



**Australian Government**

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**Department of Families,  
Housing, Community Services  
and Indigenous Affairs**

# **A National Children's Commissioner Discussion Paper**

**2011**

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# Introduction

Safeguarding the rights and nurturing the development of children is one of the most important responsibilities of any government.

The Australian Government is exploring the possible role for a National Children's Commissioner in meeting this objective.

The Australian Government wants to understand what the role could be and how it could best work in relation to existing government and non-government activities.

The functions outlined in this discussion paper are based on calls by the United Nations and community submissions where there are substantial areas of agreement but some key areas of disagreement among stakeholders. The purpose of this consultation process is to seek input from community organisations about how to practically implement such a role.

This discussion paper does not seek broad opinions on the establishment of a National Children's Commissioner but rather seeks feedback on some proposed functions through a series of questions. The aim is to clarify how these functions could work.

These consultations will not seek to duplicate the work done to date but will instead build on and be informed by consideration of the submissions and reports from these earlier processes.

# Background

Each Australian state and territory has a commissioner or guardian for children and young people (state and territory commissioners) although the names, roles and responsibilities of these commissioners are different in each state and territory.

In the majority of the states and territories, the role of the commissioner focuses on protecting the health, safety and wellbeing of children, particularly vulnerable children or children in government care. In the Australian Capital Territory the commissioner's role looks more at promoting and protecting the rights of children and young people.

Exploring the potential role for a National Children's Commissioner is one of the National Priority projects identified in the first three year action plan under the *National Framework for Protecting Australia's Children 2009-2020*.

Australia's response to the United Nations Human Rights Council's Universal Periodic Review of Australia, released in June 2011, also included a continuing commitment to exploring a possible role for a National Children's Commissioner.

A number of recent processes have considered the establishment of a National Children's Commissioner. Significant evidence has been provided in support of the establishment of a National Children's Commissioner, however there is not yet consensus about the function of such a Commissioner.

# Protecting and Promoting the Rights, Wellbeing and Development of Children

The Australian Government looks after the rights, wellbeing and development of children in relation to issues such as income support, family law, immigration, communications, and regional security.


The Government shares work with the state and territory governments on the issues of health, education, early education and care, housing, crime prevention, environmental sustainability and human rights.

States and territories are also responsible for issues such as statutory child protection, adoption and juvenile justice.

Australia has agreed to uphold the human rights standards set out in a number of international treaties and declarations, including the United Nations Convention on the Rights of the Child (UNCRC).

The Australian Human Rights Commission (AHRC) was established to protect and promote the human rights set out in these international treaties and declarations. The AHRC does not have any specific functions in relation to children; however, it does actively promote the rights of children through:

- education and public awareness;
- discrimination and human rights complaints;
- human rights compliance in the Australian courts and at the United Nations; and
- monitoring and commenting on Commonwealth policy and legislative development.



Other significant Australian Government initiatives that contribute to the promotion and protection of the rights, wellbeing and development of children include, among others:

- The establishment of the Office for Youth within the Department of Education, Employment and Workplace Relations;
- The establishment of the Australian Youth Forum;
- The development of the *National Framework for Protecting Australia's Children 2009-2020*;
- The development of the Australian Human Rights Framework;
- The launch of the National Strategy for Young Australians; and
- The appointment of a full-time Age Discrimination Commissioner within the AHRC.

# Who Should a National Children's Commissioner Represent?

In line with the UNCRC, the role of a National Children's Commissioner would relate to those under 18 years of age.

The roles of some state and territory and international commissioners are further defined in relation to specific groups of vulnerable children and young people. Other commissioners have responsibilities in relation to all children but focus on specific groups of vulnerable or at risk children and young people.

In the same way, the role of a National Children's Commissioner could relate to, all children, or only vulnerable and at risk children.

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?

# What Should the Functions of a National Children's Commissioner Be?

There is widespread support for the establishment of an independent Commissioner to promote and protect the rights, wellbeing and development of children at a systemic level.

In this context, a National Children's Commissioner could:

- promote cooperation between the Commonwealth, states and territories to promote the rights, wellbeing and development of children and young people;
- improve advocacy and raise awareness at a national level for the rights, wellbeing and development of children and young people;
- improve monitoring of Commonwealth legislation, policies and programs affecting the rights and wellbeing of children and young people; and
- improve the active involvement of children and young people in decisions that affect them.

