

The Commission for Children and Young People and Child Guardian

promoting and protecting the rights, interests and wellbeing of all Queenslanders under 18

Advice to: FaHCSIA

Topic: ACCG Response to the *National Children's Commissioner Discussion Paper*

Date due: 16 December 2011

Thank you for providing the Australian Children's Commissioners and Guardians (ACCG)¹ with the opportunity to provide feedback in relation to FaHCSIA's National Children's Commissioner Discussion Paper (the Discussion Paper).

The ACCG has previously provided extensive feedback to FaHCSIA on the role of a National Commissioner and to the Senate Inquiry regarding the *Commonwealth Commissioner for Children and Young People Bill 2010*.

The comments below are in response to the questions in the National Children's Commissioner Discussion Paper.

1. Who should a National Children's Commissioner represent?

- a) Should a National Children's Commissioner represent all children or only specific groups of children?**
- b) Should a National Children's Commissioner represent all children, but none the less have a focus on specific groups?**
- c) Which specific groups should be included, and how should they be defined?**

The ACCG supports a National Children's Commissioner having a specific rights advocacy focus on Commonwealth policy and legislation and national children's rights promotion and protection, which affect the wellbeing of Australia's children and young people. Specific areas could include family law, immigration and Indigenous² children and young people as well as matters requiring national and international coordination.

Therefore, the ACCG supports a National Children's Commissioner representing all children and young people where advocacy is needed regarding Commonwealth policy and legislation and national children's rights promotion and protection, which affect the wellbeing of Australia's children and young people. Under this broader frame of advocacy for all children and young people in national and international contexts, priority should be given to advocate strategically for those children most in need, such as children who are vulnerable or disadvantaged or who have no appropriate person to act on their behalf.

An actual definition of vulnerable and disadvantaged groups of children and young people has the potential to be restrictive and limit the ability of a National Commissioner

¹ Contributing members of the Australian Children's Commissioners and Guardians are: Commissioner for Children and Young People and Child Guardian, Queensland, Ms Elizabeth Fraser; Child Safety Commissioner, Victoria, Mr Bernie Geary; Commissioner for Children and Young People, Western Australia, Ms Michelle Scott; and Commissioner for Children, Tasmania, Ms Aileen Ashford.

² For the purposes of this document the term Indigenous includes people of Aboriginal and Torres Strait Islander background.

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to respond to the needs and issues of groups of children and young people as they arise.

The age jurisdiction need not necessarily be limited to those under 18 years. There may be scope for a National Commissioner to have an extended jurisdiction, for example, to include young people aged up to 25 years.

There are many issues which impact upon young people who are over 18 years and who fall outside of the jurisdictions of state and territory Children's Commissioners and Guardians, but who require an independent advocate on issues impacting upon them, including for example, the need for assistance when transitioning from care or detention when a young person reaches 18 years of age.

2. Do you support a National Children's Commissioner having a role promoting cooperation between the Commonwealth, states and territories?

The ACCG supports a National Children's Commissioner having a role promoting cooperation between the Commonwealth, states and territories. However, the ACCG does not support this role in relation to individual or systemic issues of state and territory responsibilities, which would duplicate the work already undertaken by Children's Commissioners and Guardians. For example, some Commissioners can investigate individual complaints and investigate systemic issues in relation to the child protection and youth justice systems.

While the Discussion Paper indicates a National Children's Commissioner cannot duplicate the work of state and territory Children's Commissioners and Guardians, it appears to limit such non-duplication to individual cases or issues within state and territory jurisdictions.

Non-duplication of state and territory Children's Commissioners and Guardians existing work must extend to all respective roles and functions of state and territory Commissioners and Guardians. This means not simply limiting non-duplication to a National Commissioner's abstention from intervening in individual cases but also in relation to the various systemic advocacy and monitoring roles undertaken by respective state and territory Children's Commissioners and Guardians.

The ACCG supports a National Children's Commissioner responding to systemic issues which are national responsibilities, such as immigration, income support, tertiary education and national regulation of early childhood services. It would also be valuable for the role to advocate for independent oversight in state and territory jurisdictions to be strengthened rather than to replace existing systems or try to fill in gaps in the monitoring frameworks which should be undertaken by the states and territories.

Also at a national level, the ACCG supports the National Commissioner having a role in coordinating and monitoring national policies, programs and funding that impact on children and young people.

Detailed consideration of each of the roles of state and territory Children's Commissioners and Guardians is necessary to determine where the role of a National Children's Commissioner in promoting cooperation between the Commonwealth, states

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and territories should be focused.

3. How would a National Children's Commissioner work with existing state and territory commissioners and guardians?

The ACCG supports collaboration and consultation between the National Children's Commissioner and the state and territory Children's Commissioners and Guardians. This could include advising on their respective focus areas and emerging issues and enabling strategic discussion as to where joint or collaborative responses/approaches can best be focused and to establish opportunities for collaboration.

