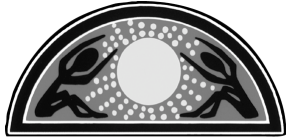




SNAICC
Secretariat of National
Aboriginal and Islander
Child Care

**Submission to the Senate Inquiry into
the Australian Human Rights
Commission Amendment (National
Children's Commissioner) Bill 2012
June 2012**

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A strong voice for our children and families

SNAICC is the national non-government peak body
that advocates on behalf of Aboriginal and Torres
Strait Islander children and families.

1. Introduction

The Secretariat of National Aboriginal and Islander Child Care (**'SNAICC'**) welcomes the opportunity to provide comments on the Australian Human Rights Commission Amendment (National Children's Commissioner) Bill 2012.

SNAICC was established as a non-governmental, not-for-profit organisation in 1981. It is the national peak body in Australia representing the interests of Aboriginal and Torres Strait Islander children and families. Further information on SNAICC is available online at www.snaicc.asn.au.

SNAICC considers the establishment of a National Children's Commissioner to be critical to improve human rights outcomes for children and young people in Australia, including Aboriginal and Torres Strait Islander children and young people. SNAICC applauds the Australian Government for its initiative to establish the office of the National Children's Commissioner.

SNAICC believes that the functions of the office, described in proposed section 46MB, are inadequate to ensure the necessary focus on the human rights and unique status of Aboriginal and Torres Strait Islander children and young people. SNAICC makes this submission to highlight this concern and make recommendations on the form that appropriate amendments should take. SNAICC further asserts that a National Deputy Commissioner with a focus on Aboriginal and Torres Strait Islander children is the preferred evidence-based model to ensure that the specific and unique needs of Aboriginal and Torres Strait Islander children are adequately addressed.

2. Groups that a National Children's Commissioner should represent

SNAICC strongly believes that the National Children's Commissioner should represent all children but nonetheless have a focus on specific groups of children. SNAICC notes that proposed section 46MB(4) provides that the National Children's Commissioner *'may give particular attention to children who are at risk or vulnerable.'* SNAICC considers that this provision is insufficient to provide a necessary, adequate, and required function to address the rights of Australia's most vulnerable children, including Aboriginal and Torres Strait Islander children.

SNAICC recommends replacing this section with a provision similar to that articulated in the enabling legislation of the Western Australian Commissioner for Children and Young People. The relevant section provides that: *"In performing the Commissioner's functions, the Commissioner must —*

(a) give priority to, and have special regard to, the interests and needs of —

- (i) *Aboriginal children and young people and Torres Strait Islander children and young people; and*
- (ii) *children and young people who are vulnerable or disadvantaged for any reason;*¹

SNAICC believes that this is an appropriate manner to define children who should be of specific focus. SNAICC also considers that the terms ‘*must*’ and ‘*give a priority to*’ as used in this section appropriately reflect the imperative for this focus. Aboriginal and Torres Strait Islander children represent the First Peoples of Australia and by virtue of that have specific and unique rights and status. This warrants a separate mandate and requires targeted and specific strategies for outreach to this group of children and young people. This issue is elaborated in the sections below.

There are many groups of children however who experience significant disadvantage and denial of fundamental human rights in Australia. The groups affected however do change over time and a listing methodology, even an inclusive approach, would be inadequate. Accordingly, a generic definition such as that proposed enables the Commissioner and civil society advocating on behalf of different groups to ensure those in need receive the necessary focus.

Recommendation A
<p>Proposed section 46MB(4) be amended to reflect the requirement for a specific priority focus in the performance of the functions of the National Children’s Commissioner on:</p> <ul style="list-style-type: none"> (a) Aboriginal and Torres Strait Islander children and young people; and (b) children and young people who are vulnerable or disadvantaged for any reason.

3. How a National Children’s Commissioner should represent Aboriginal and Torres Strait Islander children and young people

How such a mandate for Aboriginal and Torres Strait Islander children and young people is established within enabling legislation for a National Children’s Commissioner is an important issue that SNAICC seeks to address further.

SNAICC considers that the appropriate and necessary way to reflect the needs and rights of Aboriginal and Torres Strait Islander children and young people is to create a Deputy Commissioner within the body of the National Children’s Commissioner.

