



# NATIONAL CHILDREN'S AND YOUTH LAW CENTRE

## WHY AUSTRALIA NEEDS A COMMISSIONER FOR CHILDREN

DISCUSSION PAPER 002/94  
JULY 1995

THE UNIVERSITY OF  
NEW SOUTH WALES



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ISBN: 0 646 18233 1  
Discussion Paper Series ISSN: 1321-4624

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*Children deserve the best that humankind has to give.*

preamble to the Universal  
Declaration of the Rights of the  
Child 1958

*Childhood is entitled to special care and assistance*

preamble to UN Convention on  
the  
Rights of the Child 1989

*The well being of children requires political action at the highest level. We are determined to take that action. We ourselves make a solemn commitment to give high priority to the rights of children.*

Statement by world leaders at  
the  
World Summit for Children  
1990

*Children have the right to express their views freely in matters affecting them and shall have the opportunity to be heard either directly, through a representative or an appropriate body.*

Article 12 UN Convention on the  
Rights of the Child 1989

*Politicians, eager to be seen as child-friendly, have often paid lip service to the well-being of children. But at the end of the day children have usually been let down. In the power game other interests have been stronger. Children have*

*always been and still are the victims of hypocrisy.*

Thomas Hummarberg Swedish  
representative on the UN  
Committee on the Rights of the  
Child 1990

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## **Why Australia needs a Commissioner for Children**

**Robert  
Ludbrook**

### **Introduction**

There are more than four and a half million children and young people below the age of 18 in Australia. They constitute almost 27% of all Australians.

Australians have been in

the forefront of the international children's rights movement. Australia was a strong supporter of the UN Convention on the Rights of the Child and actively participated in its drafting. The Australian government ratified the Convention with one minor reservation in 1989. Australia was represented by Prime Minister Bob Hawke at the World Summit in 1990 when 71 heads of government pledged their support to the Convention and committed themselves to take political action at the highest level to give priority to the rights of children. The Human Rights and Equal Opportunity Commission in 1994 drafted an optional protocol to the Convention at the request of the United Nations.

Australia's enthusiasm for children's rights in the abstract is not matched by any noticeable change in policies and priorities whether at Commonwealth, state or territory level. Responsibility for decision making in respect of children is shared between numerous government departments in Commonwealth and state governments. The abstract enthusiasm for children's rights is soon submerged in the practical realities of party politics, entrenched attitudes and budgetary restraints.

Life for Australian children goes on very much as usual. They remain at the bottom of the social heap.

If the UN Convention is to be more than a vague mission statement there has to be someone with official responsibility for translating rhetoric into reality. Children's interests are always likely to fall to the bottom of political agendas because children are denied the vote and do not form an effective lobby group.

In this context the National Children's and Youth Law Centre proposes that a Commissioner for Children be established by the Commonwealth Government and that all states and territories establish Offices of the Commissioner.

## 21 Reasons why Australia needs a Commissioner for Children

International obligations

At the World Summit in 1990 the Australian government gave a solemn commitment to give high priority to the

rights of children and to take necessary political action to implement those rights.

2. The UN Convention on the Rights of the Child ratified by the Australian government in 1990 and by more than 160 countries worldwide, states that children shall have the right to express their views freely in all matters which affect them and that their views shall be given due weight when decisions are made. The Convention is not part of Australia's domestic law and is frequently ignored or breached.
3. Political decisions made today are likely to have a significant influence on the interests of children of present and future generations and it is important that a child perspective and an awareness of inter-generational equity should be taken into account by decision makers.
4. By Article 42 of the UN Convention the Australian government made a commitment to make the principles of the Convention widely known to both children and adults. This is an ongoing responsibility which could best be met through the work of a Children's Commissioner.
5. Australia has been very slow in meeting its reporting obligations under the Convention on the Rights of the Child. Its report is more than two years overdue and is likely to give an unjustifiably optimistic overview of children in Australia relying as it does on reports from state and territory government departments. The UN Committee on the Rights of the Child which considers reports filed under the Convention has asked reporting countries to adopt an open-minded and self-critical approach and avoid diplomatic obfuscation and the 'eloquence of evasive language'. The Committee was recently critical of the United Kingdom's failure to take measures to ensure compliance with the Convention. It recommended that the UK establish a national mechanism to co-ordinate implementation and monitoring of the Convention and that there

