is certain to be fulfilled; both Labor and the Liberals have pledged to create a Children's Commissioner in 2014.

In 2003, a child protection review, conducted by Robyn Layton QC, concluded we need a commissioner for young people. Instead, we got a guardian to oversee children in government care.

In 2013, following a royal commission into an education department cover-up of child sexual abuse, conducted by Justice DeBelle, parents renewed their call for an Education Ombudsman to act as watchdog to protect the public interest. Instead, the State Government announced they would finally create a Children's Commissioner.

Every other state in Australia has one. There is also a national Children's Commissioner.

Labor's draft legislation claimed the commissioner would serve as an advocate for children. It quickly drew criticism, however, from parents and the legal fraternity alike and the commissioner was dismissed as a 'toothless tiger'.

What is wrong with Labor's commissioner?

Independence: An advocate, who is to 'hold decision-makers to account', must be independent. Labor's commissioner is not. The bill states that a commissioner is independent of control by any minister ... "unless the minister consults with the commissioner first; then the minister can give directions to the commissioner".



The only part of the commissioner's role that is actually independent of ministerial control is the content of the reports the commissioner writes - but the Minister is the only person who gets to read them...

Amazingly, when the next draft of Labor's bill was released, they had removed the requirement for the minister to consult with the commissioner first before giving them orders.

Investigation Powers: Labor's commissioner would have no real powers to investigate complaints. All the commissioner can do is request information from government departments. And if those departments fail to cooperate, all the commissioner can do is report them; there are no consequences.

Justice DeBelle noted that the education department displayed no fear of the State Ombudsman - who has royal commission powers. How seriously will these bureaucracies take a commissioner who can do nothing but do on them?

The Law Society was critical, saying that without formal powers to investigate, "What is the commissioner really going to do"?

Commissioner's Reports: The president of the Law Society said, 'There is a fundamental difference between investigating issues for the purposes of providing a report ... and a direct independent role of intervening, and influencing individual issues....'

Labor's commissioner will have no power to intervene. They can make a report to the Minister and that is the limit of their authority.

Provided the Minister eventually writes back and states why, they are free to ignore every recommendation in the report and the case is closed.

Labor's bill does not even require anybody but the Minister to know any details of the report, that a report exists, or that an incident has even been investigated.

The law society condemned this lack of power saying, "This is not direct advocacy for children".

What is wrong with the Liberal's commissioner?

In January the Liberals released their proposal for a Children's Commissioner. The fundamental difference is the Liberals pledge that their commissioner will have legislated investigative powers. They also promise the commissioner will:

- be a truly independent statutory officer
- be fully accountable to Parliament.

This sounds good and is definitely an improvement on Labor's plan. But, Labor's claims sound good as well, until you read the proposed legislation.

The Liberals proposal focuses on the need for investigative powers - in response to criticisms from the law society and stakeholders like SAASSO. Their proposal, however, doesn't address the other end of the process - what happens with the findings of this commissioner's investigations?

“The extent of the commissioner's ability to intervene actively is a fundamental question....”

As the Law Society noted, "The extent of the commissioner's ability to intervene actively is a fundamental question...."

Both parties are yet to clarify exactly how the commissioner would be chosen. The Law Society says the choice of commissioner is critical and the method of appointment must be transparent.

The Liberals are yet to state how they would appoint a Children's Commissioner. Labor's bill revealed an all too common (if vague) process of the Minister picking their commissioner.

In 2014, South Australia will finally get a Children's Commissioner. Whether we get a powerful advocate for our children, or just another layer of bureaucracy, only time will tell. ■