Should this position not be supported, clear and specific functions, operating procedures and provision for allocation of resources are, at minimum, required within the enabling legislation in order for the National Children’s Commissioner to respond to the needs and unique status of Aboriginal and Torres Strait Islander

¹ *Commissioner for Children and Young People Act 2006 (WA), s.20(1)(a).*

children. These functions are not currently addressed in the proposed legislation. Some examples follow:

Functions

- To consider Aboriginal and Torres Strait Islander children and young people in respect of each function of the Commissioner in an integrated manner.
- To develop a specific program for Aboriginal and Torres Strait Islander children and young people each year based on the breadth of functions of the Commissioner.
- In respect of proposed section 46MB(6) to additionally have regard to the *United Nations Declaration of the Rights of Indigenous Peoples (2007)* and *General Comment 11* concerning obligations of states under the *United Nations Convention on the Rights of the Child*, addressing the unique rights of Indigenous children.

Special considerations

- In fulfilling her work, the Commissioner must develop guidelines and adopt work practices that ensure cultural safety of the Office of the Commissioner and ensure cultural appropriateness of all activities and publications.

Other issues

- *Selection of Commissioner:* Aboriginal and Torres Strait Islander leaders, community controlled non-governmental organisations and children must be involved in the selection process of the Commissioner.
- *Staff:* a Department is to be established in the office of the Commissioner to represent issues of Aboriginal and Torres Strait Islander children and young people. This Department is to be staffed by a majority of Aboriginal and Torres Strait Islander staff.

The remainder of this submission details the rationale for SNAICC's position. It outlines some important reasons for a Deputy Aboriginal and Torres Strait Islander Children's Commissioner.

The question of *how* to establish the position of a Deputy Commissioner within the enabling legislation, or alternatively how to reflect the powers, functions, procedures and resource allocation required to support Aboriginal and Torres Strait Islander children and young people, is also an issue. SNAICC suggests that this is most appropriately addressed by establishing a working group of practitioners with the ambit of skills and expertise required which could, with sufficient time, provide a considered proposal. SNAICC would be very interested in facilitating the set up and operation of a working group to prepare a series of options for consideration of the Australian Government.

Recommendation B	
(i)	A Deputy Aboriginal and Torres Strait Islander Children’s Commissioner is established within the Office of the Commissioner; and
(ii)	A working group is established to develop a proposal on draft provisions required for enabling legislation for the creation and effective operation of a Deputy Commissioner.

Recommendation C	
If Recommendation B is not supported:	
(i)	additional functions are added to the role of the National Children’s Commissioner requiring a specific and integrated focus with a targeted approach to address the unique situation and rights of Aboriginal and Torres Strait Islander children; and
(ii)	in respect of proposed section 46MB(6), the National Children’s Commissioner is required to additionally have regard to the <i>United Nations Declaration of the Rights of Indigenous Peoples (2007)</i> and <i>General Comment 11</i> concerning obligations of states under the <i>United Nations Convention on the Rights of the Child</i> , addressing the unique rights of Indigenous children.

4. Rationale for Deputy Aboriginal and Torres Strait Islander Children’s Commissioner

SNAICC believes that a Deputy Aboriginal and Torres Strait Islander Children’s Commissioner is the preferable position on the basis of evidence of what works for Aboriginal and Torres Strait Islander children and young people as well as on a more principled leadership basis. This position reflects the appropriate position of First Peoples of Australia in accordance with their unique status and rights.

SNAICC advocates for a Deputy Aboriginal and Torres Strait Islander Children’s Commissioner on the basis of the following reasons.

(a) Unique rights and status of Aboriginal and Torres Strait Islander children and young people as the First Peoples of Australia

In developing new mechanisms such as a National Children’s Commissioner, consideration must be given to the unique rights that Aboriginal and Torres Strait Islander peoples have as First Peoples of Australia. These are laid out clearly in the *United Nations Declaration of the Rights of Indigenous Peoples (2007)* (*‘UNDRIP’*), which Australia endorsed in 2009, and are reinforced by the Committee on the Rights of the Child in its *General Comment 11* concerning obligations of states under the *United Nations Convention on the Rights of the*

Child, to which Australia is a party.² The Committee on the Rights of the Child has noted that many state parties give insufficient attention to the rights of Indigenous children and to the promotion of their development.³

Rights particularly central to the creation of a specific Deputy Aboriginal and Torres Strait Islander Children's Commissioner include the right of Aboriginal and Torres Strait Islander peoples to a choice in determining how their lives are governed and to their development paths, to participate in decisions that affect their lives and to have control over their lives and future including their economic, social and cultural development.⁴ The Expert Mechanism on the Rights of Indigenous Peoples recently reinforced that "*The right to full and effective participation in external decision-making is of fundamental importance to indigenous peoples' enjoyment of other human rights.*"⁵

