



5 June 2012

Committee Secretary
Senate Legal and Constitutional Affairs Committee
PO Box 6100
Parliament House
Canberra ACT 2600
Australia

By email: legcon.sen@aph.gov.au

Dear Committee,

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

1. Women's Legal Services NSW (WLS NSW) thanks the Senate Legal and Constitutional Affairs Committee for the opportunity to comment on the Australian Human Rights Commission Amendment (National Children's Commissioner) Bill 2012.
2. WLS NSW is a community legal centre that aims to achieve access to justice and a just legal system for women in NSW. We seek to promote women's, including young women's human rights, redress inequalities experienced by women and to foster legal and social change through strategic legal services, community development, community legal education and law and policy reform work. We prioritise women who are disadvantaged by their cultural, social and economic circumstances. We provide specialist legal services relating to domestic and family violence, sexual assault, family law, discrimination, victims compensation, care and protection, human rights and access to justice.
3. We warmly welcome the introduction of this Bill and recommend its enactment.
4. In summary, we recommend:
 1. The enactment of the Australian Human Rights Commission Amendment (National Children's Commissioner) Bill 2012
 2. The inclusion of the *Declaration on the Rights of Indigenous Persons* at s46MB(6)(a) or specifically named as one of the 'other instruments' at s46MB(6)(c).
 3. The inclusion of the *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* at s46MB(6)(b).
 4. The inclusion of the *Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict* at s46MB(6)(b).

5. The inclusion of the *Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography* at s46MB(6)(b).

The role and function of the National Children's Commissioner

5. The introduction of a National Children's Commissioner has long been advocated.¹ It is consistent with Australia's acceptance of Universal Periodic Review recommendations before the United Nations Human Rights Council in June 2011.² It is a key recommendation made by the Child Rights Taskforce in the NGO Report, *Listen to Children*, in the lead up to Australia's review by the United Nations Committee on the Rights of the Child.³ Many organisations, including WLS NSW, endorsed this report.
6. Importantly, this Bill focuses on promoting 'discussion and awareness of matters relating to the human rights of children'; undertaking research to 'promote respect for' and 'enjoyment and exercise of human rights by children in Australia'; 'examin[ing] existing and proposed Commonwealth enactments' to ensure they promote and protect the human rights of children in Australia and to 'report to the Minister the results of any such examination.' WLS NSW also supports the National Children's Commissioner speaking directly with children in the undertaking of its functions.
7. We welcome the National Children's Commissioner being able to 'give particular attention to children who are at risk or vulnerable', that is, children experiencing disadvantage or discrimination. Based on the *Listen to the Children* report and on our experience, this includes Aboriginal or Torres Strait Islander children, children in out-of-home care, children who have experienced or being exposed to domestic or family violence or abuse, children in immigration detention, children in custody, children with a disability and children experiencing poverty and homelessness.

Proposed amendments to the Bill

8. We note that the *Declaration on the Rights of Indigenous Persons* is not specifically included in section 46MB(6) of the Bill. On 3 April 2009, the Australian Government formally expressed support for this Declaration.⁴ We further note the recent statement made by Mr Quinlan, Ambassador and Permanent Representative of Australia, at the United Nations Permanent Forum on Indigenous Issues. In his statement Mr Quinlan, described Australia as being a 'proud supporter' of the Declaration and that 'the Declaration and the seven human rights conventions to which Australia is signatory, are reflected in our policy approach'.⁵
9. While noting this Declaration is not legally binding, we believe it is important to include the

¹ *The Non-government Report on the Implementation of the United Nations Convention on the Rights of the Child in Australia*, May 2005, Recommendation 1 at xiv(17) accessed on 2 June 2012 at:

http://www.ncylc.org.au/croc/images/croc_report_for_web.pdf

² Human Rights Council, *Report of the Working Group on the Universal Periodic Review Australia, Addendum -Views on conclusions and/or recommendations, voluntary commitments and replies presented by the State under review*, A/HRC/17/10/Add.1, 31 May 2012, UPR Recommendation 86.28 and 86.29, accessed on 2 June 2012 at:

http://lib.ohchr.org/HRBodies/UPR/Documents/Session10/AU/A_HRC_17_10_Add.1_Australia_E.pdf

