



Review of Queensland's Human Rights Act

Submission to Independent Reviewer, Professor Susan Harris Rimmer

19 June 2024

This submission is from Save the Children and 54 reasons.

Save the Children is a leading global non-government organisation that exists to advance children's rights. 54 reasons is our Australian service delivery arm, working alongside children and their families and communities in accordance with the 54 articles in the United Nations Convention on the Rights of the Child (CRC). As Australia's leading child rights organisation, we are guided by the CRC in all we do.

The following brief comments about the Human Rights Act and children's rights are based on:

- Our experience working directly with children and families across Queensland, comprising a significant service portfolio spanning early childhood development, family support, domestic and family violence, victim support, youth justice (early intervention, bail support and transition from detention) and other specialist services and programs
- Our perspective as a child rights organisation that is engaged with legislative and policy frameworks for protecting and upholding children's rights across Australia, nationally and at state and territory level.

Queensland's Human Rights Act

Our Human Rights Act should be a source of pride for everyone living in Queensland. It represents a clear statement by the Queensland Parliament – and for Queensland communities – that our society, government and legal system are founded on respect for fundamental human rights that everyone possesses and cannot be lost or taken away.

This review is an opportunity to reflect on how the protection of rights can be further strengthened in Queensland. It comes at a time when children's rights in particular are under considerable pressure. The nature and importance of children's rights is, in some quarters, both contested and widely misunderstood. A renewed and strengthened commitment to human rights – including children's rights – could hardly be more timely.

Priorities for additional protection of the human rights of children

In principle, the Human Rights Act should comprehensively protect the rights of children. Children's rights are part of the core set of human rights obligations to which Australia has agreed, and the CRC is a core human rights treaty. At the same time, children's rights are in many respects distinctive, and require specific focus if the Human Rights Act is to achieve its aims. This should include provisions to:



- Recognise government's responsibility for upholding children's rights, including by addressing root causes and underlying conditions leading to rights being violated
- Include all rights set out in the CRC and the UN Declaration on the Rights of Indigenous Peoples (UNDRIP)
- Fully uphold children's participatory rights in line with the CRC.

We also recognise there are many legal, practical and other considerations – and constraints – to be balanced in designing an updated Human Rights Act. In light of this, we have identified five priorities for additional protection of children's rights in an updated Human Rights Act. This list is primarily based on our observations of the areas of greatest pressure on children's rights, and where the current law does not protect children's rights, in Queensland.

1. *Rights relating to children's safety and standard of living*

A fundamental challenge facing the drafters of any Human Rights Act is that children's rights – like human rights as a whole – are interrelated, interdependent, and indivisible. This means that when not all rights of children are included in the Act, significant gaps are created in the overall protection and advancement of children and their rights and development. In Queensland, this is particularly acute – and visible – in the persistent challenges relating to:

- High rates of maltreatment and children and families in contact with statutory child protection services, including intervention and removal of children from families
- Large over-representation of Aboriginal and Torres Strait Islander children in child protection and out-of-home care
- Inadequate housing for women and children who have left their homes because of domestic and family violence
- Poverty and its impacts remaining unaddressed as a root cause of a large proportion of child rights violations and harms to children, including those listed above.

A strengthened Human Rights Act could play a valuable role in addressing these interrelated challenges. Priorities for the Human Rights Act in this respect would include:

- The Act should include children's right to an adequate standard of living. This is a specific right of children that includes obligations on government to ensure that parents, caregivers and families are supported to play their role in upholding this right. It includes government's obligation to ensure adequate housing is available.¹
- The Act should be strengthened to better protect children's safety. For example, Article 19 of the CRC enshrines children's right to be safe. Along with other relevant articles in the CRC, Article 19 sets out specific obligations on government to protect children from maltreatment of all kinds, support families towards that end, and support children's recovery when harmed, which extend significantly beyond the existing provisions of the Human Rights Act. The Human Rights Act should include these rights and requirements.

¹ CRC Article 27 and other relevant articles.



- Relatedly, the Act should be strengthened to better support families, as an essential environment and pre-condition for realising children’s rights.² For example, the CRC makes clear that governments should support families to provide a safe and nurturing environment where children can thrive, in accordance with children’s best interests, rather than removing children from their families through late, harmful statutory intervention. These requirements extend beyond the general right to protection of families and children in section 26 of the Human Rights Act. The Act should be strengthened to make these obligations clearer.

2. Rights relating to children and the criminal justice system

Many of the clearest, most acute and longest standing violations of children’s rights in Queensland relate to children’s involvement with the criminal justice system.³ We strongly recommend that the protections available under the Human Rights Act be strengthened in this respect. This should include both additional rights and strengthened enforcement and accountability mechanisms.

