



Government
of South Australia

The Council for the
Care of Children

30 May 2012

Mr Tim Watling
Inquiry Secretary
The Senate Standing Committee on Legal and Constitutional Affairs
C/o legcon.sen@aph.gov.au

Dear Mr Watling

Re: Inquiry into the *Australian Human Rights Commission Amendment (National Children's Commissioner) Bill 2012*

The South Australian Council for the Care of Children (the Council) appreciates the opportunity to make a submission to a parliamentary inquiry regarding the *Australian Human Rights Commission Amendment (National Children's Commissioner) Bill 2012* (the Bill).

The Council was established by legislation in early 2006 and is an independent advisory body reporting directly to the Minister for Education and Child Development in South Australia. The Council's purpose is:

- to keep under review the operation of the *Children's Protection Act 1993* and the *Family and Community Services Act 1972* so far as it affects the interests of children and young people;
- to provide advice to the government and promote the rights and interests of children and young people and report on how children and young people are faring in this State;
- to advocate for or on behalf of all South Australian children and young people, including Aboriginal and Torres Strait Islander children and young people, children and young people with disabilities, and children and young people under the Guardianship or in custody of the Minister for Education and Child Development; and
- to inform the South Australian community about the best care and support for children and young people.

The Council welcomes the establishment of a National Children's Commissioner (the Commissioner) and generally supports the Bill to amend the *Australian Human Rights Commission Act 1986* to establish the office of a National Children's Commissioner within the Australian Human Rights Commission.

South Australia is the only jurisdiction without a Children's Commissioner and the State Government deems the Council to be the body which fulfils aspects of the role of a Children's Commissioner in South Australia.

The Council has a strong commitment to its advocacy and monitoring roles and to increasing the participation of children and young people in decision making, community planning and design, and policy development in South Australia.

The Council has an interest in the capacity building of families with infants and children to raise awareness of the importance of the early years on the development of the child across all life domains. Other areas of focus for the Council are building child and youth friendly communities, better supporting children who are disadvantaged (Aboriginal and Torres Strait Islander children, those living with a disability and their siblings, those under guardianship or in the custody of the Minister, and young carers) and promoting effective services for vulnerable families and children living in socioeconomically disadvantaged circumstances.

However, the Council does not have the legislative authority nor the resources and capacity to advocate on behalf of individual children and young people, nor to fulfil many of the functions of a Children's Commissioner. The Council is not resourced to conduct research and has limited capacity to examine and make recommendations concerning legislative and policy change to ensure the rights of children and young people are considered and protected.

The establishment of a National Children's Commissioner would support and enhance the Council's work in South Australia to advance the rights and wellbeing of children and young people in this State and at a national level.

The Council's membership provides an expert reference group from which the National Children's Commissioner could gain high level advice and information. The members of the Council include two youth advocates, 10 community members, the Chief Executives of SA Health, the Department for Education and Child Development, the Department for Communities and Social Inclusion, and the Aboriginal Affairs and Reconciliation Division of the Department of the Premier and Cabinet. Their details are on the Council's website at www.childrensa.sa.gov.au

Please find attached the Council's submission to the parliamentary inquiry and, for further information and future follow up, please contact the Council Secretariat on _____ or email:

Yours sincerely

Dr Diana Hetzel
Chair
Council for the Care of Children

Submission to:

***Inquiry into the Australian Human Rights Commission
Amendment (National Children's Commissioner) Bill 2012***

The Council for the
CareofChildren



May 2012



This page left blank on purpose

Overview

Further to commenting in December 2011 on *A National Children's Commissioner Discussion Paper 2011*, the Council for the Care of Children (the Council) notes, with approval, that the Australian Government has drafted the *Australian Human Rights Commission Amendment (National Children's Commissioner) Bill 2012* (the Bill).

The Council approves of the proposed functions for the National Children's Commissioner (the Commissioner) to be similar to the functions of the Aboriginal and Torres Strait Islander Social Justice Commissioner.

The Council notes the Commissioner will:

- improve advocacy at a national level for the rights, wellbeing and development of children and young people up to the age of 18 years;
- improve monitoring, by examining existing and proposed Commonwealth legislation and policy that affect the rights, wellbeing and development of children and young people;
- promote cooperation between the Commonwealth, States and Territories to promote the rights, wellbeing and development of children and young people;
- encourage the active involvement of children and young people in decisions that affect them, particularly administrative decisions and development of Government policies, programs and legislation;
- support Government agencies to develop mechanisms which enhance the active involvement of children and young people; and
- assist Australia in meeting its international obligations by promoting and advancing the rights of the child, in particular as enshrined in the convention on the Rights of the Child.