Clarity of roles and functions is necessary to avoid duplication of the work of existing state and territory Children's Commissioners and Guardians. The ACCG anticipates that the roles and functions of the National Commissioner would be embedded in legislation.

4. Do you support a Commissioner having a role in promoting public education and community awareness of children's rights, wellbeing and development?

The ACCG supports a National Children's Commissioner having a role in promoting public education and community awareness of children's rights, wellbeing and development, in relation to issues falling within the specific jurisdiction of a National Children's Commissioner. This promotional work should support the National Children's Commissioner advocacy role and may form part of a broader advocacy or engagement strategy regarding a particular issue.

Raising community awareness and public education on children's rights at a national and international level would occur via the range of above roles proposed by the ACCG. The same would continue to occur at a state and territory level via the work undertaken by the ACCG in their respective jurisdictions. For example, in a number of jurisdictions, one of the functions of the Commissioner is to promote public awareness and understanding of matters relating to the wellbeing of children and young people.

5. Who do you think should be targets of education programs?

The identification of specific target groups and/or education programs would need to be undertaken in consultation with the ACCG to ensure there was no duplication of the same at a state and territory level.

Targets of education programs should be informed by:

- the priority areas that a National Children's Commissioner has responsibility for, and
- an evidence base to inform the types of education programs needed, who would benefit from these education programs, how these programs should be delivered and outcomes evaluated.

Children and young people may benefit from targeted national education programs, for example in terms of being aware of their rights and responsibilities. The reciprocal aspect of children and young people having rights and responsibilities and how young people can apply these rights and responsibilities in a practical and everyday sense is

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an example of one of the ways that a National Children's Commissioner might be able to target their education to children and young people.

The ACCG has suggested in the past the role of the National Children's Commissioner could sit within the Australian Human Rights Commission³ (AHRC). The delivery of community education specifically on human rights is a key function of the AHRC, this could be strengthened by a National Children's Commissioner who could promote children's rights at a national level.

6. What methods do you think a Commissioner could most effectively use to reach those target groups?

Determining the most appropriate methods to communicate education and awareness programs to particular target groups should be informed by an evidence base. Communicating education and awareness programs to children and young people should be age-appropriate and take into account their developmental level and cultural background. In developing these methods, socially relevant means of conveying messages, including for example, social media should be considered.

7. Do you support a National Children's Commissioner conducting research and undertake inquiries on systemic issues which affect the rights, wellbeing and development of children?

The ACCG supports a National Children's Commissioner conducting, co-ordinating or sponsoring research and undertaking inquiries on systemic issues falling within the direct jurisdiction of the Commonwealth in close liaison with the ACCG. State and territory Children's Commissioners or Guardians would continue to conduct research or undertake inquiries on any issue that falls within its mandate and impacts on children and young people in its jurisdiction.

To avoid duplication of roles, a National Children's Commissioner's research and inquiry functions should not extend to individual cases or systemic issues specific to state or territory-directed services. The research functions of a National Children's Commissioner should also compliment and build on the work of existing national research bodies, for example the Australian Institute of Family Studies, the Australian Research Alliance for Children and Young People, the Australian Clearinghouse for Youth Studies (Youth Studies Australia) and the Australian Institute of Health and Wellbeing.

Where a systemic issue of national concern is the shared responsibility of the federal and state and territory governments, a National Children's Commissioner should collaborate with state and territory Children's Commissioners and Guardians to identify a strategic approach.

The National Children's Commissioner's research function could also involve:

³ Further discussion should be undertaken in relation to the merits, costs, functions and practicality of extending the role of the AHRC to take on this role. Care would need to be taken to ensure that the AHRC's existing powers and functions regarding children and young people are not reduced or diminished, particularly as they relate to complaint handling and intervention in Court proceedings.

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- identifying areas where there is insufficient research evidence to inform national policy
- promoting Australian child-related research findings in the national arena, and
- critically reviewing and disseminating international research that is highly relevant to the Australian experience.

8. What areas or issues do you think should be priorities for a Commissioner?

A National Children's Commissioner should prioritise child rights-related issues where there is insufficient research evidence to inform national policy decisions and where having a national research capacity to determine what is happening will drive systemic or cultural change.

Priority issues should include the experiences and outcomes of the following vulnerable and at risk groups:

- children affected by poverty and inequality
- children in immigration detention or whose parents are in immigration detention
- Indigenous children and COAG's closing the gap agenda
- children and young people in family law matters
- children and young people with a disability or mental health issue, as well as children and young people living with, or with a family member with, significant disability or mental health issues,
- children and young people who are homeless, and
- children and young people from culturally and linguistically diverse backgrounds.