In particular, Aboriginal and Torres Strait Islander peoples have a right to participate in decisions affecting their community and develop institutions to improve their economic and social conditions.⁶ Indigenous peoples "*have the right to make independent decisions in all matters relating to their internal and local affairs, and to effectively influence external decision-making affecting them if they choose to participate in such process.*"⁷ This is connected to the right to participate in the conduct of public affairs, which includes civil, cultural and social activities of a public nature.⁸ These obligations require specific attention to the rights and special needs of Aboriginal and Torres Strait Islander children.⁹

² Committee on the Rights of the Child, *General Comment No. 11, Indigenous Children and their Rights under the Convention*, 2009, CRC/C/GC/11, 12 February 2009.

³ *Ibid*, p.5.

⁴ UNDRIP, article 3; The Australian Human Rights Commission, *Community Guide to the UN Declaration on the Rights of Indigenous Peoples*, available at http://www.hreoc.gov.au/declaration_indigenous/declaration_full_4.html, pp.24-25.

⁵ Final Report of the study of indigenous peoples and the right to participate in decision-making, Report of the Expert Mechanism on the Rights of Indigenous Peoples, 17 August 2011, A/HRC/18/42, available at http://www.google.com.au/url?sa=t&rct=j&q=a%2Fhrc%2F18%2F42&source=web&cd=1&ved=0CB4QFjAA&url=http%3A%2F%2Fwww2.ohchr.org%2Fenglish%2Fbodies%2Fhrcouncil%2Fdocs%2F18session%2FA-HRC-18-42_en.pdf&ei=WYbqTu2jOoGtiQePzPWJBw&usg=AFQjCNE0XmIjTieJSwwNeuRJxi74qvTIw&sig2=BFLj563lk-6Fa0HodcQF0w&cad=rja.p.25.

⁶ UNDRIP, see articles 3, 18, 21 and 22 amongst others; *International Covenant on Civil and Political Rights, 1966*, article 25; Final Report of the study of indigenous peoples and the right to participate in decision-making, *ibid*, p.26. The UNDRIP contains more than 20 provisions affirming indigenous peoples' right to participate in decision-making: Progress report on the study on indigenous peoples and the right to participate in decision-making, Report of the Expert Mechanism on the Rights of Indigenous Peoples, A/HRC/EMRIP/2010/2, 17 May 2010, p.4.

⁷ Final Report of the study of indigenous peoples and the right to participate in decision-making, *ibid*, p.23.

⁸ *Ibid*, p.23.

⁹ UNDRIP article 22; Committee on the Rights of the Child, *General Comment No. 11, Indigenous Children and their Rights under the Convention*, 2009, CRC/C/GC/11, 12 February 2009.

Other critical rights, which have particular application to Aboriginal and Torres Strait Islander children, include the rights to enjoy their own culture, to profess and practice their own religion, and to use their own language.¹⁰ This is an issue that extends beyond areas considered “*cultural*” to permeate all aspects of life, including for example, education and health. The right of Aboriginal and Torres Strait Islander peoples to enjoy their culture remains a central issue, reflected by the establishment in October 2009 of the Healing Foundation, a national, Indigenous-controlled organisation which supports community-based healing initiatives to address the traumatic legacy of colonisation, forced removals and other past government policies.

This right to do things in accordance with Aboriginal and Torres Strait Islander culture is central to advocacy for children and youth. Aboriginal and Torres Strait Islander communities do things differently and interact in different ways to mainstream communities. Aboriginal and Torres Strait Islander children have different ways of learning and growing, and many Aboriginal families use significantly different child rearing practices with their children.¹¹ Aboriginal and Torres Strait Islander peoples are better situated with the knowledge and understanding of culture and of ways of doing things to take leadership to protect and promote the rights, wellbeing and development of Aboriginal and Torres Strait Islander children and youth.

Numerous studies have highlighted the “*importance of models which acknowledge and affirm Indigenous culture and build positive cultural identity.*”¹² Given the strong emphasis on adaptation to culture, it is clear why community ownership and control – in the design, delivery and management of services – are difficult to achieve from mainstream models.¹³ Decades of well-intentioned policies which have often exacerbated rather than redressed issues impacting Aboriginal and Torres Strait Islander children and families are also clear evidence that Aboriginal perspective and participation in the development of strategies to respond to issues impacting Aboriginal children is an imperative. It is also important, given ongoing distrust that has resulted from policies in recent decades, that mechanisms for Aboriginal participation and leadership are not just in place but that they are seen to be in place.

