

Free + Equal: An Australian Conversation on Human Rights – Issues Paper Submission

The Queensland Family and Child Commission (QFCC) is pleased to provide a submission to the Australian Human Rights Commission (AHRC) in response to *Free + Equal: An Australian Conversation on Human Rights – Issues Paper April 2019*.

For further information on the submission, or the responses provided herein, AHRC officers are invited to contact the QFCC, as per the details below.

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Background

The Queensland Family and Child Commission (QFCC) was established on 1 July 2014 under the *Family and Child Commission Act 2014* (Qld; the Act). Under the Act, the QFCC was established to:

- promote the safety, wellbeing and best interests of children and young people
- promote and advocate the responsibility of families and communities to protect and care for children and young people
- improve the child protection system.¹

The Act provides the QFCC with a range of functions. These functions include: ‘to provide leadership and give expert advice to relevant agencies about laws, policies, practices and services’.² It is under this mandate that the QFCC makes this submission in response to the AHRC’s Issues Paper.

Practically, the QFCC works collaboratively to influence change so Queensland is a safe place where children, young people and their families thrive in supportive communities. The QFCC aims to promote children’s rights and participation, and ensure the best interests of children are considered in public policy and decision making.

¹ Refer section 4 of the *Family and Child Commission Act 2014* (Qld)

² Refer section 9(1)(g) of the *Family and Child Commission Act 2014* (Qld)

Response to Questions

The objective of the submission is to provide responses to the questions posed within the Issues Paper. The QFCC has not responded to all twelve questions posed in the Issues Paper, but has targeted responses where it has meaningful material to contribute – that is, to Questions 1-4, 8 and 9.

This submission focuses on the rights of children and young people.

Question 1: What human rights matter to you?

United Nations Convention on the Rights of the Child (UNCRC)

The UNCRC was ratified by Australia in 1990 and explicitly documents Australian governments' commitment and duty to ensure all children in Australia enjoy the rights set out in that treaty.³

Children and young people need their own set of rights to address their unique vulnerabilities, which increase the risk of rights infringements and can result in inequality, maltreatment and exploitation.

The UNCRC is a comprehensive statement of the rights of children. Its promotion should represent a primary objective of the AHRC.

Voice

In 2018, the QFCC provided an opportunity for Queensland's children and young people to have a say about their everyday lives, priorities, concerns and visions for their communities and futures, through the *Growing up in Queensland Project*.

The QFCC gathered insights from more than 7,000 Queenslanders aged 4 to 18. Children and young people, from South East Queensland to the Torres Strait and west to Mt Isa and Longreach, shared their voices. Their thoughts, views, perspectives and wishes were recorded in *This place I call home: the views of children and young people on growing up in Queensland*.⁴

Children and young people continue to tell the QFCC they care about their right to be heard.

They want the opportunity to discuss issues, form opinions and find solutions. Young Queenslanders also said they want adults to actively listen to them without judgment. More than a quarter highlight the need for leaders and decision-makers to listen to their views.⁵

Children and young people in Queensland said they strongly value face-to-face interaction, particularly having two-way conversations which allows them to participate in their communities in a more meaningful way.⁶

*"We value just being heard. It has impact."
Youth group participant, Far North Queensland*

³ Australian Human Rights Commission, About Children's Rights [webpage], viewed 16 August 2019, <https://www.humanrights.gov.au/our-work/childrens-rights/about-childrens-rights>.

⁴ The State of Queensland (Queensland Family and Child Commission) 2018, *This place I call home: The views of children and young people on growing up in Queensland*, <https://www.qfcc.qld.gov.au/>.

⁵ The State of Queensland (Queensland Family and Child Commission) 2018, *This place I call home: The views of children and young people on growing up in Queensland*, <https://www.qfcc.qld.gov.au/> (p. 5).

⁶ The State of Queensland (Queensland Family and Child Commission) 2018, *This place I call home: The views of children and young people on growing up in Queensland*, <https://www.qfcc.qld.gov.au/> (p. 24).



A child's right to be heard is a primary right under the UNCRC.

