

28 May 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 Human Rights Law Centre warmly welcomes the introduction and strongly supports the enactment of the Australian Human Rights Commission Amendment (National Children's Commissioner) Bill 2012.

The establishment of a National Children's Commissioner will help to promote and protect the human rights of children and young people and ensure that the best interests of children are taken into account in the development and review of national law and policy. In so doing, it will be an important institutional mechanism contributing to the domestic implementation of Australia's international human rights obligations, particularly those arising under the Convention on the Rights of the Child.

The creation of a National Children's Commissioner has been consistently advocated by non-government organisations, including the National Children's and Youth Law Centre and Save the Children Australia. It is one of the key recommendations currently being made by a major NGO coalition in the context of the UN Committee on the Rights of the Child review of Australia.<sup>1</sup> The UN Committee on the Rights of the Child has previously expressed "concern that there is no commissioner within the Australian Human Rights Commission devoted specifically to child rights" and recommended that Australia ensure that the Commission "can undertake independent and effective monitoring of the implementation of children's rights".<sup>2</sup> The UN Human Rights Council also recommended that Australia appoint a national Children's Commissioner when it reviewed Australia's human rights record under the Universal Periodic Review in 2011.<sup>3</sup>

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<sup>1</sup> Child Rights Taskforce, *Listen to Children: NGO Report on Australia* (May 2011), Recommendation 6 at [http://www.childrights.org.au/\\_data/assets/pdf\\_file/0014/14405/Listening-to-children-Report-2011-colour.pdf](http://www.childrights.org.au/_data/assets/pdf_file/0014/14405/Listening-to-children-Report-2011-colour.pdf).

<sup>2</sup> Committee on the Rights of the Child, *Concluding Observations on Australia*, UN Doc CRC/C/15/Add.268 (2005), paras 15-16.

<sup>3</sup> Human Rights Council, *Report of the Working Group on the Universal Periodic Review of Australia*, UN Doc A/HRC/WG.6/10/L.8 (2011), Recommendations 86.28 and 86.29.

In addition to being indicated by Australia's international human rights law obligations, the establishment of a National Children's Commissioner is also supported by experience in comparable jurisdictions. The experience from countries such as New Zealand,<sup>4</sup> the United Kingdom<sup>5</sup> and Norway<sup>6</sup> – all of which have full-time children's rights commissioners – shows that an adequately resourced and mandated commissioner can play a valuable role in advocating for the human rights of children and young people.

In relation to the functions of the Commissioner, the HRLC 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)". We assume that the omission of this core international human rights treaty, to which Australia is party and which is one of the key instruments specified in Australia's Human Rights Framework and under the *Human Rights (Parliamentary Scrutiny) Act 2011* (Cth), is an error.

We also recommend that consideration be given to further amending section 46MB(6)(b) of the Bill to reference 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). These Optional Protocols form a part of Australia's binding obligations under international law in relation to the rights of children and it may therefore be appropriate to ensure that the Commissioner has regard to them in performing his or her functions.

The HRLC notes with approval the specification under section 46MB(4) of the Bill that "the National Children's Commissioner may give particular attention to children who are at risk or vulnerable." While establishing a Children's Commissioner is an important step in ensuring that all Australian children can fully enjoy their human rights, it is a particularly important for children who experience disadvantage or discrimination. This includes Aboriginal and Torres Strait Islander children, children in out-of-home care, child migrants and children in immigration detention, children in the juvenile justice system, children who are victims of crime and abuse, children with disabilities, children involved in family breakdowns and disputes, homeless children and children living in poverty.

In conclusion, the HRLC considers that the establishment of a full-time, adequately resourced and appropriately qualified National Children's Commissioner will make a significant contribution to the promotion and protection of the rights of the child in Australia. We strongly support the enactment of the Australian Human Rights Commission Amendment (National Children's Commissioner) Bill 2012.

We would be pleased to supplement this submission with evidence at any public hearings on the Bill.

Yours sincerely

Philip Lynch  
Executive Director

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<sup>4</sup> See <http://www.occ.org.nz/>.

<sup>5</sup> See <http://www.childrenscommissioner.gov.uk/>.

<sup>6</sup> See <http://www.barneombudet.no/english/>.