
The Parliament of the Commonwealth of Australia

Advisory Report:

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

House of Representatives
Standing Committee on Social Policy and Legal Affairs

June 2012
Canberra

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Membership of the Committee

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Inquiry information

On Thursday 24 May 2012, the Selection Committee asked the Committee to inquire into and report on the Australian Human Rights Commission Amendment (National Children's Commissioner) Bill 2012.



List of recommendations

National Children's Commissioner Bill 2012

Recommendation 1

The Committee recommends that the Australian Human Rights Commission Amendment (National Children's Commissioner) Bill 2012 be passed without amendment in the House of Representatives.

Recommendation 2

The Committee recommends that the Attorney-General review the funding allocated to the National Children's Commissioner before June 2013 and that any necessary funding increase be made to ensure the Commissioner can appropriately fulfil its functions.

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National Children's Commissioner Bill 2012

- 1.1 The Australian Human Rights Commission Amendment (National Children's Commissioner) Bill 2012 (hereafter referred to as the NCC Bill) was introduced to the House of Representatives on 23 May 2012.

Scope of the Bill

- 1.2 The NCC Bill establishes the statutory office of the National Children's Commissioner (the Commissioner) in the Australian Human Rights Commission. The Commissioner will promote public discussion and awareness of issues affecting children, conduct research and education programs and consult directly with children and representative organisations. The Commissioner will also examine Commonwealth legislation, policies and programs that relate to children's human rights, wellbeing and development.
- 1.3 The objectives of establishing the Commissioner are:
- to improve advocacy for the rights, wellbeing and development of children at the national level;
 - to improve monitoring of enactments and proposed enactments of Commonwealth laws affecting the rights, wellbeing and development of children;
 - to promote cooperation between the Commonwealth, states and territories to promote the rights, wellbeing and development of children;

- to encourage the active involvement of children in decisions that affect them, particularly administrative decisions and the development of government policies programs and legislation;
- to support government agencies to develop mechanisms that enhance the active involvement of children; and
- to assist Australia in meeting its international obligations by promoting and advancing the rights of the child.¹

Referral of the Bill

- 1.4 On 24 May 2012 the Selection Committee referred the NCC Bill to the House of Representatives Social Policy and Legal and Affairs Committee for inquiry and report.

Reason for referral

- 1.5 The Selection Committee provided the following reasons for referral/principal issues for consideration:

The adequacy of funding for the functions of the National Children's Commissioner and whether any existing functions of the Australian Human Rights Commission will be compromised thereby. Also, the interoperability of the functions of the National Children's Commissioner with state and territory child welfare and guardian responsibilities.²

Previous inquiries and consultations

- 1.6 A central priority under the National Framework for Protecting Australia's Children 2009 – 2020 is advocacy for children and young people. In line with this priority, the Commonwealth committed to examine the potential role of a National Children's Commissioner.
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1 The Australian Human Rights Commission Amendment (National Children's Commissioner) Bill 2012, *explanatory memorandum*, p. 1.

2 The Selection Committee report of 24 May 2012 is available here: <http://www.aph.gov.au/Parliamentary_Business/Committees/House_of_Representatives_Committees?url=selc/reports.htm>

- 1.7 In 2009 and 2010, the Department of Families, Housing, Community Services and Indigenous Affairs (FaHCSIA) conducted considerable consultation about a National Children's Commissioner with key stakeholders, including with state and territory children's commissioners and guardians, state and territory governments, and the community generally.³
- 1.8 These consultations demonstrated that while stakeholders generally strongly supported the establishment of a national Commissioner, at that time, there was some disagreement as to the appropriate model, responsibilities and functions of the Commissioner.
- 1.9 Due to the variety of stakeholder views, the Government undertook further targeted consultations to determine whether general consensus could be reached on the role and functions of a national Commissioner.
- 1.10 In December 2011, FaHCSIA drafted a Discussion Paper⁴ and requested feedback from non-government organisations, State and Territory National Framework Implementation Working Group members, and state and territory children's commissioners and guardians.
- 1.11 The Committee acknowledges that significant planning and consultation with states and non-government organisations has informed the development of current proposal for the Commissioner.

