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**The Smith Family's submission on the
Commonwealth Government's Discussion Paper
*A National Children's Commissioner***

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Background on The Smith Family

The Smith Family is a national, independent children's charity committed to increasing the educational participation and achievement of Australian children and young people in need. The Smith Family provides holistic and long term support from pre-school, through primary and secondary school and on to tertiary studies. In 2010-11, The Smith Family supported over 44,000 children, young people and parents/carers through its suite of *Learning for life* programs, including around 33,000 on an educational scholarship. A further 73,000 children, young people and parents/carers participated in programs facilitated by The Smith Family, such as the Commonwealth Government's *Communities for Children* initiative. Given our strong focus on the wellbeing of children, we welcome the opportunity to respond to the discussion paper on a National Children's Commissioner.

Introduction

Australia's ratification of The United Nations Convention on the Rights of the Child over 20 years ago, was evidence of a national commitment to ensuring the rights of children across a broad range of areas. In recent years the States and Territories have established guardians or commissioners for children and young people which reinforces this commitment. At the same time, the Commonwealth has developed the *National Framework for Protecting Australia's Children 2009-2020*, in partnership with the States and Territories. These are indications of the importance Australia places on the safety and wellbeing of its children and young people. However to date, a National Children's Commissioner has not been established, and this is a key component in ensuring Australia has the national arrangements in place to support the wellbeing of Australia's children.

The Smith Family notes that the *National Framework for Protecting Australia's Children* includes the action, *explore the potential role for a National Children's Commissioner including the relationship with State and Territory Children's Commissioners*, and that the timing for this was initially late 2009. The Smith Family also notes that Australia has been requested by the United Nations Committee on the Rights of the Child to provide information by early 2012, on progress regarding the establishment of such a Commission. Given the importance of a National Children's Commissioner, making substantial progress on this initiative in the near future is highly desirable, both for the wellbeing of Australia's children and for credibility within Australia and internationally.

Principles underpinning a National Children's Commissioner

The Smith Family recommends that a number of principles should underpin the work of the Commissioner, in order to ensure its effectiveness and public credibility. These include, but are not limited to:

- **Children's rights principles**
The United Nations Convention on the Rights of the Child provides the overarching framework for the work of the National Children's Commissioner.
- **Independence of the position and office**
The Commissioner requires a statutory mandate, a statutory provision relating to security of tenure and direct and regular reporting to Parliament.
- **Children's participation**
Central to the work of the Commissioner must be the genuine involvement of children and young people.



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Who should a National Children's Commissioner represent?

The Smith Family recommends that a National Children's Commissioner should represent all children. This is in line with the Convention on the Rights of the Child which applies to all children and the *National Framework for Protecting Australia's Children*, which has the high level outcome of *Australia's children and young people are safe and well*.

In addition, the Commissioner should have a particular focus on groups of more vulnerable children and those who are at risk of poorer development and wellbeing outcomes. Examples of such groups of children could include, but should not be limited to: Aboriginal and Torres Strait Islander children; children with a disability; those in the child protection, out-of-home care or homelessness systems; refugee children; and those seeking asylum. Article 29 of the Convention of the Rights of the Child explicitly relates to equal educational opportunity for all children, therefore consideration might also be given by the Commissioner to the needs of children from low SES, given their poorer educational outcomes relative to their high SES counterparts.

The Smith Family developed its first Reconciliation Action Plan in 2010. It has as its vision a *nation where Aboriginal and Torres Strait Islander children fully benefit from the education and learning opportunities that this nation has to offer and are truly valued as the first peoples of Australia through a deep respect and understanding by the broader Australian community*. In light of the unique place of Australia's Aboriginal and Torres Strait Islander people, The Smith Family would recommend that this group be an explicit focus for the Commissioner. With this exception, legislative and other arrangements for the Commissioner should not be seen as explicitly defining which groups of children are given special focus, given that vulnerability can change over time and arrangements need to be flexible enough to respond to this. Two key principles underpinning the work of the Commissioner should be *the representation of all children* and *a particular focus on vulnerable groups of children*. These principles can operate in a complementary way.

What should the functions of a National Children's Commissioner be?

The National Commissioner should have an important leadership role in a range of areas including:

- **Promoting cooperation between the Commonwealth and the states/territories regarding the rights, wellbeing and development of children.**
This is in line with Australia's jurisdictional arrangements which see responsibilities for the wellbeing of children shared between the Commonwealth, States and Territories. This co-operation should aim to ensure co-ordination across Commonwealth agencies as well as with state/territories, with agreements between various jurisdictions developed to avoid unnecessary duplication and confusion amongst other stakeholders, such as the non-government sector.
- **Improving monitoring of Commonwealth legislation, policies and programs affecting the rights and wellbeing of children and young people.**
This is in line with the important role Commissioners in the Human Rights, Race Discrimination and Sex Discrimination areas have played at the national level. It is also in line with the role the State/Territory Children's Commissioners have played in their respective jurisdictions. This role should include, but not be limited to, monitoring and reporting on the implementation of children's rights under the United Nations Convention of the Rights of Children.
- **Undertaking inquiries and research.**
Public inquiries and research have been important features of other Commissioners and



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should also be included within the range of activities that the National Commissioner could undertake. The Commissioner should be able to initiate such inquiries and develop its own agenda, including regarding research. Such inquiries and research should aim to avoid duplication of other work and have a clear public policy focus.

- **Improving advocacy and raising awareness at a national level for the rights, wellbeing and development of children and young people.**

The National Commissioner should not be seen as the only Commonwealth office with a role to play in this area but public awareness regarding children's rights and wellbeing should be one of its key functions. This is in line with the role Commissioners in other areas and jurisdictions have played. The Commissioner should work collaboratively with other agencies, including Government, non-government, corporate and philanthropic who have an interest and role in this area.

How the Commission should operate

As identified above, a key principle of the work of the Commission must be the genuine involvement of children and young people in its work. Organisations such as some of the state/territory Commissions for Children and Young People, the Reach Out Foundation and the Australian Research Alliance for Children and Youth have all undertaken significant work in this regard, as have many other government and non-government organisations. Drawing on this and other available knowledge on how best to engage children in its work during the establishment and implementation phases of the National Commissioner is strongly recommended. Exemplary involvement of children in its work, including more vulnerable groups, should be the hallmark of how the Commission operates.

Appropriate resourcing

The Smith Family is cognisant of the significant fiscal constraints operating across all jurisdictions and the Australian community generally. The effectiveness of the National Commissioner and the breadth and depth of the work it can undertake will, in part, be shaped by the resources available to it. The establishment of a National Commissioner has been a long held national commitment and is an affirmation of the national importance placed on the wellbeing of children and young people. Providing appropriate resourcing to enable the Commission to operate in an effective and inclusive way is an essential component of this.

The title of the National Commissioner

The Smith Family notes that the Convention on the Rights of the Child covers children up to the age of 18. It also notes that across Australia's states/territories, Commissioners often, though not always, include children *and young people* in their title. The Smith Family would recommend that consideration be given to the national role being called the National Commissioner for Children and Young People. This may help promote greater understanding that the Commissioner is not just concerned with younger children. Adolescents may also be less likely to realise that the work of the Commission applies to them, or be willing to be involved in the work of the Commission, if the title remains at children.