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21<sup>st</sup> February 2019

Dear Chairman

## **Draft Commissioner for Children and Young People (Jersey) Law 201-**

Thank you for your Panel's continued support to develop the draft Commissioner for Children and Young People (Jersey) Law 201-. I am more than happy to respond to your request to outline the key drivers behind the policy objectives that have led to the current version of the draft Law.

The main policy objective of the draft Law is to bring forward legislation establishing a Children's Commissioner for Jersey with a primary function for the promotion and protection of the rights of children and young people. The scope of 'children' and 'young people' (see Article 1(1) and 2) and the nature of the 'rights' (see Article 1(2)) provides the Commissioner with an intentionally broad mandate.

The draft Law provides a number of powers in support the Commissioner's primary and general functions, including the information gathering power in Article 8. The remit of children's commissioners in other jurisdictions, and the extent of their powers, varies greatly across the UK. By comparison, the draft Law is considered to provide the Jersey Commissioner with a significant presence, comprehensive range of functions, and adequate powers to significantly progress and promote child rights in the context of a small island community and government, which is itself committed to that very same outcome.

In relation to the Commissioner's power to request information, international standards recommend that NHRIs should be accorded such powers as are '*necessary*' to enable them to discharge their mandate '*effectively*', including the power to obtain any information '*necessary*' for assessing the situations falling within their competence (see General Comment No.2, para 9). The scope and extent of powers provided to NHRIs is, therefore, to be assessed in view of their mandate, the

context in which they operate and, as indicated by '*necessary*', may be balanced against other considerations.

The Commissioner has a power to request information from relevant authorities for the purposes of its primary and general functions. Requests must be reasonable but the Commissioner will be able to request information from public, third sector and private entities for a range of purposes, for example, whether that is to enable the Commissioner to formulate advice to Government or to look into matters affecting child rights.

The draft Law will limit the extent of the obligation on relevant authorities to disclose information to the Commissioner, and limitations are intended to reflect a balance between the role of the Commissioner, and pursuit of statutory functions, on the one hand and the nature of the authorities and information which they possess, on the other. As such, while relevant authorities are not prohibited from supplying information to the Commissioner, Article 8 seeks to enable some qualification of the extent of the obligation to supply information. In the case of certain relevant authorities, enabling reliance (by reference) on the absolute and qualified exemptions set out in the Freedom of Information (Jersey) Law 2011 ("2011 Law") is considered to achieve the intended policy balance. If a relevant authority declines to supply information on a qualified exempt basis, it will need to support that refusal and the Commissioner may appeal any refusal to the Information Commissioner.

As indicated above, the framing of powers for children's commissioners from other jurisdictions varies. The panel may be interested in the two examples set out below -

1. The English Commissioner has a general broad ranging information gathering power, which is applicable generally in relation to the Commissioner's functions, in a manner similar to the Jersey Commissioner. This power is qualified to an extent in that it only applies to persons exercising functions of a public nature, and as long as the request is reasonable, and is information that the body is able to disclose lawfully to the Commissioner. However, it does not create a legal gateway that overrides other legislation, for example, where that legislation restricts disclosure of confidential information to certain specified persons or for certain purposes.
2. The Northern Ireland Commissioner information gathering power is also broad, but is limited to the function of conducting investigations into certain authorities and, for that purpose, can obtain information from such persons and in such manner, and make such enquiries, as he thinks fit.

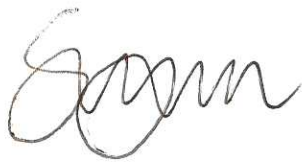
Development of the draft Law involved review and discussion by a range of officers, including an engagement day where the scope and extent of the Commissioner's powers was considered. A focus of this consideration was the proposed extent of the Commissioner's information gathering powers, and how they applied to different parts of government and other organisations, within the Jersey context. Amendments to various elements of the draft Law were made following these

discussions. It is felt that the draft Law achieves a pragmatic policy position, which was subsequently discussed and agreed by Council of Ministers, in consultation with the Children's Commissioner.

It is accepted that there are different approaches to enabling children's commissioners to pursue their mandate, but it is equally understood that there is no uniform or ideal model. The draft Law is felt to offer a sensible legislative framework for Jersey's first commissioner with a mandate for promoting and protecting the rights of children and young people.

I hope my response is of assistance. Please let me know if my officers can be of any further support to the panel's discussions or in understanding the approach to children's commissioner information gathering in powers taken in England and elsewhere in the British Isles.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Sam Mézec', written in a cursive style.

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