be regular and closer cooperation with non-governmental organisations. A Commission for Children could take responsibility for the preparation of a report that is

honest and complete and one which reflects a child perspective.

#### The powerlessness of children

6. Children do not have the right to vote and so are denied the opportunity to express their views through normal democratic channels.
7. Because children seldom organise into powerful and effective lobby groups their voice is often not heard and their views frequently overlooked when policies are drawn up and political decisions made.
8. Australian children are denied the fundamental human right to bodily integrity in laws and practices which permit teachers and carers to hit them by way of 'reasonable punishment'.
9. In the Australian education system the notion that children are individuals with independent rights is not widely accepted: students have little say in decision making and are denied opportunities to be heard, to express their views and to question or challenge school decisions.
10. Australia's family law system treats children as objects of concern and largely denies them the opportunity to advocate for themselves and present their views in court or as part of any mediation process.
11. While there are offices of youth affairs and ministers of youth affairs in most Australian states and territories they have traditionally had little influence on policy decisions and are subject to the limitations imposed by the cabinet system and party politics.

#### The state/federal divide

12. Despite Australia's ratification of the Convention, state and territory governments have not changed their laws and policies to bring them into line with the Convention and they continue to pass laws and develop policies which breach the Convention.

13. The physical, sexual and emotional abuse of children by adults is one of the most pressing social issues in Australia today and yet policies for protecting children vary considerably in their ambit and effectiveness and are too often piecemeal and patchy, underfunded and lacking in suitably trained and supported staff.
- protections for children depend on where they live. Laws and practices as to the care, protection and treatment of children vary significantly between different states and territories and sometimes between state and Commonwealth, with consequent uncertainty, inconsistency and variation in quality of service.

Special responsibility to indigenous children

15. At a time when there is a commitment by Australians to reconciliation with the Aboriginal people it is essential that issues of social justice be given the highest priority. The past cannot be erased but the special needs of Aboriginal and Torres Strait Island young people must be highlighted.
16. The position of Aboriginal children in Australian society in terms of health, living conditions, education, police harassment, prosecution and incarceration denies these children fundamental human rights and creates an underprivileged subculture within Australian society.

Poverty, poor health, poor services

17. Australia children have fallen behind in the last two decades. Child poverty levels in Australia approach 10% (UNICEF 1993) and have increased in the last 20 years. The Australian youth suicide rate has nearly doubled in the same period and is now among the highest in the world.
18. The plight of Australia's children has been highlighted in a series of national reports released over the last decade. A Human Right and Equal Opportunity Commission Inquiry (1989) found disturbing levels of youth homelessness in Australia and that some young people were dying. It argued for urgent and effective action to address the problem. The Commission's inquiry into Mental Illness (1994) concluded that there are few areas where services are adequate and that the human rights of at risk young Australians are being seriously denied.

14. Legal

children are often presented or perpetuated by the media and by many politicians and professionals.

Discriminatory treatment

## Historical development of the concept

19. Children are often discriminated against and undervalued because of their age or other irrelevant considerations.

Norway was the first country in the world to appoint a separate official to watch over the rights and interests of children. A Barneombudet or Children's Ombudsman was appointed by the Norwegian Parliament in 1981. The first appointee Malfrid Grude Flekkoy was an effective advocate for the concept of a government funded agency to promote the interests of children.