Outlined in this section are a range of functions which have been canvassed and supported in the processes to date. The aim is to clarify how these functions could work and what powers a National Children's Commissioner would require to exercise these functions in a flexible and independent manner.

The functions of a National Children's Commissioner should enhance and support rather than duplicate the work of existing Commonwealth bodies and agencies, such as the AHRC, Privacy Commissioner, the Social Security Appeals Tribunal, the Administrative Appeals Tribunal and the Commonwealth Ombudsman.



For example, a National Children’s Commissioner should not duplicate or diminish the power of the Australian Human Rights Commissioner to investigate and conciliate complaints of breaches of the UNCRC and about age discrimination.

The functions of a National Children’s Commissioner should also not diminish the independence of the role. Accordingly, it would not be appropriate for a National Children’s Commissioner to have functions which are more appropriately functions of Government.

For example, a National Children’s Commissioner could not have a role as the official guardian of unaccompanied children and children in immigration detention.

### **Working with the States and Territories**

A National Children’s Commissioner could have a role promoting cooperation between the Commonwealth, states and territories on international, national and cross-jurisdictional issues. This role would be in relation to systemic issues and would not extend to intervening in issues or cases within individual jurisdictions. For example, a National Children’s Commissioner would not have a role in relation to individual children or in the day to day care of children in statutory child protection or juvenile justice.


A National Children’s Commissioner cannot duplicate the work of states and territories, particularly the work of state and territory commissioners and guardians.

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

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

### **Promote Public Education and Community Awareness**

A function of a National Children’s Commissioner could be to initiate and promote information, education, public awareness activities and other matters to promote public understanding of issues relating to children, their rights, wellbeing and development, among children, young people, the broader community, government and public agencies.



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

Who do you think should be targets of education programs?

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

## **Conduct Research and Undertake Inquiries**

A National Children’s Commissioner could have a role in conducting or sponsoring research or inquiries on systemic issues which affect the rights, wellbeing and development of children. In relation to this function a National Children’s Commissioner could also be given various reporting responsibilities.

As discussed above, the role of a National Children’s Commissioner should not duplicate the role of states and territories or intervene in the responsibilities of individual jurisdictions. Accordingly, the role of Commissioner in conducting inquiries would not extend to individual cases.

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?

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

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

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

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

## **Consult with Children and Advocate on their Behalf**

Functions of a National Children's Commissioner could be to proactively engage children in issues and decisions that affect them and advocate on their behalf, providing a voice for all children to ensure that their views are heard.

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

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.)?

## **Monitor the Development and Application of Legislation, Policies and Programs**

The role of a National Children's Commissioner could include monitoring the development and application of legislation, policies and programs at the Commonwealth level, to ensure that processes and outcomes are consistent with the best interests of children. This could include monitoring Australia's adherence to its obligations under the UNCRC and other international obligations relating to children and young people.

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

## **Provide Advice to Government**

A National Children's Commissioner could provide advice to Government about policies, legislation, reports, practices and services or any other matters affecting the rights, wellbeing and development of Australia's children. The functions of a National Children's Commissioner could extend to making submissions to parliamentary and other inquiries on issues affecting children.

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

# Conclusion

Thank you for your consideration of the role and functions of a National Children's Commissioner. The information collected through this consultation process will clarify and supplement information gathered through previous processes and will be used to inform Government consideration of the potential role of a National Children's Commissioner.

A report on these consultations will be provided to Government by the end of the year.

## Summary of Questions

Who should a National Children's Commissioner represent?

Should a National Children's Commissioner have a role in:

- promoting cooperation between the Commonwealth, states and territories?
- promoting public education and community awareness of children's rights, wellbeing and development?
- conducting research and undertaking inquiries on systemic issues which affect the rights, wellbeing and development of children?
- engaging with and consulting with children?
- monitoring the development and application of Commonwealth legislation, policies and programs?
- providing advice, comments and recommendations to Government?

How would a National Children's Commissioner undertake these roles?

**Written responses can be provided to the Children's Policy Branch, Department of Families, Housing, Community Services and Indigenous Affairs at [child.protection@fahcsia.gov.au](mailto:child.protection@fahcsia.gov.au) by no later than Friday December 16, 2011.**