The unique status and rights of Aboriginal and Torres Strait Islander children and people require Aboriginal and Torres Strait Islander leadership in the body tasked to advocate on a national level for issues impacting Aboriginal and Torres Strait Islander children. The Government has made significant efforts recently to recognise the importance of Aboriginal leadership in relation to Aboriginal issues. The new National Standards for Out-of-Home Care, for example, provide a strong

¹⁰ United Nations Convention on the Rights of the Child, Article 30.

¹¹ See SNAICC, *Growing Up Our Way: Aboriginal and Torres Strait Islander child-rearing practices matrix*, 2011, available at <http://www.snaicc.asn.au/projects/dsp-default-c.cfm?loadref=196>.

¹² See for example SNAICC, *Indigenous Parenting Project: Main report*, 2004, p.44.

¹³ Waltja Tjutangku Palyapiyi, 2001, p.2 quoted in SNAICC, *Indigenous Parenting Project: Main report*, 2004, p.44.

example with Standard 3 confirming that: “*Aboriginal and Torres Strait Islander communities participate in decisions concerning the care and placement of their children and young people.*”¹⁴ The establishment of a Deputy Commissioner would give recognition to the importance of Aboriginal perspective in issues affecting Aboriginal children and would be in a better position to achieve outcomes for Aboriginal children.

(b) Systemic and structural discrimination and disadvantage experienced by Aboriginal and Torres Strait Islander children and youth

The proportion of Aboriginal and Torres Strait Islander children in Australia is still increasing with a higher birth rate of Indigenous families. In 2006, 38% of Aboriginal and Torres Strait Islander people were aged 14 years and under, compared with 19% of the non-Indigenous population.¹⁵ This means that while the Aboriginal and Torres Strait Islander population accounted for around 2.5% of the Australian population, Aboriginal and Torres Strait Islander children under 14 actually comprised over 5% of this population bracket.

Further, the rate of Aboriginal and Torres Strait Islander children in out of home care is approximately 10 times that of non-Indigenous children and the rate of Aboriginal and Torres Strait Islander children in juvenile detention is 23 times that of non-Indigenous children.¹⁶ A fifteen year old Aboriginal and/or Torres Strait Islander children is also four times less likely to be in school than their non-Aboriginal and Torres Strait Islander peers.¹⁷ They are the most vulnerable group in Australia, experiencing vast poverty, exclusion, discrimination and removal from their homes and cultures. This reflects serious systemic denial of human rights and intergenerational trauma requiring targeted, strengths based measures which redress the causes behind these problems. Fifteen years following the pivotal *Bringing Them Home Report*,¹⁸ the issues remain.

Recent reports and submissions cite only too clearly the disadvantage, poverty and exclusion which many Aboriginal and Torres Strait Islander children face.¹⁹

¹⁴ Available at

http://www.fahcsia.gov.au/sa/families/pubs/nat_std_4_outofhomecare/Pages/default.aspx.

¹⁵ Steering Committee for the Review of Government Service Provision, *Overcoming Indigenous Disadvantage Key Indicators 2011, Overview*, 2011, Productivity Commission, p.3.

¹⁶ Australian Institute of Health and Welfare, *Child Protection Australia 2009-2010*, January 2011; Australian Institute of Criminology, *Australian Crime: Facts & Figures 2010*, May 2011, p.122.

¹⁷ Reconciliation Australia, <http://www.shareourpride.org.au/topics/beyond-the-myths/why-so-much-suffering>.

¹⁸ See Human Rights and Equal Opportunity Commission, *Bringing them home—National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families* (April 1997).

¹⁹ James Anaya, Report of the Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous People, 15th sess, UN Doc A/HRC/15/ (4 March 2010); Aboriginal and Torres Strait Islander Social Justice Commissioner, *Social Justice Report*, Australian Human Rights Commission, 2007, 2008, 2009, 2010, 2011 (see http://www.hreoc.gov.au/social_justice/sj_report/index.html); Child Rights Taskforce – *Listen to Children*, Child Rights NGO Report Australia, May 2011, section 4.1; The National Aboriginal and Torres Strait Islander Legal Services (NATSILS) Shadow Report to the Committee on the Rights of the

This disproportionate suffering was captured by the recent Productivity Commission report on progress in *“Overcoming Indigenous Disadvantage: Key Indicators 2011.”*²⁰ Some statistics cited include:

- 52 per cent of Indigenous five year old children were ‘at risk’ or ‘vulnerable’ in the domain of languages and cognitive skills in 2009, compared to 21.4 per cent of non-Indigenous five year olds.²¹
- In 2007-2009, the Indigenous infant mortality rates were 1.6 to 3 times higher than those for non-Indigenous infants.
- In 2010, 48 per 1000 Indigenous children between 0–17 years of age were on care and protection orders, compared to 5 per 1000 non-Indigenous children.
- In 2009, attendance rates in government schools for years 5 and 10 were lower for Indigenous students than non-Indigenous students in all states and territories. The gaps between Indigenous and non-Indigenous attendance rates across the states and territories were between 9 and 24 percentage points for year 10 students and between 3 and 17 percentage points for year 5 students.
- In 2010, a substantially lower proportion of Indigenous than non-Indigenous students achieved the year three, five, seven, and nine national minimum standards for reading, writing, and numeracy.
- At 30 June 2009, Indigenous juveniles were detained at 23 times the rate for non-Indigenous juveniles.
- In 2008-2009, Indigenous people were hospitalised for alcohol related conditions at rates between 2 and 8 times those of non-Indigenous people.

Child: Review of Australia (Available from: <http://vals.org.au/law-reform-and-policy-development/submissions/tag/human-rights/>). Joint submission by the Aboriginal and Torres Strait Islander Legal Services (ATSILS) to the 2009 Australian Human Rights Consultation (<http://vals.org.au/law-reform-and-policy-development/submissions/post/national-human-rights-consultation-2009/>) ; Australians for Native Title and Recognition (ANTaR) Submission to the 2009 Australian Human Rights Consultation (<http://www.humanrightsconsultation.gov.au/www/nhrcc/submissions.nsf/list?OpenView&RestrictToCategory=Indigenous%20Rights&Start=1>); Victorian Aboriginal Child Care Agency (VACCA) Submission to the 2009 Australian Human Rights Consultation (<http://www.humanrightsconsultation.gov.au/www/nhrcc/submissions.nsf/list?OpenView&RestrictToCategory=Indigenous%20Rights&Start=51>); Submissions to the Commonwealth Attorney General’s Department on the National Human Rights Action Plan Baseline Study from Aboriginal Family Violence Prevention & Legal Service Victoria (FVPLS Victoria), Aboriginal and Torres Strait Islander Women’s Legal and Advocacy Service, Jumbunna Indigenous House of Learning, National Aboriginal and Torres Strait Islander Legal Services (NATSILS), (all available from: http://www.ag.gov.au/www/agd/agd.nsf/Page/Humanrightsandanti-discrimination_AustraliasHumanRightsFramework_ConsultationDraftBaselineStudy); Ampe Akelyernemane Meke Mekarle *‘Little Children are Sacred’*: The Report of the Northern Territory Board of Inquiry into the Protection of Aboriginal Children from Sexual Abuse (<http://www.inquirysaac.nt.gov.au/>); and *‘Growing Them Strong, Together: Promoting the Safety and Wellbeing of the Northern Territory’s Children’*, Report of the Board of Inquiry into the Child Protection System in the Northern Territory 2010 (http://www.childprotectioninquiry.nt.gov.au/report_of_the_board_of_inquiry).

²⁰ Steering Committee for the Review of Government Service Provision, *Overcoming Indigenous Disadvantage Key Indicators 2011, Overview*, 2011, Productivity Commission.

²¹ According to the Australian Early Development Index 2009 checklist: Steering Committee for the Review of Government Service Provision, *Overcoming Indigenous Disadvantage: Key Indicators 2011 Report*, Productivity Commission, 2011, 5.45.

- In 2008, Indigenous people reported experiencing a high/very high level of psychological distress at two and a half times the rate for non-Indigenous people.

The extent of this disadvantage, and the ongoing systemic and structural discrimination that it reflects, demands renewed energy and resources, as well as Aboriginal led monitoring processes and support mechanisms to assist Government to achieve outcomes for Aboriginal and Torres Strait Islander children. There needs to be a change in the way that we do things, which requires Aboriginal participation and partnership with Government.

(c) Aboriginal leadership is critical to a strengths based approach of the National Children's Commissioner

The process of empowering or enabling Aboriginal and Torres Strait Islander children and people themselves to realise their own potential, to take action, to develop solutions, and to advocate for their own human rights is fundamental to achieving structural change in the experience of disadvantage. The process of change is a critical component in rebuilding self worth and dignity.

This also requires a strengths-based approach, which enables the office to provide appropriate responses to engage Aboriginal and Torres Strait Islander children and young people, and advocate effectively on their behalf for their issues in their way.