Concurrent Senate inquiry

- 1.12 On 23 May 2012 the Senate referred the NCC Bill to the Senate Standing Committee on Legal and Constitutional Affairs for inquiry and report.
- 1.13 The Senate Committee issued a call for submissions and received 59 submissions from a range of organisations across Australia. A public hearing was conducted on 8 June 2012. The Committee reported on 18 June 2012.

3 <<http://www.families.fahcsia.gov.au/our-responsibilities/families-and-children/programs-services/protecting-australias-children/consultations-about-the-potential-role-of-a-national-children-s-commissioner/consultations-about-the-potential-role-of-a-national-children-s-commissioner>>

4 <<http://www.families.fahcsia.gov.au/our-responsibilities/families-and-children/programs-services/protecting-australias-children/consultations-about-the-potential-role-of-a-national-children-s-commissioner/consultations-about-the-potential-role-of-a-national-children-s-commissioner>>

- 1.14 The Senate Committee report recommended the Bill be passed without amendment. Additional comments by Coalition Senators supported the Bill while noting that importance of a cooperative approach with states. Senator Hanson-Young supported the Bill while also providing additional comments recommending an expansion on certain functions of the Commissioner.

Conduct of this inquiry

- 1.15 On several occasions previously, Senate and House committees have been referred concurrent inquiries. In those instances, this Committee has endeavoured not to duplicate inquiries and not to burden stakeholders with multiple requests for submissions on the same Bill.
- 1.16 While the Senate and House committee deliberations and reports are autonomous, it is recognised that both committees would be seeking evidence from similar stakeholders. Consequently, it was agreed by this Committee to make use of the submissions received as evidence to the Senate inquiry, rather than issue a separate call for submissions to the same stakeholders.
- 1.17 This report references the submissions received by the Senate Legal and Constitutional Affairs Committee. These submissions can be accessed at the Senate inquiry website.⁵
- 1.18 The Senate Committee conducted a public hearing, the transcript of which can be accessed at the Senate inquiry website.⁶ The Senate final report can also be accessed at the Senate inquiry website.⁷
- 1.19 At Senate Estimates hearings on 23 May 2012, questions were posed regarding the establishment, role, functions and funding of the National Children's Commissioner. The transcript of the Senate Estimates hearings is available on the Senate website.⁸
- 1.20 Given the extensive range of submissions received by the Senate inquiry and the evidence presented at the Senate public hearing, this Committee did not consider it necessary to conduct further hearings.

5 <http://www.aph.gov.au/Parliamentary_Business/Committees/Senate_Committees>

6 <http://www.aph.gov.au/Parliamentary_Business/Committees/Senate_Committees>

7 <http://www.aph.gov.au/Parliamentary_Business/Committees/Senate_Committees>

8 <http://www.aph.gov.au/Parliamentary_Business/Committees/Senate_Committees>

- 1.21 The Committee provided questions on notice to the Australian Human Rights Commission to clarify issues of particular concern to this Committee.

Issues considered

- 1.22 The Committee notes that overwhelming support is expressed for the NCC Bill in the 59 submissions to the Senate inquiry. However, there are a number of general concerns raised in many of the submissions.
- 1.23 Several submissions suggest that the Commissioner should have specific regard to the rights of particularly vulnerable children, such as Aboriginal and Torres Strait Islander children, children in immigration detention in Australia and children with disabilities.⁹
- 1.24 Many suggest that the Commissioner should have a positive duty to engage with children.¹⁰
- 1.25 Numerous submissions call for an extension of the list of international treaties to which the Commissioner must have regard. In particular, there is support for the addition of the *Convention Against Torture and Cruel, Inhuman or Degrading Treatment* and its *Optional Protocol*, the *Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict* and the *Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography*.¹¹
- 1.26 There have also been suggestions that the title of the Commissioner be amended to 'Australian Children's Commissioner'.¹²
- 1.27 The Committee considers that these issues have been adequately addressed in the Senate inquiry into the NCC Bill and need not be reconsidered in detail in this inquiry.

9 See for example: St Vincent de Paul Society National Council, *submission 33*; King and Wood Mallesons Human Rights Law Group, *submission 46*; Secretariat of National Aboriginal and Islander Child Care, *submission 20*; National Disability Services, *submission 38* and Asylum Seeker Resource Centre, *submission 42*.

10 See for example: King and Wood Mallesons Human Rights Law Group, *submission 46*; Child Abuse Prevention Research Australia, *submission 12*; Commission for Children and Young People Western Australia, *submission 23*.