Sweden too has an enviable record in protecting the rights of children and a non-governmental agency, Radda Barnen (the Swedish Save the Children Fund) first appointed children's ombudsmen in the late 1970s.

20. Children have been shown in a series of surveys to be routinely targeted, harassed and maltreated by the police to the extent that this is widely seen as normal and acceptable.

The Defensor de la Infancia was an initiative of the Costa Rican government set up in 1987 and given full legal status in 1990.

New Zealand's Commissioner for Children was appointed in 1989 funded by and having administrative links with the Department of Social Welfare. The first Commissioner was a Paediatrician, the present Commissioner is a lawyer.

### Important Dates

1959 *UN Declaration on the Rights of the Child*

1973 Foundation of Children's Defence Fund (US)

1979 *International Year of the Child*

1970's Establishment of Barnombudsman (Sweden)

1981 Establishment of Barneombudet (Norway)

1983 Establishment of SA Children's Interests Bureau

1986 Jerusalem appointed city Children's

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- ppointment of Commissioner for Children(NZ)
- 1989 *UN Convention on the Rights of the Child*
- 1990 *Australia ratified UN Convention*
- 1990's British Columbia specialist Child Ombudsman
- 1991 Vienna appointed Kinder und Jugenanwalt
- 1993 Chief Justice of the Australian Family Court and the President of the NSW Court of Appeal urge appointment of Commissioner for Children
- 1994 Australian Law Reform Commission recommends appointment of a Child Commissioner

**Role of an Australian Commissioner for Children**

A Commissioner for Children would be an independent spokesperson and advocate for children and young people: someone who would monitor and comment on laws, policies and practices which would impact on them.

**When is a child not a child?**

There are a variety of legal terms for referring to children: infants, minors, juveniles, children, young people. While there are arguments for extending the powers of a Commissioner for Children to cover young adults between the ages of 18 and 25, it is suggested that the Commissioner's responsibilities be limited to anyone under the age of 18. Eighteen is the age of majority in all Australian states and the UN Convention on the Rights of the, Child applies only to children and young people under the age of 18.

1989

**What would a Commissioner for Children do?**

A

- at every level and assist them in having their views considered and taken seriously.
- Consult with children and young people and ascertain their views.
- Act as a watchdog for the rights and interests of children and monitor and evaluate Australia's compliance with the UN Convention.
  - Monitor and survey laws, policies and practices affecting children and young people and seek to influence these so as to provide greater protection for children and to enhance their rights.
  - Deal with complaints from children and young people (and from adults seeking to assist them) by seeking to remedy their grievances and promote their interests.
  - Develop and promote policies which will give children and young people a fair share of national and local resources and public facilities and will provide them with a safe, healthy environment suited to their particular needs.
- Assist children and young people to put their views forward to decision makers
- Make public comment on issues of concern to children, young people, taking up particular issues with members of parliament, government officials and other key people in an effort to advance the rights and interests of children and young people.
  - Gather information about children and young people and their position in Australian society and seek to raise public awareness of the position of children and of issues of importance to them.
  - Work to ensure that there are advocates for children who will help them put their point of view when decisions are being made which affect them.
  - Write and circulate educational material on children's rights and on the UN Convention on the Rights of the Child and promote children's rights education in schools and

amongst professional groups throughout Australia.

Develop and promote codes or practice in relation to standards of care and treatment of children in out of family care, effective complaints procedures, standards for selection and training of child advocates and like matters.

### **How would the Commissioner relate to the Convention on the Rights of the Child?**

The UN Convention would provide a useful background for the work of the Commissioner. But the Convention provides minimum standards only and it is clear from Art 41 that governments are not restricted from instituting laws and policies or following international human rights instruments which are more conducive to the realisation of the rights of the child.

A Commissioner for Children would press for full implementation of the UN Convention. The Commissioner would monitor Australia's compliance with the Convention and could coordinate responses from non-governmental organisations on Australia's performance of its Convention obligations. The current arrangement whereby a Commonwealth government department is required to report on Commonwealth, state and territory compliance with the Convention is flawed.