A strengths based model means that the interaction that Aboriginal and Torres Strait Islander children, families and communities have with a body empowers them in making choices over their or their child's upbringing, builds on their expertise, increases their confidence, and supports them to learn new skills. A strengths based approach also encourages and actively requires community participation – “encouraging and facilitating communities ‘doing it for themselves’ rather than ‘being done to’.”²²

By comparison, a deficit model “*does not build on strengths already existing within Indigenous families and communities, and also set up situations where self-esteem, which is already low, is further eroded.*”²³ Shepherd and Walker highlight the ongoing issues in non-Aboriginal led services and organisations supporting strength's based approaches. They indicate that existing early childhood services “*often fail to incorporate Indigenous parenting, child-rearing and learning styles for reasons ranging from a lack of resources and staff*

²² *Pipirri Wiimaku 'for the little kids' innovative child care report*, Waltja Tjutangku Palyapayi Aboriginal Corporation, Alice Springs, NT, 2001 cited by Hutchins et al, “*Indigenous Early Learning and Care*”, Australian Research Alliance for Children and Youth (ARACY), 2007, p.24.

²³ SNAICC, *Indigenous Parenting Project: Main report*, 2004, p39.

understandings, to an inability to appreciate alternative cultural values, worldviews, lifestyles and ways of being.”²⁴

While by no means does SNAICC suggest that mainstream services can't and don't provide a strengths-based approach, it is simply significantly more likely with strong Aboriginal focus and leadership ensured through a Deputy Aboriginal and Torres Strait Islander Children's Commissioner. The following sections reinforce the reasons for this position.

(d) Evidence demonstrates that participation of the Aboriginal and Torres Strait Islander community is integral to the success of Government initiatives to advance issues impacting Aboriginal and Torres Strait Islander children, families and communities.

SNAICC works within the children and family services sector. Within this sector, there is a wealth of evidence that confirms that governance strategies that foster Aboriginal and Torres Strait Islander leadership and ownership of services lead to better outcomes for service delivery.²⁵ Ownership of services is a determining factor in participation and engagement with services. As Hutchins et al note:

“Indigenous communities all around Australia have very high expectations regarding their involvement and ownership of services and programs provided to improve and support their wellbeing. This relates to all levels of decision-making, policy development, processes and practices. Without this involvement there is no guarantee of participation.”²⁶

Recruiting and retaining Aboriginal and Torres Strait Islander workers is known to be key to engaging with and supporting Aboriginal and Torres Strait Islander families and children in the early childhood development sector,²⁷ as is cultural proficiency. A lack of cultural proficiency remains a persistent and driving factor behind failure of current services to meet the needs of Aboriginal and Torres Strait Islander communities.

This evidence is consistent with other sectors, as well as experience internationally. The importance of Aboriginal leadership and participation in processes supporting Aboriginal development outcomes was a major learning from the much-lauded US-based Harvard Project on American Indian Economic

²⁴ Shepherd, Carrington, and Walker, Roz, “Engaging Indigenous Families in Preparing Children for School”, Australian Research Alliance for Children and Youth (ARACY), 2008, p.20.

²⁵ See Flaxman et al, “*Indigenous families and children: coordination and provision of services*,” Occasional Paper No 23, National Evaluation Consortium, 2009, p34; SNAICC, *Indigenous Parenting Project: Main report*, 2004, p44; SNAICC, ‘Increasing Aboriginal and Torres Strait Islander access and engagement with child and family services’, Policy Paper, 2011, pgs 1 and 3; and Sims et al, “*Indigenous child carers leading the way*”, Early Childhood Australia, 2010, p.4.

²⁶ Hutchins et al, “*Indigenous Early Learning and Care*”, Australian Research Alliance for Children and Youth (ARACY), 2007, p.25.

²⁷ Productivity Commission Draft Research Report, “*Early Childhood Development Workforce*,” Australian Government, 2011, p.272.