11 See for example: Australian Human Rights Commission, *submission 36*; Uniting Justice, *submission 29* and St Vincent de Paul Society National Council, *submission 33*.

12 See for example: Australian Human Rights Commission, *submission 36* and Australian Research Alliance for Children and Youth, *submission 24*.

- 1.28 Consequently the Committee has focused its inquiry on the issues for consideration suggested by the Selection Committee, namely the adequacy of the funding allocated for this position and the interoperability of the National Children's Commissioner with the commissioners and guardians of the states and territories. These issues are considered in the following sections.

Adequacy of funding

- 1.29 Several submissions express concern that the allocated \$3.5 million in funding will not be sufficient for the Commissioner to successfully fulfil the role.¹³ There is concern that the limited funding may render the Commissioner's establishment merely tokenistic.¹⁴
- 1.30 Some submissions note that state and territory commissioners receive significantly more funding than is currently proposed for the national Commissioner.¹⁵
- 1.31 The Australian Human Rights Commission's submission expresses concern that the funding 'would not by itself meet the real cost of creating this position.'¹⁶
- 1.32 At Senate Estimates hearings on 23 May 2012, the Hon. Catherine Branson, Australian Human Rights Commissioner, noted the inadequacy of the funding if, as predicted, complaints to the Commission increase:

That funding will enable us to provide staff: not a substantial number of staff, but staff for that commissioner – probably a personal assistant and two other support staff...the funding itself is not adequate if we choose to give those staff, which we regard as essentially the minimum with which a commissioner can effectively work, adequate resources for what we would expect to be a rise in complaints made under the Convention on the Rights of the Child.... the Commission expects that there will be a rise in complaints of breaches of the CRC made to the Commission under the *Australian Human Rights Commission Act 1986* (Cth) and of the

13 See for example, Australian Human Rights Commission, *submission 36*; The International Commission of Jurists (Australia), *submission 34*; St Vincent de Paul Society National Council, *submission 33*; Youthlaw, *submission 6* and King and Wood Mallesons Human Rights Law Group, *submission 46.s*

14 Create Foundation, *submission 10*, p 2.

15 Uniting Justice Australia, *submission 29*, p 7; Australian Research Alliance for Children and Youth, *submission 24*, p 2.

16 Australian Human Rights Commission, *submission 36*, p 6.

Age Discrimination Act 2004 (Cth)...it is our experience that the number of complaints go up with a new commissioner.¹⁷

The Commission's responses to questions on notice also outline these concerns¹⁸ and further note:

[T]he Commission has had to make arrangements to alter its office fit-out in order to provide an office for the Commissioner and work-stations for the Commissioner's staff. No specific funding has been provided for this purpose.¹⁹

- 1.33 The Australian Human Rights Commission's submission also outlines concerns that the funding will not cover project work:

Nor will the funding announced be adequate to allow the Commissioner to engage in any substantial project work. A high quality annual report would ideally be informed by work of this kind.²⁰

It also notes that the production of an annual report, as required by this Bill, is a particularly resource-intensive undertaking.²¹ The Commission's responses to questions on notice state that:

The Commission allocates a team director and two project staff to prepare these reports. The funding provided for the Children's Commissioner is not sufficient to provide an equivalent level of staff for a report.²²

- 1.34 Finally, the Commission notes in its submission:

There will also be additional demands made on the other Commission staff, including on our legal and communications teams as well as on finance and personnel staff. This increase in the general workload of the Commission is not recognised in the

17 Ms Catherine Branson, Senate Estimates hearings, 23 May 2012. Transcript available at the Senate website: <http://www.aph.gov.au/Parliamentary_Business/Committees/Senate_Committees>

18 Australian Human Rights Commission, *responses to questions on notice*, p 2.

19 Australian Human Rights Commission, *responses to questions on notice*, p 2.

20 Australian Human Rights Commission, *submission 36*, p 6. See also Grandparents Australia (Victoria), *submission 15*, p. 1. This was reiterated in the Commission's responses to questions on notice, Australian Human Rights Commission, *responses to questions on notice*, p 2.

