



4 June 2012

Committee Secretary
Senate Legal and Constitutional Affairs Committee
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Parliament House
Canberra ACT 2600

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Dear Committee Secretary

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

National Legal Aid (NLA) welcomes the creation of the new position of National Children's Commissioner at the federal level, and the opportunity to comment on the related Bill.

About National Legal Aid

National Legal Aid (NLA) represents the Directors of the eight State and Territory legal aid commissions (commissions) in Australia. The commissions are independent statutory authorities established under respective State or Territory enabling legislation. They are funded by State or Territory and Commonwealth governments to provide legal assistance to disadvantaged people.

NLA aims to ensure that the protection or assertion of the legal rights and interests of people are not prejudiced by reason of their inability to:

- obtain access to independent legal advice;
- afford the appropriate cost of legal representation;
- obtain access to the federal and state and territory legal systems; or
- obtain adequate information about access to the law and the legal system.

Principles

It is suggested that the legislation should establish principles, drawing from international law principles, also explicitly referring to the special place of children in society. For example, see the WA *Commissioner for Children and Young People Act* principles.

Scope

In order to meet the stated objective of contributing to meeting Australia's obligations under the *Convention on the Rights of the Child* (CROC), the position should hold

significant powers to inquire and report and the scope of those powers should encompass monitoring of guardianship arrangements for children.

The scope of the role should be expanded beyond that of a commissioner and include oversight of guardianship arrangements for children. In the national context this includes to oversight guardianship arrangements in place for certain children, including those who have had a statutory guardian such as that under the *Immigration (Guardianship of Children) Act* and those who have no guardian in Australia, such as Indonesian minors detained in relation to illegal foreign fishing or people smuggling.

Age

The proposed Act should specifically differentiate between children and young people and recognise that while children have different interests and needs to young people, all people under 18 are minors and in need of special care and protection.

The Act should enable the Commissioner's functions to extend to:

- people who, although not minors at the time of the exercise of the power of the Commissioner, were minors at the time of the incident complained of;
- people who claim to be minors but are not recognised as minors due to an age determination which is disputed by the person.

Functions

The functions of the Commissioner should include:

- to initiate inquiries, receive complaints, investigate and report to the minister on any matter as required;
- to monitor the wellbeing of young people generally, and specifically vulnerable young people. The definition of vulnerable should include young people in detention of any kind, including those accused or convicted of criminal matters, seeking asylum or awaiting charge, and
- to contribute to all public policy taking the needs and rights of children into account.

Conclusion

We thank you for the opportunity to make this submission.

Please do not hesitate to contact us if you require any further information.

Yours sincerely

Bevan Warner
Chair