Federal and state Commissioners for Children might encourage Commonwealth and state governments to incorporate the UN Convention into Commonwealth or state and territory domestic law in the form of a Bill of Children's Rights or a Children's Rights Act or by including its principles in an objects clause in specific legislation.

### **Would a Minister for Children or an Office for Children have more political clout?**

A government portfolio of Minister for Children would provide a direct voice for children in Parliament and (hopefully) in cabinet. But members of parliament are constrained by party policies and political loyalties. Children are not voters and they

Carry out research and establish a database of laws, regulations, policy documents affecting children.

seldom rank highly on political agendas. Experience has shown that designated Ministers for Children or for Youth have little influence on government policies. They are usually low in the ministerial hierarchy and the important decisions are made by the portfolios responsible for service delivery: education, health, community welfare.

A

government minister is not usually able to criticise political colleagues or to reveal discussions in cabinet. A shadow Minister is able to criticise government policies but has no direct power to change things in a way which will benefit children.

There have been various proposals for the creation of a new Commonwealth government agency with special responsibility for the interests of children and young people. The Report of the Parliamentary Standing Committee on Community Affairs (May 1995) recommended that a Child and Youth Bureau be set up within the Attorney-General's Department to monitor implementation of the UN Convention on the Rights of the Child and to oversee legislative, policy and program initiatives in the area of youth and family policy. Others have suggested an Office of the Status of Children similar to the Office of the Status of Women attached to the Prime Minister's office. The official report following the International Year of the Family has recommended the creation of a National Office for Family Policy (for Official Recommendations see Appendix C).

There may be a place for a Commonwealth Minister for Children and Youth or an Office for Children and Young People but there are grounds for doubting their effectiveness. The Report to the Minister for Family services by Moira Rayner on behalf of the Institute of Family Studies (Dec 1994) did not support a Minister for Children believing that 'this would encourage those many agencies which presently have policies and programs for children to abandon them, or the responsibility for them or for a policy overview, in the mistaken belief that 'someone else' would be responsible for them'. And there is a danger that an office to promote the interests of children would be merged in a wider Office for the Family. While family interests and children's interests often coincide they also diverge on some issues and it would be hard for an Office for the Family to represent effectively the separate interests of children and young people.

The Institute of Family Studies saw a Commissioner for

Children as having an important symbolic effect and providing a significant focus for public debate. But the Institute considered a Commissioner would not be effective unless there were administrative mechanisms for coordinating children's policy within and across departments.

An independent Commissioner for Children, not bound by party

political considerations, would be able to speak out freely on behalf of children without the constraints on a Minister or government agency. Experience in Norway, New Zealand and elsewhere suggests that politicians are reluctant to close their ears to the voice of an independent official appointed to present a child or youth viewpoint.

### What powers **must the Commissioner for Children be given?**

- The Commissioner for Children should have access to all records and documents held by government departments (subject to issues of client confidentiality) and should have the power to require public officials to appear before the Commissioner and to produce such documents as are required. The Commissioner should be assured of access to all statistical information and government data bases.
- The Commissioner should have the power to hold public inquiries and subpoena witnesses and documents and to make reports to Parliament on any children's issues.

### Why a **Commissioner?**

The term 'Commissioner' indicates that the official would be answerable to Parliament. This has the advantage that the Commissioner has official status but is independent of any particular minister or government department. The term Commissioner for Children has been adopted successfully in New Zealand and has been proposed for the United Kingdom.

A term such as 'Official Guardian' conveys a somewhat old fashioned welfare approach and might be confusing in states which have Guardianship Boards. 'Child and Youth Advocate' or 'Advocate for Children' are preferable terms to 'Official Guardian', but again there might be confusion with lawyers and others who currently advocate for children.

