



Queensland
Family & Child
Commission

Policy Submission

Inquiry into Australia's Human Rights Framework

June 2023

Commissioner's introduction

The Queensland Family and Child Commission (QFCC) strongly supports the introduction of a Federal Human Rights Act. Formalising requirements to comply with human rights principles is a critical part of recognising our collective responsibilities under international treaties, protocols and conventions (international law). The QFCC is a statutory body of the Queensland Government. Its purpose is to influence change that improves the safety, wellbeing and rights of Queensland's children and their families. Under the *Family and Child Commission Act 2014*, the QFCC has been charged by government to review and improve the systems that protect and safeguard Queensland's children and young people. This submission has been prepared following our explicit commitment to advancing children's rights, laid out in the QFCC's *Strategic Plan 2022–2026*.¹ This submission outlines the importance of such an act and highlights the perspectives of Youth Advocates.

Summary of QFCC's submission

- ☐ Enact a Federal Human Rights Act.
- ☐ Support in principle the model proposed by the Australian Human Rights Commission in the *Free & Equal: A Position paper on a Human Rights Act for Australia* (Position Paper).
- ☐ In addition to the rights currently proposed in the Position Paper, include the rights set out by the United Nations Convention on the Rights of the Child, the United Nations Convention on the Rights of Persons with Disabilities and the United Nations Declaration on the Rights of Indigenous Peoples in a Federal Human Rights Act.
- ☐ Actively engage with children and young people who represent diverse views and experiences, including Aboriginal and Torres Strait Islander children and young people.
- ☐ Develop and implement targeted awareness programs to educate children, young people and adults about their rights.
- ☐ Establish effective complaints mechanisms which resolve systemic and practical barriers for children and young people to seeking to access recourse.
- ☐ Establish a dedicated, independent, appropriately empowered and resourced National Commissioner for Aboriginal and Torres Strait Islander children and young people and equivalent roles in every state and territory.

¹ Queensland Family and Child Commission. (2022). Strategic Plan 2022–2023. <https://www.qfcc.qld.gov.au/strategicplan>

A Federal Human Rights Framework

Human rights are the basic entitlements and freedoms that every person possesses. They affirm the inherent worth and dignity of every person, protect fundamental freedoms, promote equality and non-discrimination, and contribute to social progress and accountability. They provide a shared set of values and norms that hold governments and institutions accountable for their actions.

Australia does not have a comprehensive legal framework for safeguarding human rights at the federal level. This has been noted by United Nations Treaty bodies, which have stated that the incorporation of treaties into Australia's legal system has been inadequate.² The guiding principles outlined in international human rights treaties, to which Australia is a signatory, are not automatically part of Australia's domestic law. Unless specific legislation has been developed and included at the federal or state level, these principles do not form part of Australia's legal framework. This lack of integration needs to be addressed to ensure human rights are adequately protected within the country's legal system.

The QFCC recommends the development of a Human Rights Act by the Australian Government as a demonstration of its commitment to the protection of human rights. This act would provide several benefits, including:

- ☐ Establishing broad, foundational rights and freedoms that may not be adequately addressed within existing provisions.
- ☐ Enabling the comprehensive inclusion of all principles and rights protection statements referenced in international human rights law and United Nations Declarations.
- ☐ Establishing stringent scrutiny processes for new bills and legislation, implementation frameworks, and a process for assessing compatibility.
- ☐ Promoting community and professional education on human rights matters.
- ☐ Demonstrating a partnership and joint focus between political leadership and the community.

When discussing what a Federal Human Rights Act should include, a QFCC Youth Advocate stated:

"Explicit recognition of children's rights under the UN Convention on the Rights of the Child. The Act should state that all government policies and decisions must consider children's rights as outlined in the CRC. The Act should encompass a wide range of rights, including civil, political, economic, social, and cultural rights. This would ensure that children and young people are protected holistically and have their diverse needs addressed." QFCC Youth Advocate

Children and young people have general human rights, but they also require specific rights that recognise their special needs and protections. These rights are outlined in the United Nations Convention on the Rights of the Child (UNCRC). Core principles of the UNCRC include non-discrimination, the best interests of the child, the right to life, survival and development, and respect for the views of the child. Children and young people also have the right to be guided in the exercise of their rights by caregivers, parents and community members, in line with their evolving capacities.³ The Human Rights Act should reflect these principles and prioritise the wellbeing, views, and needs of children and young people in all decisions affecting them.