Development. This project suggests that there are four key principles that inform sustainable social development for Indigenous Americans.²⁸ These are that:

- When Indigenous communities *“make their own decisions about what development approaches to take, they consistently out-perform external decision makers on matters as diverse as governmental form, natural resource management, economic development, health care, and social service provision.”*
- Sovereignty and control must be supported by institutions that oversee the running of the organisation or enterprise, and can *“separate politics from day-to-day business and program management.”*
- Services must fit within the unique culture of the particular community.
- Strong Indigenous leadership is critical – effective leaders *“introduce new knowledge and experiences, challenge assumptions, and propose change.”*

Consistent with this evidence, SNAICC believes that a Deputy Aboriginal and Torres Strait Islander Children’s Commissioner will significantly strengthen outcomes in:

- (i) Participation of Aboriginal and Torres Strait Islander children and community in processes initiated by the National Children’s Commissioner;
- (ii) the National Children’s Commissioner’s ability to develop responsive and culturally sensitive strategies to advance issues of Aboriginal and Torres Strait Islander children and young peoples; and
- (iii) the National Children’s Commissioner’s ability to understand the breadth and depth of issues confronting Aboriginal and Torres Strait Islander children and young peoples and therefore develop effective recommendations for redressing gaps and strengthening policies, laws and programs to better service these children and young people.

(e) State experience with Children’s Commissioners highlights a need for a specific mandate contained within the enabling legislation for Aboriginal and Torres Strait Islander children and young people

Every State and Territory in Australia has a Children's Commissioner or Guardian which was established at different times between 1997 and 2007. The powers and functions of State and Territory Children's Commissioners to undertake their mandate with regard to children's rights generally differ significantly from jurisdiction to jurisdiction. Subject to two exceptions, State and Territory Children's Commissioners do not have specific mandates, policies or practices relating to Aboriginal and Torres Strait Islander children. As a result, the effectiveness of the State and Territory Children's Commissioners in advocating for Aboriginal and Torres Strait Islander children's rights has been very limited.

Some Children's Commissioners have published various reports, papers, submissions or educational material that touch on aspects of Aboriginal and Torres Strait Islander children's rights. Consultation with Aboriginal and Torres

²⁸ Available at Harvard Project on American Indian Economic Development, <http://hpaied.org/about-hpaied/overview>.

Strait Islander agencies or groups also happens on an ad hoc basis when pressing issues relating to Aboriginal and Torres Strait Islander children arise. Such consultation is not consistent however and is reliant on respective Children's Commissioners choosing to take up issues rather than pursuant to any consistently applied guidelines or legislative requirements.

This lack of effectiveness of the Children's Commissioners across Australia is highlighted in the recent NGO Report submitted to the UN Committee on the Rights of the Child, which highlights particular failings and issues relating to the protection and realisation of the rights of Aboriginal and Torres Strait Islander children.²⁹ This is reinforced by section 4(b) above.

In the Northern Territory, the Children's Commissioner has a specific function to monitor the implementation of any decisions of the Northern Territory Government arising from the *"Inquiry into the Protection of Aboriginal Children from Sexual Abuse (Little Children are Sacred)"* report.³⁰ The Commissioner publishes reports annually in relation to the *"Closing the Gap of Indigenous Disadvantage - A Generational Response"* report. This function opens pathways for engagement and ensures the consistent, systematic review of issues impacting Aboriginal and Torres Strait Islander children. It nevertheless remains significantly limited in its capacity to develop a focused, self-initiated agenda and respond to the needs of Aboriginal and Torres Strait Islander children and youth in a culturally appropriate and responsive manner.

In Western Australia, as noted above, the legislation establishing the Western Australian Commissioner for Children and Young People requires the Commissioner to give priority to, and have special regard to, the interests and needs of Aboriginal children and young people and Torres Strait Islander children and young people.³¹ Since its recent establishment in 2007, the Western Australian Commissioner has designated certain issues relating to Aboriginal and Torres Strait Islander children, education in particular, as being of priority. The Commissioner has actively advocated for increased provision of education to Aboriginal students that embraces and encompasses the language, culture and values of their own community to enable their full and continued participation in learning,³² among other matters.

Again, while reflecting significant progress, adequate redress of issues impacting Aboriginal and Torres Strait Islander children requires more. Designated Aboriginal leadership is necessary to establish appropriate strategies for engaging with children and youth, for framing the issues and for providing strengths based advice to Government on its laws, policies, procedures and practices.

²⁹ See Report, *Listen to Children* at www.childrights.org.au.

³⁰ *Care and Protection of Children Act 2007 (NT)*, section 259.

³¹ *Commissioner for Children and Young People Act 2006 (WA)*, section 20.

³² See <http://www.ccp.wa.gov.au/content/Aboriginal-education.aspx>.

(f) Recognition of specific focus on Indigenous children supported by international experience

While there is limited comparative international experience to draw on, we note two important developments in countries in which the Indigenous peoples of the land similarly continue to experience systematic discrimination, exclusion, generational trauma and poverty.