## **Why not attach the Commissioner to a non-government agency?**

This is how the Swedish Barnombudsmen operate. There are several Children's Ombudsmen attached to Radda Barnen, the Swedish branch of the Save the Children Fund. Funding is received from the Swedish government as well as from voluntary donations. The advantage of

grafting the role of Commissioner of Children onto an existing non-government organisation would be that it would be seen to be independent of government. The disadvantage would be that it would not have the enhanced status and influence of a government official. It would be more susceptible of funding vagaries and political pressure if it had not statutory basis.

The best method of ensuring that the Commissioner remains independent from political influence, but has recognised official status and authority, is for the Commissioner to be set up by separate act of parliament with statutorily defined functions and powers and with assured funding. But it is essential that the Commissioner establishes close liaison with and seeks advice from relevant non-government organisations.

## **.c. Why not a Children's Ombudsman?**

In Australia the role of Ombudsman is primarily investigative, with an emphasis on investigating complaints and reporting on issues of maladministration in government and quasi-government bodies. Commonwealth and state ombudsmen have a good record in dealing with complaints by or about children and young people and they have developed effective procedures in dealing with these complaints. It would be wasteful of resources to create separate Commonwealth, state and territory Children's Ombudsmen.

A Commissioner for Children would have a wider and more flexible role and would not be restricted to an adjudicative or investigative approach. The Children's Commissioner could act as a voice for children and comment on wider policy issues. The Commissioner could follow up issues in a proactive manner and would not be restricted to handling individual complaints. But a Commissioner for Children would liaise closely with state and Commonwealth Ombudsmen and would refer appropriate matters to the Ombudsmen and also take up at a broader level issues identified by Ombudsmen in their inquiries and reports.

The Norwegian and Swedish Children's Ombudsmen have a wider and more flexible focus than the traditional Ombudsman model as perceived in Australia and other Commonwealth jurisdictions. The Norwegian Barneombudet is closer to the model proposed above for a Commissioner for Children.

## **Children's Commissioner in the Human Rights and Equal Opportunity Commission (HREOC)?**

HREOC, while it has a far wider function, is seen as dealing particularly with anti-discrimination complaints. The Commonwealth does not currently have legislation which bans discrimination on the grounds of age although it is likely that such legislation will be passed within the next decade. HREOC's jurisdiction is effectively limited to certain designated Human Rights instruments that have been ratified by the Commonwealth government.

While there might be administrative and financial advantages in having a Commissioner for Children linked and maybe sharing offices with HREOC, it is important that a Commissioner should be a separate entity created by a special statute with wider statutory functions and powers than those presently enjoyed by HREOC.

## **Would governments tolerate a critical Commissioner?**

All official human rights agencies face the problem that if they criticise government action or inaction they may find themselves de-funded, marginalised or disestablished. There are many examples of this happening in Australia,

This would be a problem for a Commissioner for Children. But Australian governments have, on the whole, come to accept that human rights agencies will sometimes criticise their policies and priorities. It is envisaged that a Commissioner for Children will stand outside party politics and will be seen to be a conduit by which the rights and interests of children can be brought to the attention of policy makers and law makers. A Commissioner for Children would not always succeed in changing laws or policies or in getting greater resources for children but should be in a position to advocate fearlessly for children and their rights.

Why not a

The Commissioner for Children should be independently funded and have an assured budget. The Commissioner should be appointed for a term of three or five years and should not be able to be dismissed except for serious misconduct.

### **Should the Commissioner be a Commonwealth or state official?**

If a Children's

Commissioner is to have a significant influence it is imperative that Commissioners be appointed for each state and territory as well as at Commonwealth level.