² See United Nations Committee's recent [concluding observations](#) for the Convention on the Rights of the Child; Convention on the Rights of Persons with Disabilities; International Convention on the Elimination of All Forms of Racial Discrimination; International Covenant on Civil and Political Rights.

³ United Nations Human Rights Office of the High Commissioner. (1989). Convention on the Rights of the Child. <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-child>

"A requirement that the best interests of the child be a primary consideration in all decisions affecting children. This is a core principle of the CRC. This principle requires decision-makers to prioritise children's well-being and consider their views and needs." QFCC Youth Advocate

"Provisions to ensure children's right to have a say in decisions that affect them, and for their views to be given due weight according to their age and maturity. This includes requiring the government to consult with children on policies that impact them." QFCC Youth Advocate

"I believe young people should have freedom to express their views and have them taken into account - however, there are still inhospitable environments, poor outreach and power imbalances that hinder this." QFCC Youth Advocate

The Human Rights Act should emphasise the importance of children's and young people's participation and ensure that their views are considered in decision-making processes. It should also outline the government's responsibility to consult with children, taking into account their age and maturity, particularly on policies that directly impact them.

"Strong protections for vulnerable groups of children, including Aboriginal and Torres Strait Islander children, children in detention, children with disabilities, and children in out-of-home care." QFCC Youth Advocate

"Adequate standards of living: The Act should guarantee children and young people access to essential services, such as healthcare, education, housing, and social support systems, to ensure they can enjoy a decent standard of living and reach their full potential." QFCC Youth Advocate

"Education and safe housing are key... Young people should have adequate healthcare both physical and mental." QFCC Youth Advocate

The QFCC advocates for strong protections for children and young people who do not experience the full enjoyment of their rights, including Aboriginal and Torres Strait Islander children and young people, children and young people in detention, children and young people with disabilities, and children and young people in out-of-home care. Adequate standards of living should be guaranteed through the federal Human Rights Act, ensuring equitable access to essential services such as healthcare, education, housing, and social support systems. These provisions aim to address the overrepresentation of Aboriginal and Torres Strait Islander children and young people in the child protection and youth justice systems, issues underpinned by inadequate education, health, housing and other universal services.

Operation of human rights Act in Queensland

Queensland Human Rights Act

On 1 January 2020, the *Queensland Human Rights Act 2019* (the Act) came into effect, making Queensland the third jurisdiction in Australia, alongside the Australian Capital Territory and Victoria, to establish a framework for protecting human rights. The Queensland Act adopts a dialogue model of human rights, imposing obligations on the three branches of government to consider, promote and safeguard human rights. These obligations include:

- Parliament must ensure that all new laws are assessed for compatibility with human rights.
- Ministers, departments and public entities must act in a manner that aligns with human rights and give due consideration to human rights when making decisions.
- Courts and tribunals are tasked with interpreting laws in a way that is compatible with human rights.

The Act serves as an essential component of administrative law obligations and oversight mechanisms, holding the government accountable. Its primary goals are to protect and advance human rights, foster a culture within the public sector that values and advocates for human rights, and encourage discussions regarding the essence, interpretation, and scope of human rights. The Act delineates 23 sections outlining protected human rights for all individuals within the state, while also mandating that Parliament take human rights into account when enacting legislation. These rights are primarily derived from the International Covenant on Civil and Political Rights, with additional provisions from the International Covenant on Economic, Social and Cultural Rights (right to education and right to health services), as well as one right from the Universal Declaration of Human Rights (property rights).