21 Australian Human Rights Commission, *submission 36*, p 6.

22 Australian Human Rights Commission, *responses to questions on notice*, p 2.

amount of funding that has been provided for in the creation of the position.²³

Ms Branson reiterated these concerns at Senate Estimates hearings²⁴ and they are restated in the Commission's responses to questions on notice.²⁵

Interoperability with state and territory agencies

- 1.35 The Senate inquiry received submissions from the Australian Children's Commissioners and Guardians, the Commissioner for Children and Young People Western Australia and Council for the Care of Children Government of South Australia. There was strong support for the establishment of a National Children's Commissioner from the children's commissioners in all states and territories.
- 1.36 Many submissions emphasised that a National Children's Commissioner must work cooperatively with relevant state and territory bodies and must not duplicate the work of these bodies.²⁶
- 1.37 At the Senate Estimates hearings, Ms Branson noted the lengthy planning and consultation process that had taken place on this issue in the development of the proposal for the national Commissioner, stating:
- There has been quite long term consideration of [the relationship between a national children's commissioner and the guardians and children's commissioner at state and territory level].... [t]he topic of the possibility of establishing a national children's commissioner has been under consideration for some time.²⁷
- 1.38 Ms Branson noted that state and territory commissioners and guardians' representatives also made a combined submission to the Attorney-General's Department supporting the establishment of a National Children's Commissioner, and that:

23 Australian Human Rights Commission, *submission 36*, p 6.

24 Ms Catherine Branson, Senate estimates hearings, 23 May 2012. Transcript available at the Senate website: <http://www.aph.gov.au/Parliamentary_Business/Committees/Senate_Committees>

25 Australian Human Rights Commission, *responses to questions on notice*, p 2.

26 See for example, Law Council of Australia, *submission 17*, p. 8, Consortium of Eight Non-Government Organisations, *submission 45*, p. 4 and King and Wood Mallesons Human Rights Law Centre, *submission 46*, p. 9.

27 Ms Catherine Branson, Senate estimates hearings, 23 May 2012. Transcript available at the Senate website: <http://www.aph.gov.au/Parliamentary_Business/Committees/Senate_Committees>

Within that group there is a high level of confidence that a National Commissioner will enhance their work and that the cooperative relationship that already exists between them and the Australian Human Rights Commission will continue.²⁸

1.39 Some submissions point out that while state services for children play an important role in examining state policy and legislation, there are also vital national policy areas that affect children, such as immigration or social security.²⁹

1.40 Similarly, the Commission notes that the Commonwealth, states and territories have different areas of responsibility regarding the rights and interests of children:

The Commonwealth government is responsible for ensuring that Australia meets its obligations under the CRC. Children's rights and interests are impacted by policies and services that fall within the Commonwealth's powers, for example income support and family law. However, states and territories have responsibility for the provision of many other services that affect children, including health and education.

The Commission envisages that the National Children's Commissioner would take primary responsibility for policy work regarding issues affecting the rights and interests of children that are a Commonwealth responsibility. However, on occasion, the National Children's Commissioner might conduct work on issues that are also of interest to state and territory children's commissioners and guardians, especially if they are of national importance. For example, the National Children's Commissioner may wish to work on issues such as the experience of Aboriginal and Torres Strait Islander children living in remote parts of Australia.³⁰

1.41 However, the distinction in roles regarding the undertaking of casework is clearer. Ms Branson noted in Senate Estimates hearings that the National Children's Commissioner will not undertake any casework and will have an advocacy function, a coordination function and an identification of issues function, broadly supporting the other work of the Australian

28 Ms Catherine Branson, Senate estimates hearings, 23 May 2012. Transcript available at the Senate website: <http://www.aph.gov.au/Parliamentary_Business/Committees/Senate_Committees>

29 Employment Law Centre of Western Australia, *submission* 26, p. 2 and Bravehearts, *submission* 5, p. 1.

30 Australian Human Rights Commission, *responses to questions on notice*, p 3.

Human Rights Commission but with a particular focus on children.³¹ In that sense, the Commissioner's work will not overlap with the casework undertaken by the state and territory commissioners.

- 1.42 In the Commission's responses to questions on notice, it emphasises the focus on collaboration where overlap in Commonwealth and state roles might exist:

[T]here would need to be mechanisms to support communication and collaboration. Developing partnerships with state and territory children's commissioners and guardians would be one of the first activities of a National Children's Commissioner.³²

- 1.43 The Commission's submission recommends that explicit reference be made to state and territory children's commissioners and guardians in s 46MB(5),³³ which lists organisations with which the National Children's Commissioner may consult.

