



Summary Document:

SNAICC Options Paper on the Model for a National Commissioner for Aboriginal and Torres Strait Islander Children and Young People

Context

SNAICC – National Voice for our Children and the Family Matters campaign have worked together with key partners to build momentum for the establishment of a National Commissioner for Aboriginal and Torres Strait Islander Children and Young People in Australia (National Commissioner).

In October 2019, SNAICC developed a [Position Paper on the establishment of](#)

[a national commissioner for Aboriginal and Torres Strait Islander children and young people](#) that was supported by more than 80 organisations across Australia. The Position Paper proposed a model for a National Commissioner to sit within the Australian Human Rights Commission.

Since the release of the Position Paper, some stakeholders have suggested that consideration of additional models

may be worthwhile. With the support of leading international law firm King & Wood Mallesons, SNAICC has developed a comprehensive Model Options Paper that explores other possible models based on assessing existing national and international commissioner roles against the Paris Principles and identifies best practice elements.

An Urgent and Compelling Need

SNAICC’s 2019 Position Paper outlines the clear and compelling case for the establishment of a National Commissioner that is dedicated to advancing the rights of Aboriginal and Torres Strait Islander child and young people across Australia. The key reasons that demonstrate the need and imperative for a National Commissioner include:

- the unacceptably high levels of multiple and intersecting forms disadvantage and discrimination experienced by Aboriginal and Torres Strait Islander children and young people across all Australian states and territories;

- to prevent Aboriginal and Torres Strait Islander children and young people from continuing to fall through the cracks of our federal system; and
- as demonstrated through successful Family Matters reports, the clear need to develop and implement unique responses and solutions to address the unique challenges faced by Aboriginal and Torres Strait Islander children and young people.

The call for a National Commissioner builds on the increasing recognition by state and territory governments of the importance and value of a commissioner

dedicated specifically to Aboriginal and Torres Strait Islander children and young people, as demonstrated by the establishment of similar bodies in Victoria, South Australia and Queensland.

A dedicated focus at the national level on advancing the rights of the current generation of Aboriginal and Torres Strait Islander children and young people is essential to end the intergenerational cycle of disadvantage and to promote better outcomes for future generations.

Model Options Paper – Key findings

The preparation of the Model Options Paper involved a comprehensive desktop review of existing Australian and international commissioner models. Models have been assessed against the United Nations Principles Relating to the Status of National Human Rights Institutions (known as the “Paris Principles”) and the paper outlines key findings and recommendations for compliance with the best practice requirements for each element of the Paris Principles.

Based on detailed review and analysis of eighteen commissioner models, the paper concludes that:

- the New Zealand and United Kingdom Children’s Commissioner models appear to be the best overall existing commissioner models when considered against the Paris Principles.
- the South Australian Commissioner for Children and Young People

appears to be the best existing Australian model when considered against the Paris Principles, although with the caveat that not all its functions are legislatively enshrined.

Most usefully, the paper outlines a “best practice composite model” that illustrates examples of best practice and provides concrete guidance for Federal Government decision-makers on the key elements required to establish an effective National Commissioner.

These elements are summarised as follows:

Paris Principle	Best practice
Entrenchment in law	<p>The National Commissioner should be established via standalone federal legislation with sufficient detail to ensure a clear mandate and independence. This should include the National Commissioner’s role, functions, powers, funding, lines of accountability, appointment mechanisms and term of office.</p> <p>If the National Commissioner is to be mandated to receive, consider or resolve complaints, the enacting legislation should set out the necessary functions and powers required for the National Commissioner to adequately fulfil this mandate.</p>
Human rights mandate	<p>The National Commissioner should be legislatively empowered to protect and promote the rights of Aboriginal and Torres Strait Islander children and young people in Australia. In particular, the National Commissioner should be mandated to consider the implementation of rights enshrined in the UN Convention on the Rights of the Child and the UN Declaration on the Rights of Indigenous Peoples and other relevant bodies of the international human rights system.</p>

Cooperation with other human rights bodies	The National Commissioner should develop, formalise and maintain working relationships with other domestic institutions established for the promotion and protection of the rights of Aboriginal and Torres Strait Islander children and young people, such as SNAICC.
Ensuring pluralism	Consistent with best practice in self-determination the National Commissioner should be an Aboriginal or Torres Strait Islander person. The office of the National Commissioner should comprise staff representative of the diverse segments of Australian society, with consideration of gender, ethnicity and minority status.
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Selection & appointment of decision-making body	The establishing legislation should set out a clear, transparent and participatory selection and appointment process for the National Commissioner based on identified and objective criteria that is publicly available. Consistent with best practice in self-determination, the legislation should also mandate that Aboriginal and Torres Strait Islander young people be involved in the selection process for the National Commissioner.
Independence from government	The establishing legislation should provide that the National Commissioner be independent from Government, be free from political interference and stipulate clear details relating to tenure.
Adequacy of funding	The National Commissioner should have both financial independence and adequate resources to perform the mandated duties.
Public reporting	The National Commissioner should be mandated to publish annual and special reports, highlighting any key developments of the office and setting out the National Commissioner's opinions, recommendations and proposals with respect to matters affecting Aboriginal and Torres Strait Islander children and young people. These reports should be publicly available and tabled with parliament, with requirements that the issues identified in these reports be discussed and considered by the legislature and responded to in a timely manner. Preferably, the National Commissioner should be entitled to table these reports in Parliament directly, as opposed to going through the Executive. The National Commissioner should also be empowered to follow up on any action taken in response to the recommendations contained in its reports.

The Model Options Paper also identifies a number of challenges to implementation and efficacy that arise across the various commissioner models:

- a lack of clear mandate in establishing legislation;
- a lack of political impartiality or autonomy from government;
- a lack of transparency in appointment / selection of commissioners;
- inadequate quasi-judicial competency and complaints handling powers; and
- inadequate and insecure funding.

The identification of these major impediments provide further practical guidance on the key elements that must be incorporated into the establishment of a National Commissioner that meets best practice standards and will be effective to supporting improved outcomes for future Aboriginal and Torres Strait Islander people across Australia.

A full copy of the Model Options Paper will be published in December at www.snaicc.org.au.