



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

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

The Australian Research Alliance for Children and Youth (ARACY) welcomes the establishment of a National Children's Commissioner, and appreciates the opportunity to comment on the Bill.

There are a number of issues which we believe warrant consideration in the Bill:

1. Need to focus on child wellbeing. The Australian Human Rights Commission Amendment (National Children's Commissioner) Bill 2012 takes a children's rights approach to framing the role of the Children's Commissioner. While not negating the importance of a rights approach (as derived from the United Nations Convention on the Rights of the Child), a rights approach is a means/mechanism of achieving an end; it is not the end in itself. The end in mind for a Children's Commissioner should be improved children's wellbeing. ARACY therefore recommends that a clause be inserted in 46MB that sets out the object of the Bill is to promote the wellbeing of children.
2. Need for a title change to Australian Children's Commissioner. The Bill refers to the Commissioner as the "National Children's Commissioner". This title will cause difficulties for the Commissioner within the international arena. Further it is inconsistent with how the Government now refers to itself as the Australian Government rather than the Federal or Commonwealth Government. Given the Commissioner is focused on the Australian Government ARACY recommends the title be changed to Australian Children's Commissioner.
3. Need to include other protocols in the Commissioners remit. ARACY recommends that section 46MB(6)(b) of the Bill be amended to include "(vii) the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment done at New York on 10 December 1984 ([1989] ATS 21)", the Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict (ratified by Australia on 26 September 2006) and the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography (ratified by Australia on 8 January 2007).

4. Need to focus on best practice approaches to incorporating the voices of children. The Commissioner's office will only be effective if it incorporates the voice, sentiment and needs of children in its efforts. This means ensuring that the voices of children are the basis by which the Commissioner's office operates. In undertaking schedule 46MB(5) (*In performing functions under this section, the National Children's Commissioner may consult any of the following a) children" ...*), , the commissioner should work to best evidence practice principles in undertaking such consultations.
5. The Commissioner should focus on turning existing evidence into action. Section 46MB1c) states that the commissioner will "*undertake research, or educational or other programs, for the purpose of promoting respect for the human rights of children in Australia, and promoting the enjoyment and exercise of human rights by children in Australia ...*". ARACY's view is that it may be the case that the wellbeing of children is less than optimal in Australia partly because the best **existing** evidence has not been applied. ARACY recommends that Section 46MB1c) state that the Commissioner will "*undertake research, utilise best evidence and progress education and knowledge translation strategies or other programs to promote respect for the human rights of children*"

Other considerations:

- Funding. ARACY are concerned at the low level of funding allocated to the Commissioner which equates to around 3 cents per child per annum¹. The allocation of \$3.5m over 4 years is less than the allocation for the smallest commissioner's office in the country (The ACT Children & Young people Commissioner²). Without adequate funding, the Commissioner will struggle to advance children's wellbeing using rights or any other mechanism at their disposal. We urge the Committee to support raised funding in its response to the Bill.
- The need to bridge the gap between community aspirations for children, and the current reality. In a soon to be published ARACY survey of 1,000 adult respondents , 92% considered children growing up 'healthy, happy and able to develop their full capacities as people and citizens' to be 'important' or 'extremely important' in making Australia a better country in the next 20 years; it was ranked the highest of 12 possible statements. However the same research found that only 39% of respondents agree that adults working in our society typically consider the wellbeing of children and young people when they are making decisions. ARACY therefore supports the establishment of an Australian Children's Commissioner as it goes some way to righting this imbalance between aspiration and reality.

¹ There are 2.772m children 18 and under in Australia. This divided by \$875,000 per annum = \$0.03 per child per annum
<http://www.abs.gov.au/AUSSTATS/abs@.nsf/DetailsPage/3101.0Sep%202011?OpenDocument>

² <http://www.hrc.act.gov.au/res/file/Annual%20report%20for%20website.pdf>



- Progressing evidence based action / reform, based on a soundly developed and holistic plan for children's wellbeing. There are currently many agendas, frameworks and action strategies being progressing in Australia, however there is no integrated plan for child & youth wellbeing. To this end, ARACY is facilitating the development of *The Nest: a National Action Plan for Children and Youth Wellbeing*³. We are extensively consulting with children, young people and families across Australia. A coalition of around 120 organisations are actively contributing to its development. Simultaneously we are reviewing the evidence to identify what works to improve children and youth wellbeing, and incorporating existing agendas and effort into a cohesive national agenda. This will culminate in a summit in November where the plan will be finalised. *The Nest* offers the Commissioner a work plan focusing on promoting and achieving wellbeing using a range of evidence based strategies and mechanisms, not just rights based mechanisms. Joining the efforts of others is going to be critical for the Commissioner given the low level of resourcing allocated. The Ministers second reading speech outlines her intent to promote children's wellbeing, however this needs to be put beyond doubt in the Bill itself so valuable projects like *The Nest* are clearly situated within the Commissioners remit.

Thank you for the opportunity to comment on the Bill

Yours sincerely

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³ <http://www.thenestproject.org.au/>