- **Article 12:** children and young people have a right to express their views on matters that affect them and for those views to be taken seriously in accordance with their age and maturity.⁷

The right to be heard is an avenue through which rights for children and young people are realised. Children and young people who have a voice can speak up about the infringement of other rights and identify barriers to the full enjoyment of their rights.

Listening to the voices of children and young people gives policymakers the opportunity to understand the needs of children and young people and make better decisions to improve their lives.

Connection to culture

Aboriginal and Torres Strait Islander children hold distinct cultural rights.

- **UNCRC, Article 30:** Aboriginal and Torres Strait Islander children have the right to enjoy their own culture and to use their own languages⁸
- **United Nations Declaration on the Rights of Indigenous Peoples:** Aboriginal and Torres Strait Islander people have the right to maintain and develop all aspects of their culture⁹
- **Human Rights Act 2019 (Qld), Section 28:** the distinct cultural rights of Aboriginal and Torres Strait Islander peoples are recognised, including the rights to practice their beliefs and teachings, use their languages, protect and develop their kinship ties, and maintain their relationship with the lands, seas and waterways.¹⁰

For many Aboriginal and Torres Strait Islander children and young people, identity is centred around culture. Culture helps them make sense of the world around them and their place in it. The QFCC heard from children and young people through the *Growing up in Queensland Project* about the importance of 'caring for country and culture', they said caring for country keeps culture strong, making it extremely important to their identity.¹¹

Being able to practise culture is not only important for an Aboriginal and Torres Strait Islander child's personal growth and wellbeing but contributes to strong communities. Connection to culture is known to contribute to better health outcomes in Aboriginal and Torres Strait Islander communities.¹²

Maintaining a connection to culture is made difficult in a society still feeling the effects of colonisation. However, Queensland is continuing to make positive steps towards helping Aboriginal children and young people to keep culture strong and proud.

The QFCC urges the Australian Human Rights Commission to advocate the primacy of this right so all Aboriginal and Torres Strait Islander children and young people can fully enjoy their cultural rights.

⁷ *Convention on the Rights of the Child*, opened for signature 20 November 1989, 1577 UNTS 3 (entered into force 2 September 1990) art 12.

⁸ *Convention on the Rights of the Child*, opened for signature 20 November 1989, 1577 UNTS 3 (entered into force 2 September 1990) art 30.

⁹ *Declaration on the Rights of Indigenous Peoples*, GA Res 61/295, UN GAOR, 61st sess, 107th plen mtg, Supp No 49, UNDOC A/RES/61/295 (13 September 2007).

¹⁰ *Human Rights Act 2019 (Qld)*, s 28.

¹¹ The State of Queensland (Queensland Family and Child Commission) 2018, *This place I call home: The views of children and young people on growing up in Queensland*, <https://www.qfcc.qld.gov.au/> (p. 84).

¹² Healing Foundation, 2013, *Our children, our dreaming: a call for a more just approach for Aboriginal and Torres Strait Islander children and families*, Aboriginal and Torres Strait Islander Healing Foundation, Canberra, p. 4.

Recommendation

The QFCC recommends:

- the AHRC advocate the rights of children and young people as reflected in the United Nations *Convention on the Rights of the Child*
- This should include a primary focus on:
 - the right to be heard
 - the right to connection to culture.

Question 2: How should human rights be protected in Australia?

The recent assent of the *Human Rights Act 2019* (Qld; the Act) in Queensland has been instrumental in the broad promotion of individual and organisational responsibility for the realisation of human rights. The Act creates a legislated rights framework for all Queenslanders.

The Act protects twenty-three human rights in law, with the main objective of:

- protecting and promoting human rights
- helping to build a culture in the Queensland public sector that respects and promotes human rights
- helping to promote a dialogue about the nature, meaning and scope of human rights.

From 1 January 2020, the Act will require government entities to consider human rights in all decision-making and action, and will allow for the limitation of human rights only in certain circumstances and after careful consideration.¹³

The Act acknowledges the essential role human rights play in our society, and will lead to improved government legislation and policy, while protecting vulnerable Queenslanders.

