



# **Australian Human Rights Commission Amendment (National Children's Commissioner) Act 2012**

**No. 89, 2012**

**An Act to provide for a National Children's  
Commissioner, and for related purposes**

Note: An electronic version of this Act is available in ComLaw (<http://www.comlaw.gov.au/>)



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# **Australian Human Rights Commission Amendment (National Children's Commissioner) Act 2012**

**No. 89, 2012**

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## **An Act to provide for a National Children's Commissioner, and for related purposes**

*[Assented to 28 June 2012]*

The Parliament of Australia enacts:

### **1 Short title**

*This Act may be cited as the Australian Human Rights Commission  
Amendment (National Children's Commissioner) Act 2012.*

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

*No. 89, 2012 1*

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## 2 Commencement

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

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<b>Commencement information</b>		
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provision(s)</b>	<b>Commencement</b>	<b>Date/Details</b>
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	28 June 2012
2. Schedule 1	The later of: (a) 1 July 2012; and (b) the day this Act receives the Royal Assent.	1 July 2012

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Note: This table relates only to the provisions of this Act as originally enacted. It will not be amended to deal with any later amendments of this Act.

- (2) Any information in column 3 of the table is not part of this Act. Information may be inserted in this column, or information in it may be edited, in any published version of this Act.

## 3 Schedule(s)

Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

## **Schedule 1—National Children's Commissioner**

### **Part 1—Amendments**

#### *Australian Human Rights Commission Act 1986*

##### **1 Subsection 3(1)**

Insert:

*children* means people under the age of 18.

##### **2 Subsection 3(1)**

Insert:

*National Children's Commissioner* means the National Children's Commissioner referred to in section 46MA.

##### **3 At the end of subsection 8(1)**

Add:

; and (g) the National Children's Commissioner.

##### **4 Subsection 8(7)**

Omit "or Disability Discrimination Commissioner", substitute "Disability Discrimination Commissioner or National Children's Commissioner".

##### **5 After Part IIA**

Insert:

## **Part IIAA—National Children's Commissioner**

### **Division 1—Establishment and functions**

#### **46MA National Children's Commissioner**

There is to be a National Children's Commissioner.

**46MB Functions of Commission that are to be performed by  
National Children's Commissioner**

- (1) The following functions are conferred on the Commission:
    - (a) to submit a report to the Minister that complies with subsection (3) as soon as practicable after 30 June in each year;
    - (b) to promote discussion and awareness of matters relating to the human rights of children in Australia;
    - (c) to undertake research, or educational or other programs, for the purpose of promoting respect for the human rights of children in Australia, and promoting the enjoyment and exercise of human rights by children in Australia;
    - (d) to examine existing and proposed Commonwealth enactments for the purpose of ascertaining whether they recognise and protect the human rights of children in Australia, and to report to the Minister the results of any such examination.
  - (2) The functions of the Commission under this section are to be performed by the National Children's Commissioner on behalf of the Commission.
  - (3) A report under paragraph (1)(a):
    - (a) must deal with such matters, relating to the enjoyment and exercise of human rights by children in Australia, as the National Children's Commissioner considers appropriate; and
    - (b) may include recommendations that the Commissioner considers appropriate as to the action that should be taken to ensure the enjoyment and exercise of human rights by children in Australia.
  - (4) In performing functions under this section, the National Children's Commissioner may give particular attention to children who are at risk or vulnerable.
  - (5) In performing functions under this section, the National Children's Commissioner may consult any of the following:
    - (a) children;
    - (b) Departments and authorities of the Commonwealth, and of the States and Territories;
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- (c) non-governmental organisations;
  - (d) international organisations and agencies;
  - (e) such other organisations, agencies or persons as the Commissioner considers appropriate.
- (6) In performing functions under this section, the National Children's Commissioner must, as appropriate, have regard to:
- (a) the Universal Declaration of Human Rights (United Nations General Assembly Resolution A/RES/217(III) A (1948); and
  - (b) the following, as amended and in force for Australia from time to time:
    - (i) the International Convention on the Elimination of all Forms of Racial Discrimination done at New York on 21 December 1965 ([1975] ATS 40);
    - (ii) the International Covenant on Economic, Social and Cultural Rights done at New York on 16 December 1966 ([1976] ATS 5);
    - (iii) the International Covenant on Civil and Political Rights done at New York on 16 December 1966 ([1980] ATS 23);
    - (iv) the Convention on the Elimination of All Forms of Discrimination Against Women done at New York on 18 December 1979 ([1983] ATS 9);
    - (v) the Convention on the Rights of the Child done at New York on 20 November 1989 ([1991] ATS 4);
    - (vi) the Convention on the Rights of Persons with Disabilities done at New York on 13 December 2006 ([2008] ATS 12); and
  - (c) such other instruments relating to human rights as the Commissioner considers relevant.

Note 1: In 2012, the text of the Universal Declaration of Human Rights was accessible through the United Nations website ([www.un.org](http://www.un.org)).

Note 2: In 2012, the text of an international agreement in the Australian Treaty Series was accessible through the Australian Treaties Library on the AustLII website ([www.austlii.edu.au](http://www.austlii.edu.au)).

## Division 2—Appointment

### 46MC Appointment of National Children's Commissioner

- (1) The National Children's Commissioner is to be appointed by the Governor-General by written instrument, on a full-time basis.
- (2) A person must not be appointed as the National Children's Commissioner unless the Minister is satisfied that the person has appropriate qualifications, knowledge or experience.