Almost all rights identified by the UNCRC are given express or implicit protection under the Act. For example, the Act protects recognition and equality before the law (section 15), the right to life (section 16), the right the protection of families as a fundamental group unit of society (section 26(1)), and the right to be free from unlawful or arbitrary interference with a person's privacy, family, or home (section 25).

Additionally, section 26(2) of the Act protects the right of every child, without discrimination, to the protection that is needed by the child, and is in the child's best interests, because of being a child. Section 48(3) of the Act also confirms that rights can be interpreted with reference to international law and the judgments of domestic, foreign and international courts and tribunals.

In Queensland, there is a statutory obligation for the government to adopt a human rights-based approach in lawmaking, policymaking and decision-making. The Act provides individuals with a mechanism to lodge complaints if their rights have been unjustifiably limited or violated. It extends protection to the rights of all individuals, including children and young people.

Queensland's legal safeguards for children's rights could be strengthened by explicitly requiring that the views of children and young people be taken into account in all decision-making processes affecting them.

The Act also clarifies that the rights it protects are supplementary to other laws and international treaties, including the UNCRC and the Convention on the Rights of Persons with Disabilities.

The role of children's commissioners

State and territory children's commissioners, advocates and guardians play an important role in maintaining the visibility of the rights and issues facing children who experience vulnerability, injustice and marginalisation.

Children's commissioners, advocates and guardians have a unique vantage point to observe, report and drive changes to improve upon the realisation of the rights of children and young people.

The QFCC operates as the state's Children's Commission under the *Family and Child Commission Act 2014*. The QFCC bears not only the responsibility but also the commitment to promote and protect the rights of children and young people in Queensland, extending beyond its status as a public entity. The QFCC's role is centred around advocating for the rights of children and young people and holding systems accountable when their rights are disregarded or when the balance of rights fails to serve the child's best interests. The QFCC has advocated for its establishing legislation to include clear responsibilities regarding children's rights. This would strengthen our proactive engagement on a range of issues that impact upon the rights of children, including, but not limited to, discrimination, disability support, equitable access to quality education and health services, family violence prevention and involvement with justice systems.

Under the *Safe and Supported National Framework for Protecting Australia's Children 2021-2031*, Australian, state and territory governments have committed to the *Aboriginal and Torres Strait Islander First Action Plan 2023-2026* (released on 31 January 2023). Action 7 of the First Action Plan is to establish and strengthen advocacy through Aboriginal and Torres Strait Islander Commissioners and similar roles. This seeks to address the overrepresentation of Aboriginal and Torres Strait Islander children in child protection systems and provide improved information sharing, data development and analysis.

The QFCC is advocating for a new dedicated function of the Commission, to establish a dedicated, independent, appropriately empowered and resourced Commissioner for Aboriginal and Torres Strait Islander children and young people to focus on issues of particular concern that impact adversely and disproportionately on the safety, wellbeing, rights and best interests of Aboriginal and Torres Strait children and young people. Inquiry into the Federal Human Rights Framework should deliver on commitments by all Australian, state and territory Governments to establish and strengthen safeguards for Aboriginal and Torres Strait Islander children and young people.

Awareness and education of rights

The primary objective of implementing a Human Rights Act is to transform the decision-making culture and instil a commitment to transparent, human rights-based decisions within public discourse. The ultimate goal is to establish a system where laws, policies and decisions undergo consistent evaluation through a human rights lens. However, to be effective, a comprehensive human rights awareness and education strategy is critical.

The United Nations Committee on the Rights of the Child (UN Committee) has recommended that governments strengthen their activities to raise awareness of the UNCRC, including by engaging the media and promoting the active involvement of children in public outreach activities. The UN Committee also recommended mandatory modules on human rights and the UNCRC in school curriculums and training programs for all professionals working with (or for) children. This includes all law enforcement officials, teachers, health personnel, social workers and personnel of childcare institutions, as well as state and local government officials.⁴

In 2022, the QFCC conducted annual surveys which asked Queensland adults and frontline workers about their understanding of the UNCRC. The overall level of understanding of the UNCRC among adults in Queensland was