³ *Listen to Children*, Child Rights Taskforce, May 2011, Recommendation 6 accessed on 2 June 2012 at:

http://www.childrights.org.au_data/assets/pdf_file/0014/14405/Listening-to-children-Report-2011-colour.pdf

⁴ The Hon Jenny Macklin MP, *Statement on the United Nations Declaration on the Rights of Indigenous Peoples*, 3 April 2009, accessed on 2 June 2012 at:

http://www.jennymacklin.fahesia.gov.au/statements/Pages/un_declaration_03apr09.aspx

⁵ Gary Quinlan, *Fifth Anniversary of the Declaration on the Rights of Indigenous Peoples*, United Nations Permanent Forum on Indigenous Issues, 17 May 2012 accessed on 4 June 2012 at:

http://www.unnny.mission.gov.au/unny/120517_pfii.html

Declaration in this Bill, particularly given the Australian Government has indicated it is reflected in its policy approach and that the Bill provides that the Children's Commissioner give particular attention to vulnerable children, which includes Aboriginal children. We recommend that the *Declaration on the Rights of Indigenous Persons* be inserted at s46MB(6)(a) or specifically named as one of the 'other instruments' at s46MB(6)(c).

10. We note that the *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)* is not included at s46MB(6)(b). Australia ratified this Convention on 8 August 1989.
11. *CAT* is important in the context of children, particularly with respect to children who have experienced or being exposed to domestic or family violence and/or abuse. Domestic and family violence is one of the most insidious forms of violence against women and children.⁶ As set out by the Committee on the Elimination of All Forms of Violence Against Women in *General Recommendation No. 19*, it is generally accepted that domestic and family violence often involves extreme physical and psychological suffering amounting to torture as defined under *CAT*.⁷ This approach to domestic and family violence has been accepted by the Committee Against Torture which has condemned 'the prevalence of violence against women and girls, including domestic violence' in its Concluding Observations on various countries⁸ and in its *List of issues prior to the submission of the fifth periodic report of Australia*.⁹
12. In addition to domestic and family violence, *CAT* is also relevant to children in immigration detention, custody and out-of-home care. We recommend that the *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* be included in the Bill at s46MB(6)(b).
13. We further note the absence of 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 on 8 January 2007. Both Optional Protocols provide important protections for children and we therefore recommend their inclusion at s46MB(6)(b).
14. If you would like to discuss any aspect of this submission, please contact Liz Snell, Law Reform and Policy Coordinator or Donna Hensen, Indigenous Women's Legal Program Coordinator on

Yours sincerely,

Women's Legal Services NSW

Janet Loughman
Principal Solicitor

⁶ Committee on the Elimination of All Forms of Discrimination against Women, *General Recommendation No. 19*, 11th session, 1992, paragraph 23.

⁷ Committee on the Elimination of All Forms of Violence Against Women, *General Recommendation No 19*, 11th session, 1992, accessed on 4 June 2012 at: <http://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm>

⁸ Committee against Torture, *Concluding Observations on Greece*, (2004) UN doc. CAT/C/CR/33/2, paragraphs 4 and 5. See also Committee against Torture, *Concluding Observations on Ecuador*, (2006) UN doc. CAT/C/ECU/CO/3, paragraph 17; Committee against Torture, *Concluding Observations on Argentina*, (2004) UN doc. CAT/C/CR/33/1, paragraph 6; Committee against Torture, *Concluding Observations on Bahrain*, (2005) UN doc. CAT/C/CR/34/ BHR, paragraphs 6-7; *Concluding Observations on Nepal*, (2005) UN doc. CAT/C/NPL/CO/2, paragraph 27.

⁹ Committee Against Torture, *List of issues prior to the submission of the fifth periodic report of Australia*, CAT/C/AUS/5, 15 February 2011 at paragraph 13.