Under the Act, the Queensland Human Rights Commission will have the power to receive and conciliate human rights complaints. From 1 January 2020, anyone who's rights have been limited by a public entity will be able to make a complaint to the Queensland Human Rights Commission.

Recommendation

The QFCC recommends:

- the AHRC acknowledges the importance of complaints mechanism to address the contravention of human rights
- any complaints mechanism be accessible for children and young people.

Question 3: What are the barriers to the protection of human rights in Australia?

With respect to their rights, children and young people have unique vulnerabilities, which include:

¹³ The State of Queensland (Department of Justice and Attorney-General), Human Rights [webpage], viewed 28 October 2019, [https://www.justice.qld.gov.au/initiatives/human-rights#targetText=The%20Human%20Rights%20Act%20will,circumstances%20and%20after%20careful%20consideration.&targetText=If%20you%20are%20not%20happy,\(from%201%20January%202020\).](https://www.justice.qld.gov.au/initiatives/human-rights#targetText=The%20Human%20Rights%20Act%20will,circumstances%20and%20after%20careful%20consideration.&targetText=If%20you%20are%20not%20happy,(from%201%20January%202020).)

- physical inferiority, and level of emotional and intellectual development
- dependence on adults due to their legal status which, along with cultural practices, restricts their capacity to make their voices heard and be involved in the decisions that affect them
- reliance on adults for necessities and access to services that build health and wellbeing.¹⁴

These vulnerabilities increase the risk of the rights of young people being infringed. However, some children and young people have additional vulnerabilities that further increase the risk of rights infringements.

Children and young people can experience greater vulnerability due to the intersection of social characteristics, such as disadvantage and poverty, being from a non-English speaking or asylum seeker background, and identifying as LGBTIQ+ or Aboriginal and Torres Strait Islander. Children experiencing homelessness or mental illness, and children with disability are particularly at risk of having their rights infringed and their protections not upheld.¹⁵

Children and young people within institutionalised settings, such as youth detention and out-of-home care, face increased vulnerability.¹⁶

Specific and targeted strategies to address each of these vulnerabilities are required to give children and young people full access to the enjoyment of their rights.

Recommendation

The QFCC recommends the AHRC:

- take note of the vulnerabilities to which children and young people are subject, and which increase the risk of rights infringements
- consider specific and targeted strategies to prevent rights infringements for children and young people.

Question 4: How should the Government address the situation where there is a conflict between different people's rights?

A range of common circumstances exist in which children and young people's rights conflict with the rights of others. The balance of children and young people rights with those of their parents has been a focus in recent years.

Not Now, Not Ever: Putting an End to Domestic and Family Violence in Queensland highlights the conflict between the rights of children and their parents in proceedings in the Family Court of Australia. The report noted the common concern of the court's focus on parents' right to a relationship with their child, without consideration for the best interests of the child, where domestic and family violence is present.¹⁷

'Best interests' is an important concept under the UNCRC:

¹⁴ Child Rights International Network, Children in Vulnerable Situations [webpage], access 28 October 2019, <https://archive.crin.org/en/home/rights/themes/children-vulnerable-situations.html>

¹⁵ Australian Human Rights Commission 2019, About Children's Rights [webpage], accessed 28 October 2019, <https://www.humanrights.gov.au/our-work/childrens-rights/about-childrens-rights>

¹⁶ Commonwealth, Royal Commission into Institutional Responses to Child Sexual Abuse 2017, *Final Report*, Volume 2 (p. 84).

¹⁷ Special Taskforce on Domestic and Family Violence in Queensland 2015, *Not Now, Not Ever: Putting an End to Domestic and Family Violence in Queensland*, viewed 28 October 2019, <https://www.csyw.qld.gov.au/campaign/end-domestic-family-violence/about/not-now-not-ever-report> (p. 270).

- **Article 3:** In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.¹⁸

Recommendation

The QFCC recommends that in all instances of conflict between the rights of a child and the rights of any other party, the best interests of the child must be the paramount principle.

