



Commissioner for Children and Young People
Western Australia

Mr Tim Watling
Inquiry Secretary
Legal and Constitutional Affairs Legislation Committee
Parliament House
CANBERRA ACT 2600
Via email: LegCon.Sen@aph.gov.au

Dear Mr Watling

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

Thank you for the opportunity to make a submission to the Senate Legal and Constitutional Affairs Legislation Committee on the Australian Human Rights Commission Amendment (National Children's Commissioner) Bill 2012 (The Bill).

I was appointed as Western Australia's inaugural Commissioner for Children and Young People in December 2007 pursuant to the *Commissioner for Children and Young People Act 2006* (the WA Act). Under the WA Act my role is to advocate for the half a million Western Australian children and young people under the age of 18, specifically having responsibility to promote and monitor their wellbeing.

In performing my role the best interests of children and young people must be my paramount consideration. I must give priority to, and have special regard to, the interests and needs of Aboriginal and Torres Strait Islander children and young people, and children and young people who are disadvantaged for any reason. I am also required to have regard to the United Nations Convention on the Rights of the Child.

It is with these responsibilities in mind that I make my submission.

I welcome the announcement of the National Children's Commissioner and support the establishment of the position. I look forward to engaging with the National Commissioner to promote our common purposes in addressing the needs of children and young people.

I am generally supportive of the proposed Bill, however, I have a number of comments. These comments are made in the context of a relatively short period of several days to provide feedback.

Having considered the Bill I make the following comments aimed at strengthening the legislation.

Caring for the future growing up today

Inclusion of guiding principles

A number of the legislative instruments establishing Commissioners for Children around Australia set out statements of principles which guide and shape the focus of that office. These include the *Commissioner for Children and Young People Act 2006* (WA); the *Commission for Children and Young People Act 1998* (NSW); the *Commissioner for Children and Young People and Child Guardian Act 2000* (Qld); and the *Child Wellbeing and Safety Act 2005* (Vic).

The Bill would be strengthened by expressly referring to guiding principles which are applicable to the National Children's Commissioner. Principles to be considered include:

1. The best interests of children should be the paramount consideration.
2. Children are entitled to live in a caring and nurturing environment and to be protected from harm and exploitation.
3. Children have the right to be heard and their views given serious consideration and taken into account.
4. The importance of parents, family and communities in safeguarding and promoting wellbeing should be recognised, and they should be supported in this role.

These principles are based closely on guiding principles in the WA Act. These are also clearly in accord with the intent of the Bill, as stated in the Explanatory Memorandum and in the Attorney General's Second Reading speech on 23 May 2012.

Recommendation 1: that the Bill includes guiding principles.

The notion of 'wellbeing'

The Bill itself refers to the 'human rights' of children throughout, and the role of the Commissioner to work in a human rights framework. I acknowledge the fundamental importance of this. I note the Explanatory Memorandum and Second Reading speech both refer throughout to the wellbeing of the child.

The notion of 'wellbeing' is intrinsically linked to a child's rights.

It is therefore suggested that an express reference to the Commissioner's role in the monitoring and promoting the wellbeing of children is inserted in the legislation.

Recommendation 2: that the Bill includes reference to children's wellbeing and the Commissioner's role in the monitoring and promoting of their wellbeing.

Functions of the Commissioner

The Commissioner's role includes the function, under s.46MB (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...'.

As indicated above it is important that a National Commissioner also have a focus on monitoring and promoting the wellbeing of children and young people. This will

involve reviewing and promoting not only laws but Commonwealth policies, programs and services. I refer you to section 19 of the WA Act, which reflects this approach.

Recommendation 3: that the Bill includes a function for the Commissioner to examine existing and proposed policies, programs and services delivered by Commonwealth agencies to or for children.

Regard to the views of children

The United Nations Convention on the Rights of the Child (UNCROC) is underpinned by four fundamental principles, one of which is Participation – that children have a right to have their say in decisions that affect them and to have their opinions taken into account.

The Bill states that the Commissioner 'may consult' children in performing his or her functions. In the WA Act, it is one of the guiding principles that children and young people have the right to be heard and their views taken into account. One of the Commissioner's functions is to consult with children and young people in WA (s.19n), develop appropriate means of consulting with children and young people (s.20c) adopt work practices that ensure the Commissioner is accessible to children and young people and encourage their participation in decision-making (s.20e (i) and (ii)). The WA Act also contains provisions (s.50) that reports prepared by the Commissioner are developed in a 'child-friendly' version. This is consistent with Articles 12 and 17 of the UNCROC.

The Bill could be strengthened, consistent with UNCROC, by ensuring the Commissioner has a role in encouraging the participation of children in decision-making, and developing methods of communication which are appropriate to the ages and maturity levels of children.

In accordance with the guiding principles above and the statement in the Second Reading speech, the legislation could be amended to reflect that the views of children must be taken into account and given serious consideration. This would entail a further amendment to reflect that the Commissioner develop methods of communicating with children that are appropriate to their ages and maturity, and encourage their participation in decisions that affect their rights and wellbeing.

Recommendation 4: that the Bill includes express reference to the views of children being taken into account.

Recommendation 5: that the Bill requires that the Commissioner encourages the participation of children in decision-making processes that affect their rights and wellbeing.

The Convention on the Rights of the Child

The Bill states that the Commissioner must have regard to a number of Conventions and Covenants on human rights. The list includes the UNCROC. Given UNCROC's importance as a defining instrument for the rights of children, it would be appropriate that UNCROC is elevated in the list to sit beside the Universal Declaration of Human Rights, rather than being listed among the other Conventions and Covenants.

Recommendation 6: that the Bill elevates the Convention on the Rights of the Child as described.

The Committee may wish to further consider relevant sections of the WA Act, in particular sections 3 and 4 (Principles); section 19 (Functions); Part 5 (Special inquiries); and Part 6 (Reporting).

I thank you again for the opportunity to comment on this important piece of legislation which will have a vital role in safeguarding and promoting the rights, health, safety and wellbeing of all children across Australia.

I am happy to provide any further information or clarification should this be required.

Yours sincerely

MICHELLE SCOTT

Commissioner for Children and Young People WA

3 May 2012