The initiative should come from the Commonwealth with the appointment of a Federal Commissioner. It is believed that individual states and territories would follow by appointing their own Commissioners. The Children's Advisory Council of Western Australia (now disbanded) recommended to the government of that state the establishment of a Children's Commissioner for Western Australia. In South Australia, where the Children's Interests Bureau carries out many of the functions of a Commissioner for Children, that agency could be appointed the state Commissioner for Children or could continue under its present name with greater independence and assured funding. New South Wales in 1993 appointed a Child Advocate as an honorary position but the appointee has no staff and minimal resources.

### **Would the Commissioner have a legal or welfare focus?**

A Commissioner would avoid a predominantly legal or a predominantly welfare approach. In this respect it would differ from Ombudsmen, Anti-Discrimination Boards and Equal Opportunities Commissions which have a specifically rights focus and from Child Welfare Associations and Child Protection Councils which lean more towards a social work and child welfare approach.

The Commissioner for Children should take an interdisciplinary approach and should be free to work at a legal, social or political level. The Commissioner would be able to take an overview of many issues. Like the Children's Defence Fund in the United States, the Commissioner could analyse government fiscal and social security policies and budget changes to highlight their beneficial or harmful effect on children and to make comment on whether children are receiving a fair share of

national resources . Environmental policies which would be likely to affect children (including future generations) would also be an area in which a Commissioner might exert influence.

### **Would a Commissioner take on individual cases?**

It is not envisaged that the Commissioner would be a legal advocate for individual children nor would the

Commissioner initiate court action on behalf of children. The Commissioner could refer individual children and young people to local legal, social work or youth advocacy services or to Ombudsmen as necessary.

It is anticipated that one of the functions of a Commissioner would be to press for a network of youth advocacy services providing special selected and trained workers to advocate for children and young people before courts and tribunals.

The Commissioner for Children might be granted standing in important litigation in order to present a child perspective. From time to time HREOC has been appointed to present a child viewpoint in litigation over the sterilisation of children with a mental disability and other significant human rights issues.

### **Would a Commissioner for Children weaken parents' position?**

Being for children does not mean being against parents. The UN Convention strikes a delicate balance between the rights of children and the rights and responsibilities of parents.

The Norwegian Barneombudet and the New Zealand Commissioner for Children take pains to avoid becoming involved in disputes between parents or carers over their children or in disputes between children and their parents. The Norwegian legislation specifically prohibits the Ombudsman from getting involved in individual family conflicts.

The Commissioner would be looking at wider policy issues and would provide neither a counselling nor a legal advice or advocacy service for individual children in conflict with their parents. Parents or children who approached the Commissioner would normally be referred to appropriate counselling or advocacy agencies.

### **Is there a danger the Commissioner would lose**

## touch?

There is always a danger that public officials may lose touch with the client group they are appointed to represent. It is suggested that the Commissioner should be advised by a Youth Advisory Committee and by a Community Advisory Committee. The Commissioner would keep in touch with young people through speaking to groups,

running workshops and consultations.

It is anticipated that the Commissioner would encourage young people to organise and to form self-advocacy groups who could speak for themselves on issues of concern. The Commissioner for Children would not be a funding body but could alert young people and youth groups to sources of funding.

## Could children be assured of absolute confidentiality?

The legislation creating a Commissioner for Children should provide an absolute statutory privilege in respect of communications made by children to the Commissioner. The Commissioner should draw up and circulate widely a code of ethics dealing with issues of confidentiality and other ethical issues.

## Who would fund the Commissioner for Children?

The Commissioner for Children would be funded by government. Funding should not be channelled through a particular government department (as is the case in Norway, New Zealand and South Australia). It should be appropriated directly by Parliament.

## What accountability would the Commissioner have?

The Commissioner would be required to furnish an annual report to Parliament and would be subject to scrutiny by the Auditor-General.

## How can we get a Commissioner for Children in Australia?

- Exerting pressure on politicians and senior bureaucrats at both Commonwealth and state

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cy documents and manifestos.

