

4 June 2012
Committee Secretary
Senate Legal and Constitutional Affairs Committee
Parliament House
Canberra ACT 2600
By email: legcon.sen@aph.gov.au

Dear Committee

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

We welcome the Australian Government's tabling of the Australian Human Rights Commission Amendment (National Children's Commissioner) Bill 2012 and in particular, we congratulate the government on their continuing commitment to prioritising the promoting the rights, wellbeing and development of Australia's children and young people.

We acknowledge the important role of the National Children's Commissioner (NCC) in promoting public discussion and awareness of issues affecting children, promoting the use of evidence of what works in improving the lives and opportunities of children and young people, identifying research or evidence gaps, conducting education programs, and consulting directly with children, young people and representative organisations. The NCC should use findings from these roles to assess whether and how Commonwealth legislation, policies and programs that relate to children and young people respects their human rights and improves wellbeing and development.

And finally, the NGO consortium is eager to support implementation of the National Children's Commissioner and to work collaboratively with the new Commissioner.

Yours Sincerely

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Background to this submission

A consortium of Non-Government Organisations (NGO) working in the children's, youth and family sector have been working together since prior to the release of the Commonwealth Government Discussion Paper on a National Children's Commissioner (released in November 2011) to articulate a shared vision for the role and contribution of the National Children's Commissioner.

A copy of the NGO Sector Position Paper on the National Children's Commissioner (the Position Paper) is attached for your information. We note the separate submission to this Inquiry from the Human Rights Law Centre, one of the organisations involved in the development of the Position Paper.

We would like to preface our submission with a note that one key ask from non-government organisations remains outstanding now that the role of a National Children's Commissioner will be established – the appointment of an independent Children's Guardian for unaccompanied children in Australia who are in immigration detention, or whose parents are in immigration detention. As outlined in our Position Paper, an independent Commonwealth Children's Guardian should be appointed to monitor, assess and report on the wellbeing of all children in immigration detention in Australia, and to ensure the Government meets and upholds its responsibilities for all children and young people seeking asylum in Australia.

Purpose of this submission

A sub-set of the NGO group that endorsed the Position Paper has reached a consensus on the key matters that we wish to bring to the attention of the Committee and the Minister prior to finalisation of the Bill and those matters on which we seek further consideration.

These matters we raise are detailed below. It should be noted that where recommendations from the NGO consortium are made in one section, that where relevant and useful these changes should flow through to all relevant legislative documents.

Core operational principles the NGO consortium would like to see more explicitly articulated:

The Bill should give special recognition to the unique status of Aboriginal and Torres Strait Islander children and young people as the First Peoples of Australia.

The National Children's Commissioner should proactively involve and consult children and young people from diverse groups with different needs, in ways that are appropriate to their circumstances, age and maturity so that their views are taken into account in the exercise of the NCC functions.

The Bill should enshrine a commitment to using best practice and continuous improvement approaches to involving children in the development, appointment, engagement, planning, operation and evaluation of the Office.

Draft legislation:

1 Schedule: Pt1, sub-s 3(1) - Definition of a child:

We would support expanding the definition of a child in particular cases to people aged 18-25 considered to still be making "adult transitions". We note that:

- Centrelink considers 18-25 year olds in some circumstances as still dependant on adults
- Age is not necessarily reflective of experience, for many once they reach 18, all previous support collapses (includes disability, young people leaving out of home care)

2 Part 11AA-National Children's Commissioner, Div 1:

46 MB (1) (a) The NGO consortium would like to see a requirement that the NCC report through the relevant Minister to Parliament.

46 MB (4) *In performing functions under this section, the National Children's Commissioner may give particular attention to children who are at risk or vulnerable.*

The consortium recommends that as this is an essential function of the position that the word 'may' be replaced by should.

3 Division 2 - Appointment

46 MC The NGO consortium recommends the following additions:

"46MC (2) *A person must not be appointed as the National Children's Commissioner unless the Minister is satisfied that the person has appropriate qualifications, knowledge or experience.* The Minister must give due regard to views and expectations of children and young people in determining the appropriateness of any appointment"

(3) In the selection process it is important that suitable mechanisms are in place for the voices of children and young people to inform the Minister's appointment decisions.

4 Division 4-Miscellaneous

46 MM The NGO consortium recommends reciprocity between the various Commissioners operating within the Australian Human Rights Commission (Commission). It is important to ensure that the NCC can work effectively with other Commissioners to investigate or act on information that is relevant to the performance of the NCC and the Commission.

46 MN The NGO consortium recommends a timeframe for a response from the Minister to issues raised in reports, any actions arising and responses to recommendations is specified in the Bill. We propose three months is a suitable timeframe for responses from Government.

The Explanatory Memorandum

5 The objectives of establishing a National Children's Commissioner

The NGO consortium seek addition of a primary objective that is to promote and improve children and young people's wellbeing. That said we support the objectives as noted in this document in so far as they contribute to actions that will deliver on this primary objective.

6 Statement of comparability

The NGO consortium recommends that the Bill should explicitly state that the NCC should complement and increase the ability of all Commissioners to fulfil their existing responsibilities regarding the rights of children and young people.

7 New Division 1 – Establishment and functions

10. Dot point 2. The NGO consortium recommends that apart from raising awareness and promoting discussion that the NCC could, where appropriate not only consult with existing national child rights and wellbeing advocacy organisations, but also partner and collaborate to improve children and young people's wellbeing.

20. This section should include the following words: "The Office of the National Children's Commissioner should have authority to represent all children in Australia. The Office should also have a specific priority to afford special protection for all vulnerable or at risk groups of children and young people in Australia. At this current time, these groups would include, but would not be limited to, Aboriginal and Torres Strait Islander children, children seeking asylum in Australia, refugee children, non-citizen children, children with disability and children in the child protection system including those in out of home care."

The mandate should allow for flexibility in the role of the Office of the National Children's Commissioner to respond to the changing nature of children who are recognised as vulnerable or at-risk based on best available evidence.

21. This section should clearly state the need to ensure consultation includes diverse persons and organisations. We also would advise that those noted in the draft Bill are not an exhaustive list and that the NCC should be able to consult key NGOs involved in advocacy for children and young people.

8 New Division 4 - Miscellaneous

30. The focus on Commonwealth legislation, policies and programs should not constrain the capacity of the NCC to learn from the experiences of State and Territory Children's Commissioners (CC). The NCC should be able to collaborate where appropriate, with State and Territory CC to enhance opportunities to improve recognition and exercise of children's rights to achieve nationally consistent best practices.