- 1.44 The Commission also notes that some communication and collaboration mechanisms between state and territory bodies and the Commission already exist:

[F]or example a bi-annual meeting of all children's commissioners and guardians which the Commission has participated in for several years. We envisage that the National Children's Commissioner would continue to participate in these meetings.³⁴

- 1.45 The Committee considers that there is a clear role for a National Children's Commissioner. A national Commissioner will scrutinise legislation and policy at a national level and will have a coordination and advocacy role, distinct from the casework responsibilities of the state and territory bodies.

Committee comment

- 1.46 The Committee has considered the issues referred to it and has examined the evidence submitted to the Senate inquiry. It approached the Australian

31 Ms Catherine Branson, Senate estimates hearings, 23 May 2012. Transcript available at the Senate website: <http://www.aph.gov.au/Parliamentary_Business/Committees/Senate_Committees>

32 Australian Human Rights Commission, *responses to questions on notice*, p 3.

33 Australian Human Rights Commission, *submission 36*, p. 7.

34 Australian Human Rights Commission, *responses to questions on notice*, p 3.

Human Rights Commission for further information in response to questions on notice concerning the adequacy of funding and the interoperability of a National Children's Commissioner with the state and territory commissioners.

- 1.47 The Committee recognises the urgency of establishing a National Children's Commissioner and the vital role the Commissioner would play in advocating for children's rights in Australia. Accordingly, the Committee wishes to avoid delay in the establishment of the Commissioner, although the Committee has some concerns regarding the adequacy of ongoing funding.
- 1.48 The Committee recommends that the NCC Bill be passed without amendment in the House of Representatives.
- 1.49 The Committee also recommends that a review of funding be carried out before June 2013, and that an appropriate funding increase be made if required in order to ensure the Commissioner can appropriately fulfil its functions.

Recommendation 1

The Committee recommends that the Australian Human Rights Commission Amendment (National Children's Commissioner) Bill 2012 be passed without amendment in the House of Representatives.

Recommendation 2

The Committee recommends that the Attorney-General review the funding allocated to the National Children's Commissioner before June 2013 and that any necessary funding increase be made to ensure the Commissioner can appropriately fulfil its functions.

Mr Graham Perrett MP
Chair
21 June 2012

Dissenting Report by Coalition Members

National Children's Commissioner Bill 2012 (Cth)

1. Coalition members do not agree with the Committee that the *Australian Human Rights Commission Act 1986* (Cth) should be amended to establish the statutory office of the National Children's Commissioner (the Commissioner) in the Australian Human Rights Commission (the AHRC).
2. Coalition members of the Committee recognise the importance of promoting public discussion and awareness of issues affecting children. We also acknowledge that legislation, policies and programs affecting the rights, wellbeing and development of children should be properly examined. However, we are not persuaded by the Committee that this bill would necessarily advance these objectives any further than is currently being achieved.
3. Coalition members are of the view that the AHRC, in cooperation with the relevant state and territory commissioners and guardians, already adequately perform the functions envisaged for the new Commissioner. The establishment of a new Commissioner at a federal level would unnecessarily duplicate the policy and advocacy functions of the respective state and territory authorities, as well as the advisory functions provided for in the *Australian Human Rights Commission Act 1986* (Cth). Additionally, given the new Commissioner will only function as an advocate and not undertake any casework, Coalition members are not persuaded its establishment would support the work currently performed by state and territory commissioners. Rather, the bill would merely contribute to the expansion of Australia's already burgeoning bureaucracy.
4. Coalition Members cannot agree with the Commission that there is urgency surrounding the establishment of a National Children's Commissioner. There is no evidence to suggest that there has been an increase in the workload of the AHRC, or that of the respective state and territory commissioners, to justify the establishment of a new Commissioner at a federal level.
5. Coalition Members are not persuaded that there are any compelling reasons to further expand the number of AHRC commissioners or a sufficient justification to create a stand-alone advocacy function for children's rights in Australia at a Commonwealth level.

Recommendations

1. That the bill be opposed.

Hon Judi Moylan

Mr Ross Vasta

Dr Sharman Stone