- Clarifying what is envisaged as role of a Commissioner for Children and resolving some of the confusion surrounding the various official proposals for a Commissioner for Children, a Children's Ombudsman, an Office for the Status of Children and a Youth Bureau.
- Seeking broad based support from non-government organisations in local areas and raise the issue at conferences, seminars and gatherings which children's issues are being discussed.
- Support the National Children's and Youth Law Centre in its campaign for Commissioners for Children to be appointed for Commonwealth, states and territories.
- Talk to children and young people and seek their active support .

### Legislation

<i>New Zealand:</i>	Children, Young Persons and their Families Act 1989
<i>Norway:</i>	Ombudsman for Children Act 1981
<i>South Australia:</i>	Community Welfare Act 1983 s26

### Bibliography

Child Care for Kids Law Reform Commission  
Interim Report No  
73

(1994) *Review of Legislation Administered by Dept of Human Services and Health para 2.12*

Children's Advisory Council (WA) (1992) *Protecting Children 's Interests in Western Australia .A Proposal for a Western Australian Commissioner for Children*

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Flekkoy, Malfrid Crude (1990) *Models for Monitoring the Protection of Children 's Rights*. Florence: International Child Development Centre, UNICEF

Hewlett, Sylvia (1993) *Child neglect in rich nations*. New York, UNICEF

Human Rights and Equal Opportunity Commission (1989) *Our homeless children*. Canberra: AGPS

Human Rights and Equal Opportunity Commission (1993) *Human rights & mental illness*. Canberra: AGPS

Rosenbaum, Martin and Newell, Peter (1991) *Taking Children Seriously: A Proposal for a Children 's Rights Commissioner*. London: Calouste Gulbenkian Foundation

Verhellen, Eugeen and Spiesschaert, Frans (eds) (1987) *Ombudswork for Children*. Belgium: Ghent University

## **Appendix A Agencies**

### *Norway*

Barneombudet P0 Box 8036,  
Dep 0030 Oslo 1 Norway tel:  
fax:  
(00472) 344990  
(00472) 349524

### *Sweden*

Radda Barnen  
Tegeluddsv 31

### *New Zealand*

Box 27320  
S-102 54 Stockholm  
Sweden  
tel: 08-63 0000

### *Costa Rica*

Defensoria de la Infancia  
Ministerio de Justicia y Gracia

San Jose, Costa Rica tel: 506  
237344 fax: 506 233879

**Vienna**  
Commissioner for Children 39  
Pipitea Street Box 12 539  
Wellington New Zealand tel:  
644711410 fax: 644711418

***South Australia***

SA Children's Interests Bureau  
3rd Floor, City Square Building  
Hindmarsh Square Adelaide SA  
5000  
tel: (08) 226 6875 fax: (08) 226  
7088

Kinder und Jugenanwalt  
Sobieskigasse 31  
Vienna, Austria  
tel: (222) 341556

***Jerusalem***

Ombudsman for Children and Youth  
Hebrew University of Jerusalem  
P0 Box 24 100,  
Mt Scopus, Jerusalem 91905  
Israel

## **Appendix B Supporters**

### **Do you support the appointment of a Commissioner for Children?**

#### **You are not alone.**

The following organisations and individuals have supported the Commissioner for Children idea:

Action for Children  
Association for the Welfare of Child Health (AWCH)  
Australian College of Paediatricians  
Australian Institute of Family Studies  
Australian Joint Standing Committee on Foreign Affairs  
Australian Law Reform Commission  
Chief Justice of the Family Court, Justice Alastair Nicholson  
Child Protection Council (NSW)  
Children's Advisory Council (WA)  
Children's Interests Bureau (SA)  
Children's Rights Coalition  
Defence for Children International (Aus)  
EPOCH New South Wales  
National Association for the Prevention of Child Abuse and Neglect (NAPCAN)  
National Children's and Youth Law Centre  
National Federation of Parent's and Citizen's Associations  
National Network of Children's and Young People's Legal and Advocacy Services  
Oz Child Australia  
President of NSW Court of Appeal, Justice Michael Kirby  
UNICEF  
Victorian Council for Civil Liberties  
Youth Action and Policy Association (NSW)

Now it's your turn! Write to your the Commonwealth AttorneyGeneral, Hon. Michael Lavarch, Parliament House, Canberra 2600 or to your Member of Parliament and to the National Children's and Youth Law Centre today to voice your support.