Question 8: What should the Australian Human Rights Commission and the government do to educate people about human rights?

Educating children and young people about their rights reduces the risk that those rights will be infringed.

It is important that children and young people have access to clear advice about their rights, and that this advice and information be provided in child friendly way.

Through the *Growing up in Queensland Project* the QFCC has demonstrated the importance of meeting young people in their own communities, and applying broad messages, such as those about child rights, to their own context.

It is fundamentally important that those who work with children, such as educators, social workers, police and carers, have a detailed understanding of child rights. With the introduction of the *Human Rights Act 2019* (Qld), government officers will be required to ensure that they comply with the requirements of the Act. Government officers in Australia already have a responsibility to ensure that their engagement with children and young people complies with the requirements of the UNCRC.

Finally, it is important that the broader community is aware that children have rights and are aware of what these rights are.

Recommendation

The QFCC recommends AHRC:

- identify strategies and initiatives to present information about child rights to children and young people in their own communities
- reviews strategies and initiatives that skill key professions engaging with children, about child rights and their responsibilities in this regard
- identify options for raising broad community awareness of children's rights.

¹⁸ *Convention on the Rights of the Child*, opened for signature 20 November 1989, 1577 UNTS 3 (entered into force 2 September 1990) art 3.

Question 9: What actions are needed to ensure the government meets its obligations to fulfil human rights?

In the context of recommendations made by the Australian and New Zealand Child Commissioners and Guardians (ANZCCG) Group¹⁹, the QFCC advocates that the age of criminal responsibility in Australia be raised to at least 14 years.

The negative long-term impacts children and young people experience from early contact with the criminal justice system are well-documented. The younger a child has their first contact with the criminal justice system, the higher the chance of future offending.²⁰ Children who are arrested before 14 years are three times more likely than children arrested after 14 years to become chronic adult offenders.²¹

The criminal justice system does not address the needs of young offenders. Young offenders experience a range of risk factors including poverty, homelessness, abuse and neglect and mental illness.²² Raising the age of criminal responsibility would allow those vulnerable children and young people to access appropriate supports to improve their outcomes, instead of subjecting them to a system that further criminalises them.

Currently under Queensland legislation a person under the age of 10 cannot be arrested for, charged with, or convicted of a crime.²³ This is well below international standards, with the current European average standing at 14 years.²⁴ The United Nations has recommended Australia raise its minimum age of criminal responsibility to 14 years.²⁵

Recommendation

The QFCC recommends that the age of criminal responsibility in Australia be raised to at least 14 years.

¹⁹ Australian Human Rights Commission, Australian and New Zealand Children's Commissioners and Guardians Communique 12-14 November 2018 [webpage], viewed 28 October 2019, <https://www.humanrights.gov.au/our-work/childrens-rights/publications/australian-and-new-zealand-childrens-commissioners-and-0>

²⁰ Australian Institute of Health and Welfare 2017, *Young people returning to sentenced youth justice supervision 2015–16*, Juvenile justice series no. 21, cat. no. JUV 85, Canberra, AIHW (p. 5).

²¹ Alltucker K, Bullis M, Close D, and Yovanoff P 2006, *Different Pathways to Juvenile Delinquency: Characteristics of Early and Late Starters in a Sample of Previously Incarcerated Youth*, *Journal of Child and Family Studies*, 15(4), 479–492 (p.480).

²² The State of Queensland (Queensland Family and Child Commission) 2017, *The age of criminal responsibility in Queensland*, <https://www.qfcc.qld.gov.au/>

²³ *Criminal Code Act 1989* (Qld) s 29.

²⁴ Goldson B 2013, *Unsafe, Unjust and Harmful to Wider Society: Grounds for Raising the Minimum Age of Criminal Responsibility in England and Wales*, *Youth Justice*, 13(2), 111–130 (p. 115).

²⁵ United Nations Committee on the Rights of the Child, *Concluding observations on the combined fifth and sixth periodic reports of Australia*, UN DOC CRC/C/AUS/CO/5-6 (30 September 2019) para 48(a).