### 46MD Period of appointment

The National Children's Commissioner holds office for the period specified in the instrument of appointment. The period must not exceed 7 years.

Note: For re-appointment, see section 33AA of the *Acts Interpretation Act 1901*.

### 46ME Acting appointment

The Minister may, by written instrument, appoint a person to act as the National Children's Commissioner:

- (a) during a vacancy in the office of the Commissioner (whether or not an appointment has previously been made to the office); or
- (b) during any period, or during all periods, when the Commissioner:
  - (i) is absent from duty or from Australia; or
  - (ii) is, for any reason, unable to perform the duties of the office.

Note: See also sections 20, 33AB and 33A of the *Acts Interpretation Act 1901*.

## Division 3—Terms and conditions

### 46MF Remuneration and allowances

- (1) The National Children's Commissioner is to be paid the remuneration that is determined by the Remuneration Tribunal. If no determination of that remuneration by the Tribunal is in

operation, the member is to be paid the remuneration that is prescribed by the regulations.

- (2) The National Children's Commissioner is to be paid the allowances that are prescribed by the regulations.
- (3) This section has effect subject to the *Remuneration Tribunal Act 1973*.

#### **46MG Leave of absence**

- (1) The National Children's Commissioner has the recreation leave entitlements that are determined by the Remuneration Tribunal.
- (2) The Minister may grant the National Children's Commissioner leave of absence, other than recreation leave, on the terms and conditions as to remuneration or otherwise that the Minister determines.

#### **46MH Outside employment**

The National Children's Commissioner must not engage in paid employment outside the duties of his or her office without the approval of the Minister.

#### **46MI Resignation**

- (1) The National Children's Commissioner may resign his or her appointment by giving the Governor-General a written resignation.
- (2) The resignation takes effect on the day it is received by the Governor-General or, if a later day is specified in the resignation, on that later day.

#### **46MJ Termination of appointment**

The Governor-General may terminate the appointment of the National Children's Commissioner:

- (a) for misbehaviour; or
- (b) if the Commissioner is unable to perform the duties of his or her office because of physical or mental incapacity; or
- (c) if the Commissioner:

- (i) becomes bankrupt; or
- (ii) applies to take the benefit of any law for the relief of bankrupt or insolvent debtors; or
- (iii) compounds with his or her creditors; or
- (iv) makes an assignment of remuneration for the benefit of his or her creditors; or
- (d) if the Commissioner is absent, except on leave of absence, for 14 consecutive days or for 28 days in any 12 months; or
- (e) if the Commissioner engages in paid employment contrary to section 46MH.

#### **46MK Other terms and conditions**

The National Children's Commissioner holds office on the terms and conditions (if any) in relation to matters not covered by this Act that are determined by the Governor-General.

### **Division 4—Miscellaneous**

#### **46ML National Children's Commissioner may obtain information from Commonwealth government agencies**

- (1) If the National Children's Commissioner has reason to believe that a Commonwealth government agency has information or a document relevant to the performance by the Commissioner of functions under this Part, the Commissioner may give a written notice to the agency requiring the agency:
  - (a) to give the information to the Commissioner in writing signed by or on behalf of the agency; or
  - (b) to produce the document to the Commissioner.
- (2) The notice must state:
  - (a) the place at which the information or document is to be given or produced; and
  - (b) the time at which, or period within which, the information or document is to be given or produced.
- (3) The time or period stated under paragraph (2)(b) must be reasonable.

- (4) A Commonwealth government agency must not, in response to a requirement under this section:
- (a) give information in a manner that would reveal the identity of a particular individual; or
  - (b) produce a document that reveals the identity of a particular individual;
- unless the individual has consented to the giving of the information or the production of the document.
- (5) If:
- (a) subsection (4) would prevent a Commonwealth government agency from complying with a requirement under this section to produce a document; and
  - (b) the agency is able to provide a copy of the document that has had deleted from it the information that would reveal the identity of the individual concerned;
- the agency must comply with the requirement by producing a copy with that information deleted.
- (6) In this section:
- Commonwealth government agency*** means:
- (a) a Department or authority of the Commonwealth; or
  - (b) a person who performs the functions of, or performs functions within, a Department or authority of the Commonwealth.

**46MM National Children's Commissioner must give information to the Commission**

The National Children's Commissioner must give to the Commission such information as the Commission from time to time requires relating to the operations of the Commissioner under this Part.

**46MN Minister must table reports of National Children's Commissioner**

The Minister must cause a copy of each report received by the Minister under this Part to be laid before each House of the

**Schedule 1** National Children's Commissioner  
**Part 1** Amendments

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Parliament within 15 sitting days of that House after the report is received by the Minister.

**6 At the end of subsection 46PV(3)**

Add:

; and (g) the National Children's Commissioner.

## **Part 2—Application and transitional provisions**

### **7 First report of the National Children's Commissioner**

The first report under paragraph 46MB(1)(a) of the *Australian Human Rights Commission Act 1986* (as amended by this Act) is to be submitted to the Minister as soon as practicable after 30 June 2013.

### **8 Application of amendment made by item 6**

The amendment made by item 6 applies in relation to proceedings:

- (a) that commence on or after the commencement of that item;  
or
- (b) that commenced before the commencement of that item, and that had not been completed by that commencement.

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*[Minister's second reading speech made in—  
House of Representatives on 23 May 2012  
Senate on 21 June 2012]*