## **Letter Seeking Support for a Commissioner for Children**

**Dear Colleagues,**

**The National Children's and Youth Law Centre is urging the Commonwealth Attorney-General and state and territory Attorneys' General to appoint a Commissioner for Children, an independent advocate for the rights and interests of all Australian children.**

**The Centre has set out the reasons why it supports a Commissioner for Children in the enclosed Discussion Paper 'Why Australia needs a Commissioner for Children'.**

**We are hoping to gain as much support as we can from other organisations and we would be grateful if your organisation would consider the issue and indicate to us whether it supports our proposal and, if so, whether you would be willing to have your name added to the list of supporters in Appendix B.**

**Whether or not your organisation favours the appointment of a Commissioner for Children we would be interested to have your views. We are happy to provide you with any additional information you may need.**

**Yours sincerely,**

**Robert Ludbrook  
Director**

## **Appendix B Official Recommendations**

### **Parliamentary Standing Committee on Community Affairs May '95**

r112 A Child and Youth Bureau be established within the Attorney-General's Department to commence work associated with incorporating the Convention on the Rights of the Child into State/Territory laws

r113,114 The Child and Youth Bureau to monitor Australia's compliance with CROC and to oversee legislative, policy and program initiatives in the area of youth and family policy across departments to determine the extent of their compatibility with CROC.

r215 The Attorney-General report regularly to the Prime Minister on Australia's performance in meeting its obligations under CROC

**r216 The Council of Australian Governments (COAG) become** the vehicle for consultation between Commonwealth and State/Territory governments in relation to implementation of CROC.

### **Joint Committee on Foreign Affairs, Defence and Trade November 1994**

r9.8 The Australian government introduce legislation which incorporates CROC into domestic law

r9.8.2 The Attorney-General investigate the feasibility of establishing a Children's Ombudsman within the office of the Human Rights and Equal Opportunity Commission

r9.17 The Australian Government in consultation with the States develop a national code to consolidate youth/children's rights

## **Report of National Council on International Year of the Family November 1994**

rl.10 The government establish a permanent National Office for Family Policy to plan co-ordinate and monitor legislation and policies affecting families, children and young people. The major purpose would be to scrutinise all major public policies in terms of their effects on families. The Office would be the responsibility of a Minister for Family Support and Family Policy at Cabinet level

## **Australian Institute of Family Studies Report 'Preventing Child Abuse' to Minister for Family Services Dec 1994**

4.12 A Ministry for Children We do not support at this time the 'establishment of a separate Ministry for Children. We believe this would encourage those many agencies which presently have policies and programs for children to abandon them or the responsibility for them in the mistaken belief that someone else would be responsible

4.13 A Commissioner for Children A Commissioner would require status, independence, resources and a resource-base separate from the control of the agencies which he/she might report on. We believe that the creation of such an office would have an important symbolic effect and would be a significant focus for public debate. But we believe that to appoint a Children's Commissioner to HREOC would be only symbolic and not effective unless there were also administrative mechanisms for~ co-ordinating children's policy within and across Departments.

## **Australian Law Reform Commission 'Child Care for Kids'**

August 1994

r4 The government should establish a national agency to coordinate government policy affecting children and to monitor the implementation of programs, policies and laws to ensure that the rights and interests of children are protected and promoted

para 2.11 Large areas of children's service provision are State and Territory responsibilities. One way of ensuring that the rights of children in children's services are protected would be for the Commonwealth to exercise its obligations under CROC in a Children's Rights Act.

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