



National Disability Services

NDS Submission

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





National Disability Services

June 2012

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About National Disability Services

National Disability Services is the peak industry body for non-government disability services. Its purpose is to promote and advance services for people with disability. Its Australia-wide membership includes around 700 non-government organisations, which support people with all forms of disability. Its members collectively provide the full range of disability services—from accommodation support, respite and therapy to community access and employment. NDS provides information and networking opportunities to its members and policy advice to State, Territory and Federal governments.

NDS is pleased that the Australian Government is proceeding with the establishment of a National Children's Commissioner. Locating the office within the Australian Human Rights Commission will strengthen the focus on the human rights of children and young people at a national level.

Within the legislation, the explicit references to the Universal Declaration of Human Rights and the numerous United Nations Conventions (notably the Convention on the Rights of the Child and the Convention on the Rights of Persons with Disabilities) are particularly important. Australia's other children's commissions do not reflect this commitment.

The National Children's Commissioner must ensure that the rights of all children are enhanced by the establishment of this office. Too often the particular needs of children with disability are overlooked in mainstream initiatives due to other pressing concerns, such as children requiring protection. As the Commissioner is not responsible for policies or programs, he or she should focus on the rights of all children and young people in Australian society.

NDS makes the following comments on the functions that are to be performed by the National Children's Commissioner:

To submit a yearly report to the Minister

A yearly report on progress—including recommendations—relating to the enjoyment and exercise of human rights by children in Australia is appropriate. The requirement on the Minister to table this report within 15 sitting days will be welcomed by those with an interest in the wellbeing of Australia's children and young people.

NDS is pleased that the Commissioner will not be required to prepare Australia's report to the United Nations Convention on the Rights of the Child; to do so would limit the Commissioner's ability to be an independent statutory officer. This is an improvement on the proposed 2010 Bill.

To promote discussion and awareness of matters relating to the human rights of children

NDS supports the broad focus on rights of children and young people; it is appropriate given the location of this office within the Australian Human Rights Commission. The role of the Commissioner to "promote discussion and awareness of matters relating to the human rights of children in Australia" will help fill a gap in current political discourse. The Commissioner should be able to express views on a national agenda and provide leadership without compromising independence.

NDS is concerned, however, that unless human rights are broadly defined, the focus on wellbeing will be less than it should be. For example, children with disability have a right to education and attend schooling which some would say is being met. But education systems are failing to adequately meet their educational needs, resulting in many of these children not achieving their potential. A National Children's Commissioner should be able to investigate and make recommendations to address

failings in the quality of services and not just be concerned with whether particular children have access to these services.

To undertake research, or educational or other programs, for the purpose of promoting the enjoyment and exercise of human rights by children

The ability of the Commissioner to undertake research or education or other programs is appropriate and welcomed. The Commissioner should be able to investigate issues of concern and initiate responses.

Within the legislation, the relationship between the National Children's Commissioner and children's commissioners in states and territories is not addressed. While the role of the National Commissioner should not replicate the roles of state and territory Commissioners, the National Commissioner should be able to have an Australia-wide perspective on children and young people and to coordinate and lead responses to matters of national significance.

To examine existing and proposed Commonwealth enactments

NDS supports the function of the Commissioner to examine existing and proposed Commonwealth enactments for the purpose of ascertaining whether they recognise and protect the rights of children in Australia. In doing so, NDS expects particular consideration to be given to whether the enactments are consistent with Australia's commitments to the both the Convention on the Rights of the Child and the Convention on the Rights of Persons with Disabilities.

To give particular attention to children who are at risk or vulnerable

NDS would like function (4) strengthened. At present, it states: "In performing functions under this section, the National Children's Commissioner may give particular attention to children who are at risk or vulnerable". NDS requests that 'may' be replaced with 'must'.

NDS notes the recent report¹ by the Victorian Equal Opportunity and Human Rights Commission into the relinquishment of children with disability into state care. It estimates that over 50 families surrender the day-to-day care of their child with disability to the state each year, and it appears that this figure is increasing. The prime risk factor is identified as unmet need for services – especially facility-based respite, in-home support and behaviour support services. Children with disability can be vulnerable; the National Children's Commissioner must have a particular focus on their needs.

¹ Victorian Equal Opportunity and Human Rights Commission 2012, *Desperate measures: the relinquishment of children with disability into state care in Victoria*, Victorian Equal Opportunity and Human Rights Commission, Carlton



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