⁴ Committee on the Rights of the Child. (2019). Concluding observations on the combined fifth and sixth periodic reports of Australia. https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC%2FC%2FAUS%2FQ%2F5-6&Lang=en

relatively low, with only 35 per cent agreeing to have a good working understanding of it.⁵ The survey of frontline workers in child protection and family support showed greater awareness, with 82 per cent of the participants agreeing that they have a good understanding of the UNCRC. This suggests that professionals working directly in these fields have a higher level of child rights awareness, which is essential for their roles in safeguarding and promoting the rights of children and young people.⁶

Our findings suggest that there is a need for continued efforts to improve child rights (and possibly human rights) awareness among the general population in Queensland. Public education and awareness of rights is currently handled by individual agencies, each focusing on how this relates to their own service delivery. While these initiatives are valuable, there is a need for coordinated education at both the state and national levels to ensure the consistent promotion of effective rights-based messaging for different audiences. Targeted initiatives, education campaigns and resources play a crucial role in enhancing awareness and understanding of rights, ensuring that human rights principles are more widely known and respected.

Complaint processes

An essential part of a right-respecting jurisdiction is effective human rights complaint mechanisms. To ensure that government is held to account, people must have formal avenues to seek redress and have their grievances addressed when their rights have been violated. For children and young people, formal complaints systems can present a number of barriers which may prevent them from formally raising their concerns.

“An independent oversight body to monitor compliance with the Act and investigate complaints, similar to a children's commissioner or ombudsman. This body should have powers to recommend policy and legislative changes.” QFCC Youth Advocate

The QFCC has previously identified that very few complaints are made by (or on behalf of) children and young people.⁷ The lack of such complaints does not mean children do not have concerns. Rather, children and young people experience significant barriers to making complaints, including fear of not being listened to, taken seriously or believed, and feeling like the complaints system is not child-friendly, overwhelming or unresponsive.⁸ In Queensland (or Australia), there is no central agency responsible for receiving complaints from children and young people.

The Queensland Human Rights Commission (QHRC) handles complaints under the Queensland *Anti-Discrimination Act 1991* and the Queensland *Human Rights Act 2019*. However, the number of complaints received by the QHRC from or on behalf of children and young people each year is relatively small. In the 2021-22 period, the QHRC accepted and finalised a total of seven complaints from, or on behalf of, children or young people. Out of these seven complaints, six were directed against public entities and alleged breaches of the *Human Rights Act 2019*.⁹

⁵ Queensland Family and Child Commission. (2022). Community perceptions survey 2022 report.

<https://www.qfcc.qld.gov.au/sites/default/files/2022-11/Community%20survey%20report%202022.PDF>

⁶ Queensland Family and Child Commission. (2022). Child protection and family support workforce survey 2022 report.

<https://www.qfcc.qld.gov.au/sites/default/files/2022-11/Workforce%20survey%20report%202022.PDF>

⁷ Queensland Family and Child Commission. (Unpublished). Creating a child friendly complaint system.

⁸ Commissioner for Children and Young People Western Australia. (2013). Are you listening? Guidelines for making complaints systems accessible and responsive to children and young people. <https://www.ccyp.wa.gov.au/media/1414/report-are-you-listening-guidelines-for-making-complaints-systems-accessible-and-responsive-to-children-and-young-people-june-2013.pdf>

⁹ Information about the Queensland Human Rights Commission's complaints process can be found here, <https://www.qhrc.qld.gov.au/complaints>.

Regarding complaints specifically related to human rights issues concerning children, whether made by children themselves or not, the QHRC accepted and finalised 26 complaints related to the protection of families and children, and 18 complaints concerning the right to education. The QHRC accepted and finalised eight complaints related to child safety and 13 complaints related to public education, which are sectors likely to be involved with children and young people.

While some complaints related to children's rights and relevant sectors are being processed by the QHRC, the number of complaints received from or on behalf of children and young people remains relatively low. This indicates that there may be barriers or factors limiting children's ability to effectively access and utilise the complaints process within the QHRC. Special consideration should be given to addressing the systemic and practical barriers encountered by children and young people when establishing effective complaint mechanisms.