



1 June 2012

Committee Secretary
Senate Legal and Constitutional Affairs Committee
Parliament House
Canberra ACT 2600
By email: legcon.sen@aph.gov.au

Dear Committee,

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

In my capacity as Chairperson, I write on behalf of the National Aboriginal and Torres Strait Islander Legal Services (NATSILS) which is comprised of the following Aboriginal and Torres Strait Islander legal services (ATSILS):

- Aboriginal and Torres Strait Islander Legal Service (Qld) Ltd (ATSILS Qld);
- Aboriginal Legal Rights Movement Inc. (ALRM);
- Aboriginal Legal Service (NSW/ACT) (ALS NSW/ACT);
- Aboriginal Legal Service of Western Australia (Inc.) (ALSWA);
- Central Australian Aboriginal Legal Aid Service (CAALAS);
- North Australian Aboriginal Justice Agency (NAAJA); and
- Victorian Aboriginal Legal Service Co-operative Limited (VALS).

We congratulate the Australian Government on its decision to establish a National Children's Commissioner and welcome the introduction of the Australian Human Rights Commission Amendment (National Children's Commissioner) Bill 2012 (the Bill).

It is important that children and young people have a voice at all levels, including at a national and international level. It is important that the human rights of children and young people are promoted and protected not only because of Australia's obligations under the Convention on the Rights of the Child¹ but also because of their lack of political power and persuasion, and the vulnerable position they hold in society. The observations and recommendations of numerous

¹ *Convention on the Rights of the Child*, opened for signature 20 November 1989, 1577 UNTS 3 (entered into force 2 September 1990).

United Nations human rights mechanisms,² backed by the experience of comparable overseas jurisdictions,³ make a strong case for the positive and significant role that a full-time and well-resourced National Children's Commissioner could play in promoting and protecting the human rights of children and young people in Australia.

While the introduction of a National Children's Commissioner is a welcomed development, the NATSILS are concerned that the Commissioner's mandate as currently set out in the Bill, does not provide sufficient focus on Aboriginal and Torres Strait Islander children. Given that Aboriginal and Torres Strait Islander children rate the highest in nearly all indicators of disadvantage, the NATSILS propose that a specific focus is warranted. The staggering over-representation of Aboriginal and Torres Strait Islander children in the child-protection and juvenile justice systems alone provides sufficient justification for this.⁴ The need for a specific mandate in relation to Aboriginal and Torres Strait Islander children has also been highlighted by a major Australian NGO coalition in relation to the Australia's upcoming review under the Convention on the Rights of the Child.⁵

The NATSILS propose that the required focus on the situation of Aboriginal and Torres Strait Islander children, so as to ensure the promotion and protection of their human rights, could be achieved through the following:

- Inserting a clause to establish a Deputy National Commissioner that has a specific mandate for focusing on Aboriginal and Torres Strait Islander children;
- Section 46MB (4) of the Bill specifies that 'the National Children's Commissioner may give particular attention to children who are at risk or vulnerable'. If a Deputy National Commissioner is not established then s 46MB (4) should be amended to include the requirement that 'in performing functions under this section, the National Children's Commissioner *must* have particular regard to the situation of Aboriginal and Torres Strait Islander children';

² The UN Committee on the Rights of the Child has previously expressed "concern that there is no commissioner within the Australian Human Rights Commission devoted specifically to child rights" and recommended that Australia ensure that the Commission "can undertake independent and effective monitoring of the implementation of children's rights" see Committee on the Rights of the Child, *Concluding Observations on Australia*, UN Doc CRC/C/15/Add.268 (2005), paras 15-16. The UN Human Rights Council has also previously recommended that Australia appoint a National Children's Commissioner when it reviewed Australia's human rights record under the Universal Periodic Review in 2011 see Human Rights Council, *Report of the Working Group on the Universal Periodic Review of Australia*, UN Doc A/HRC/WG.6/10/L.8 (2011), Recommendations 86.28 and 86.29.

³ Comparable jurisdictions such as New Zealand (see <http://www.occ.org.nz/>), the United Kingdom (see <http://www.childrenscommissioner.gov.uk/>) and Norway (see <http://www.barneombudet.no/english/>), which all have full-time children's rights commissioners, show that an adequately resourced and mandated commissioner can play a valuable role in advocating for the human rights of children and young people.

⁴ In 2010 – 2011 Aboriginal and Torres Strait Islander children were 8 times more likely to be the subject of substantiated child abuse and neglect, 9 times more likely to be subject to a statutory child protection order, and 10 times more likely to be subject to out-of-home care (see Australian Institute of Health and Welfare, *Child Welfare Series no 53 Child Protection Australia 2010-11* (2012)). Aboriginal and Torres Strait Islander children are 26 times more likely to be in detention than non-Aboriginal and Torres Strait Islander children (see Australian Institute of Criminology, *Australian Crime: Facts and figures* (2009), 113).

⁵ Child Rights Taskforce, *Addendum to "Listen to Children" the Child Rights NGO Report for Australia* (2012), 2.

- Amending s 46MB (6)(a) to include the Declaration on the Rights of Indigenous Peoples; and
- Amending s 46MB (5)(a) to specify that consultation with children, in particular Aboriginal and Torres Strait Islander children, must be done in a culturally competent manner.

In relation to measures that could strengthen the role of a National Children's Commissioner more generally, the NATSILS recommend the following:

- Amending s 46MB (6)(b) to include the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment;
- Inserting a clause that gives the National Children's Commissioner powers to obtain information from government agencies like those given to the Aboriginal and Torres Strait Islander Social Justice Commissioner under s 46K of the *Australian Human Rights Commission Act 1986* (Cth);
- Inserting a clause to give the National Children's Commissioner the power to receive and investigate complaints from children relating to a breach of their human rights;
- Ensuring true independence by amending ss 46MB (1)(a) and (d) so that the National Children's Commissioner reports directly to Parliament as opposed to the Minister; and
- If ss 46MB (1)(a) and (d) are not amended to require the National Children's Commissioner to report directly to Parliament than a clause should be added that requires the Minister to table the National Children's Commissioner's annual report in Parliament as similarly required in relation to the Aboriginal and Torres Strait Islander Social Justice Commissioner's annual report under s 46M of the *Australian Human Rights Commission Act 1986* (Cth).

In conclusion, the NATSILS strongly support the establishment of a full-time National Children's Commissioner, and with the inclusion of the above amendments, believe that such could significantly contribute to the protection and promotion of Aboriginal and Torres Strait Islander children's human rights.

If you would like to discuss any of these matters further please do not hesitate to contact me on

Yours sincerely,

Shane Duffy
Chairperson
NATSILS



**Victorian Aboriginal Legal
Service Co-operative Ltd**



**Aboriginal Legal Service of
Western Australia**



**Aboriginal Legal Rights
Movement Inc**



NORTH AUSTRALIAN ABORIGINAL JUSTICE AGENCY