Specific comments to the Inquiry into the *Australian Human Rights Commission Amendment (National Children’s Commissioner) Bill 2012*

The Council strongly supports the provisions of the *Australian Human Rights Commission Amendment (National Children’s Commissioner) Bill 2012* (the Bill) to advance the human rights of children and young people in Australia, especially those who are particularly marginalised or vulnerable. The Council welcomes the allocation of funding over four years from 2012-13 to establish the Office of the National Children’s Commissioner.

Item 1

This item will insert a definition of children and young people to mean people under the age of 18. The Council acknowledges that the definition is consistent with the *United Nation’s Convention on the Rights of the Child (UNCRC)*. However, in recognition of the needs of children and young people who are especially marginalised or vulnerable, the Council recommends that the Commissioner should have the discretion, in particular circumstances, to promote the rights and interests of all children (even prior to birth) and young people up to 25 years of age.

New Division 1 – Establishment and functions

The Council supports the proposed provisions in this section for the Commissioner to:

- report annually to the Parliament;
- promote discussion and awareness of matters relating to the human rights of children and young people in Australia;
- undertake research, education and other programs to promote respect for children’s and young people’s human rights and enjoyment and to facilitate the exercise of human rights by children and young people in Australia; and
- examine existing and proposed Commonwealth legislation and policy to ensure these instruments recognise and protect the human rights of children and young people in Australia.

The Council agrees that the Commissioner should provide leadership at a national level and not duplicate the work of existing Commonwealth bodies or the work of State/Territory Children’s Commissioners and Guardians. In South Australia (SA), where State Government

deems the Council to be the body which fulfils aspects of the role of a Children's Commissioner, the Council would seek to work collaboratively with the Commissioner to advance the rights of children and young people in SA. It should be noted that the Council does not have a role in advocating on behalf of individual children and young people in South Australia, and that the National Commissioner will also not be able to fulfil this role.

The Council supports the provisions for the Commissioner to appropriately focus his/her reports and to make recommendations to Government. The Council strongly recommends that the Commissioner's authority to represent all children and young people in Australia should be explicit and include reference to all children and young people:

- from Aboriginal and Torres Strait Islander backgrounds;
- from Culturally and linguistically diverse (CALD) backgrounds;
- seeking asylum in Australia;
- who are refugees or non-citizens;
- with disability;
- in the juvenile justice system; and
- in the child protection system, including those in out-of-home care.

The Council agrees with the expectation that the Commissioner will consult with children and young people. However, the Council recommends that the requirements, as drafted, to proactively involve and consult with children and young people from diverse groups, ages, and circumstances should be strengthened.

The involvement of children and young people should extend to the development, operation and evaluation of legislation and policy and reflect a strong commitment to best practice and continuous improvement approaches. Children and young people should also be involved in the appointment of the Commissioner and in the planning for, and in the establishment, operation and evaluation of, the Office of the Commissioner.

New Division 4 – Miscellaneous

The Council strongly supports the proposed provisions for the Commissioner to obtain relevant information from Commonwealth agencies and recommends that the provisions should explicitly extend to government agencies and non-Government organisations (NGOs) that receive funding for services to children and young people from the Commonwealth Government and/or that contract with Commonwealth agencies to provide such services.

The Council further notes that the Australian Human Rights Commission (the Commission) can, with the leave of the court, intervene in court proceedings that involve human rights issues and that the power does not extend to representing individual children or young people. The Council strongly recommends that the provisions to delegate the power to the Commissioner should be explicit.

The Council supports the protection of children's and young people's rights to privacy and that informed consent should always be sought in all situations when it is safe to do so. The Council also acknowledges that the need to share personal information about groups of children and young people without their consent may not arise in the Commissioner's systemic advocacy role.

However, the legislation should be carefully drafted to avoid reinforcing any perceived barriers to the appropriate sharing of (only relevant) information to address serious or imminent threats to a child's or young person's health, safety or wellbeing.

Please refer to the attached SA's Information Sharing Guidelines (ISG) for promoting the safety and wellbeing of children, young people and their families. The ISG guides providers of services to children, young people and their families in appropriately sharing information when a child or a young person is in immediate danger and when adverse outcomes can be predicted unless service provision is coordinated.¹

¹ Information Sharing: *Guidelines for promoting the safety and wellbeing of children, young people and their families*. (2008). Government of South Australia.