New Zealand has had a national Children's Commissioner for many years. The Children's Commissioner considered as far back as 2002 that his office lacked appropriate accessibility to Indigenous children.³³ There is no specific reference to Indigenous children in the New Zealand Children's Commissioner's enabling legislation.

In Canada, there are Children's Commissioners (or Child Advocates) for 9 out of 10 provinces of Canada, and 1 out of 3 territories. Movements for a national Children's Commissioner have been underway for many years. In 2001, Hon. Landon Pearson, Senator Advisor on Children's Rights to The Minister of Foreign Affairs and Karen Kraft-Sloan, M.P. York North, Ontario, House of Commons prepared detailed submissions to the Federal Government for a National Children's Commissioner.³⁴ This included a mandate for a Deputy Commissioner to advocate for Aboriginal children in Canada.

The submissions stated at p.11:

"A Deputy Commissioner would assume responsibility for advocating on behalf of Aboriginal children. For example, the Deputy Commissioner would liaise regularly with advocates of Aboriginal children, such as First Nations, Métis and Inuit community groups; Band and Tribal Councils; education authorities and First Nations academic institutions; First Nations, Métis and Inuit women's organizations; and other First Nations, Métis and Inuit organizations that work with children."

The submission sets out an organisational structure with the Commissioner and Deputy Commissioner together in an office reporting to Parliament. This is the model developed by members of the Canadian Government and demonstrates good practice for redressing the rights and needs of Indigenous peoples within that State.

Similarly, this is the model that, SNAICC submits, the Australian Government should also consider as a progressive way of improving partnership between Indigenous and non-Indigenous Australians, and developing more effective

³³ Commissioner for Children Te Tari o te Kaikomihana mo nga Tamariki, '2002 Annual Report', available at http://www.occ.org.nz/__data/assets/pdf_file/0009/3321/OCC_AnnualReport2002.pdf.

³⁴ Available at http://www.landonpearson.ca/uploads/6/0/1/4/6014680/proposal_for_a_childrens_commissioner_2001.pdf.

means of improving the human rights and well-being of Aboriginal and Torres Strait Islander children and young people.

(g) This is an important moment to seize on to demonstrate that Australia is thinking differently in relation to Aboriginal and Torres Strait Islander peoples – that it is building effective partnerships

The Australian Government has made significant new strides recently to mark a different emerging relationship of partnership with Aboriginal and Torres Strait Islander people. Support for the establishment of the National Congress of Australia's First Peoples, the establishment of a new peak body for Aboriginal children and family interests in the Northern Territory, a landmark agreement in NSW to transfer out-of-home care service provision to the non-government sector, and the first steps in a process to change Australia's Constitution to recognise Aboriginal and Torres Strait Islander peoples are some new important initiatives marking a partnership approach.

The Honourable Jenny Macklin reinforced this approach recently at the Oxfam Straight Talk Summit, noting that: *"We know that it's all about working together, working respectfully, understanding each other ... we all know that we've got to grow and learn together. The old ways often have to be put aside so that we can figure out more productive and more effective ways that we can work together."*³⁵

There is no greater imperative for partnership than in relation to the needs and rights of children and young people. The establishment of a National Children's Commissioner offers an exciting opportunity to provide a more effective way to work together.

The Australian Government, along with the state and territory governments have made enormous contributions to *"Closing the Gap,"* including significant funds to close the gap in disadvantage suffered by Aboriginal and Torres Strait Islander children. While Closing the Gap targets have been set, there has been little progress – if any – towards them.³⁶ Better partnership with Aboriginal and Torres Strait Islander people, marked through a Deputy Commissioner, would assist the Government to be better informed about process and content elements required to see real advances towards these set targets. Now is the time for action on these issues.

Finally, the creation of a National Children's Commissioner is an important opportunity to shift the way that these issues are presented in the public domain

³⁵ Oxfam Straight Talk Summit, 21 September 2011, http://www.jennymacklin.fahcsia.gov.au/speeches/2011/Pages/oxfamstraighttalksummit_21sept11.aspx.

³⁶ Steering Committee for the Review of Government Service Provision, *Overcoming Indigenous Disadvantage: Key Indicators 2011 Report, Overview*, Productivity Commission, 2011, p.4.

and to reflect recognition that we need to do things differently to respect and support Aboriginal and Torres Strait Islander children and young people in Australia.

Thank you for the opportunity to contribute to this very important process.

Please don't hesitate to contact me if you have any questions or comments, or if SNAICC can assist in any way.

Yours sincerely,

Frank Hytten
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SNAICC