Priority areas relevant to all children and young people should include:

- monitoring of Commonwealth frameworks and strategies
- public health issues such as childhood obesity and youth binge drinking
- mass media and digital communications issues such as the sexualisation of children in the media, cyber-safety and film and computer game classifications
- children's participation in decision-making at the national policy level
- Australia's response to UNCROC, and
- development of a National Plan on the middle years.

9. How do you think a Commissioner should be able to source information?

A National Children's Commissioner should be able to source information needed to undertake their responsibilities from Commonwealth Government agencies through a collaborative approach in the first instance. A National Children's Commissioner should also work collaboratively with other relevant agencies to source information, such as state and territory government agencies and Children's Commissioners and Guardians and non-government organisations. However, legislative provisions mandating Commonwealth Government agencies to provide a National Children's Commissioner with relevant information may also be necessary to provide the Commissioner with sufficient authority to obtain information to assist in undertaking their responsibilities. In sourcing information consideration should be given to:

- if the information is subjected to any confidentiality legislative provisions

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- information and research already in the public arena, such as which may have already been published by the state and territory Children's Commissioners and Guardians, and
- providing organisations and individuals with the opportunity to comment on information they provided, which the National Children's Commissioner proposes to make public, such as is in a report.

The purpose of particular stakeholders providing information and the type of information to be provided needs to be carefully considered, focused and made clear to:

- ensure the information being provided is of public value and of use to the National Children's Commissioner to effectively undertake their responsibilities and improve outcomes for children and young people, and
- prevent duplicating reporting and information sharing which already exists, including between state and territory and Commonwealth governments.

10. Who do you think a Commissioner should be able to consult with (e.g. Commonwealth agencies, state and territory agencies, private organisations)?

A Commissioner should be able to consult with a range of organisations and individuals to be appropriately informed and effectively undertake their responsibilities, including:

- children and young people and their parents and carers
- state and territory Children's Commissioners and Guardians
- Commonwealth agencies
- national bodies such as the Australian Human Rights Commission and Social Inclusion Board
- non-government organisations including welfare groups, national service providers, peak bodies, children and youth advocacy groups and human rights groups
- universities and other research institutions, and
- state and territory government agencies.

11. How should a Commissioner report the findings of research and inquiries?

A National Children's Commissioner should be required to publicly report the findings of its research and inquiries and this should be embedded in legislation. Reports should be in writing and distributed to all participating agencies, organisations and individuals and be made available on the National Commissioner's website. Child friendly versions of the findings should be made available.

12. Should a National Children's Commissioner have a positive responsibility to engage with and consult with children?

The ACCG believes that it is imperative that a National Children's Commissioner proactively engages and consults with children and young people on issues and decisions that affect them and which fall within the responsibility of a National Children's Commissioner and that this should be a legislated requirement.

It is also imperative that a National Children's Commissioner communicate directly with children and young people and listen to their concerns and views and that age

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appropriate ways of engaging with very young children on relevant issues are developed and utilised by a National Children's Commissioner.

13. Should a National Children's Commissioner have a positive responsibility to engage with and consult with specific experts or representative groups (e.g. teachers, parents, child development experts, etc.)?

A National Children's Commissioner should have a positive responsibility to engage with and consult with specific experts or representative groups for the National Children's Commissioner to effectively undertake their responsibilities. However, this engagement should not be considered a substitute for engaging with children and young people themselves.

14. Do you support a National Children's Commissioner having a role in monitoring the development and application of Commonwealth legislation, policies and programs?

As covered in previous questions, the ACCG strongly supports a National Children's Commissioner having a role in reviewing Commonwealth legislation, policies and programs for their impact on children and young people provided the role does not extend to monitoring the application of policies or programs which are delivered by the state and territory government service systems.

For example, a National Commissioner could play a role in relevant Commonwealth Government Ministerial Advisory Committees that deal with Commonwealth legislation and programs.

15. Do you support a National Children's Commissioner having a role in providing advice, comments and recommendations to Government?

The ACCG supports a National Children's Commissioner having a role in providing advice, comments and recommendations to the Australian Government and federally commissioned inquiries. Recent examples of where a National Children's Commissioner's input and advocacy may be of value include:

- the Australian Human Rights Commission's current inquiry into the treatment of individuals suspected of people smuggling offences who say they are children
- the Productivity Commission's Study of the Early Childhood Development Workforce
- the Australian Law Reform Commission's Review of the National Classification Scheme
- the Department of Education, Employment and Workplace Relations' Review of the Disability Standards for Education 2005
- the Productivity Commission's inquiry into a long term disability care and support scheme
- the Federal Family Violence Inquiry
- Senate inquiries into the classification of computer games and billboard advertising, and
- the Joint Select Committee on Cyber-Safety Inquiry into Cyber-Safety entitled High-Wire Act: Cyber-Safety and the Young.