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WITS 69836

Senator Trish Crossin
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Dear Senator Crossin

I am responding to your invitation to the Premier Lara Giddings, of 24 May 2012, and thank you for the opportunity to make a submission to the Legal and Constitutional Affairs Legislation Committee of Inquiry into the Australian Human Rights Commission Amendment (National Children's Commissioner) Bill 2012 (the Bill). In addition, I apologise for the fact that this response, which constitutes a submission, is late despite being expedited through my office.

Establishment and functions of a National Children's Commissioner

The nurturance, protection and education of our children and young people, in accordance with their needs, are whole-of-government and whole-of-community responsibilities. The importance of Children's Commissioners' roles is widely acknowledged. A *National Children's Commissioner* recognizes both the responsibilities and obligations of the Federal government in providing leadership in regard to the rights, wellbeing and safety of children and young people, and the Government's constitutional authority in the international arena and as a Party to international agreements.

While the United Nations Convention on the Rights of the Child is both a ratified treaty, and a declared instrument under the Commonwealth *Human Rights and Equal Opportunity Commission Act 1986*, the Bill is an important step towards enablement of the Convention. In particular, the explicit provision in the Bill, requiring the National Children's Commissioner to perform his/her functions with an appropriate level of regard to a range of international human rights and antidiscrimination instruments, not only exceeds the provisions of State Commissioners for Children but establishes a high benchmark in the Commissioner's function under s.46MB(1)(d), "to examine existing and proposed Commonwealth enactments for the purpose of ascertaining whether they recognise and protect the human rights of children in Australia....".

While the Commissioner's examination of Commonwealth legislation, for the recognition and protection of the human rights of children in Australia, is a significant development, change will ultimately depend on the requirement for such recognition and protection to be a necessary condition for the passing of all legislation.

The focus of the National Children's Commissioner's role on *all* children, with opportunity for particular attention to children who are at risk or vulnerable is commended. Conceptually, this is consistent with a public health approach, which would support a position that *all* children share a need for their rights, wellbeing and safety to be upheld, while children with risks and vulnerabilities depend first on the rights afforded to *all* children, and subsequently on rights afforded to them in virtue of their specific needs. This framework is, in my opinion, the one most likely to ensure the broad relevance of the National Children's Commissioner, and progress the rights agenda for all children in Australia, including those with risks and vulnerabilities.

Given the long and commendable history of human rights leadership by the Human Rights and Equal Opportunity Commission (HREOC), it is appropriate for the new National Children's Commissioner to be located within that Commission. Being located within the HREOC will facilitate debate and build across-portfolio expertise, which can only benefit Australia's children and add to the erudition of the National Children's Commissioner's arguments in relation to children with particular vulnerabilities and risks.

As Minister for Children I look forward to the appointment of a National Children's Commissioner.

Yours sincerely

Michelle O'Byrne MP
Minister for Children

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