For example, Article 37 of the CRC enshrines the fundamental requirement that the arrest, detention or imprisonment of a child must be used only as a measure of last resort and for the shortest appropriate period of time. The Human Rights Act should include that requirement.

More broadly, the Human Rights Act should include, or give greater emphasis to, foundational rights of children which, if upheld, would prevent their contact with the criminal justice system or require earlier intervention and diversion to avoid repeated contact with that system, including those noted above relating to children’s safety and standard of living.

It is also notable that there are many examples of existing practices that are inconsistent with rights that are currently contained in the Human Rights Act. For example, children are regularly held in police watch houses despite the Act’s requirement that children be segregated from adults in detention.⁴

3. Children’s participatory rights

Participatory rights are of particular significance for children, as recognised in Article 12 of the CRC. Indeed, as the UN Committee on the Rights of the Child has stated, Article 12 is ‘a **unique** provision in a human rights treaty; it addresses the legal and social status of children, who, on the one hand lack the full autonomy of adults but, on the other, are subjects of rights’.⁵

Accordingly, particular attention should be paid to ensuring that children’s participatory rights are fully upheld through the Human Rights Act. This could include the creation of a duty

² This should adopt an expansive and understanding of ‘families’ that reflects culture and kinship relationships wherever relevant, in line with child rights and human rights principles.

³ See, eg, Save the Children and 54 reasons, 2023, *Putting children first: A rights respecting approach to youth justice in Australia*; Queensland Family and Child Commission, 2023, *Queensland Child Rights Report 2023 – Spotlight: Youth Justice in Queensland*.

⁴ Section 33(1).

⁵ Committee on the Rights of the Child, *General Comment No. 12 (2009), The right of the child to be heard*, CRC/C/GC/12, 20 July 2009, [1] (emphasis added).



requiring public entities to ensure children’s participation when making decisions that affect children, supported by legislative and administrative requirements to ensure meaningful participation, transparency and accountability. The ‘participation duty’ proposed by the Australian Human Rights Commission in its model Federal Human Rights Act and supported by the Federal Parliamentary Joint Committee on Human Rights could be a useful starting point.⁶

As proposed by the AHRC, any general participation duty should include specific reference to children and specific provision for how children’s participatory rights would be upheld.

4. *Right to self-determination and UNDRIP*

Indigenous peoples have a fundamental right to self-determination. This is recognised in UNDRIP and in the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights, and in Queensland is most relevant to Aboriginal and Torres Strait Islander peoples. There is a crucial intersection between children’s rights and other rights of Aboriginal and Torres Strait Islander peoples. UNDRIP contextualises children’s right to culture and the importance of this right to the realisation of other rights. It also provides a framework for enabling genuine self-determination as a fundamental right and a principle that can secure access to other rights.

The Human Rights Act should give full effect to UNDRIP. The specific provisions in the Act should reflect advice from Aboriginal and Torres Strait Islander organisations, individuals and communities with the appropriate authority and expertise.

5. *Right to a healthy environment*

A clean, healthy and sustainable environment is a human right in itself. It is also the basis for fulfilling nearly all other rights of children. The right has been recognised by the UN Human Rights Council, the UN General Assembly and the UN Committee on the Rights of the Child.⁷ In particular, climate change undermines every aspect of children’s rights – their right to health, wellbeing, safety, housing, education, an adequate standard of living, culture, non-discrimination, and many others. The Human Rights Act should include this right.

Victims’ rights

We understand that the review is considering whether victims’ rights in the Victims of Crime Assistance Act 2009 should be included in the Human Rights Act. We suggest two overarching considerations are relevant.

First, victims of crime should be appropriately protected and supported, including by law, in line with established human rights standards. Our perspective on this is informed by – among other things – our work as a partner provider of the VictimConnect service, the state-wide specialist counselling and case management service for victims of violent crime.

⁶ *Report of Inquiry into Australia’s Human Rights Framework*, May 2024.

⁷ Human Rights Council resolution 48/13; General Assembly resolution 76/300; UN Committee on the Rights of the Child, *General comment No. 26 (2023) on children’s rights and the environment, with a special focus on climate change*, 22 August 2023, [6]-[8], [63].



Second, if victims' rights are included in the Human Rights Act, it is important that this be done in a way that reflects the balanced and interdependent nature of human rights as a whole. This should include ensuring that protections for victims' rights do not inadvertently infringe upon the rights of accused children in the justice system, and fully recognising that children who come into contact with the criminal justice system are commonly themselves victims of crime.

Override provisions

The Queensland Government overrode the Human Rights Act twice in 2023 to enact youth justice measures that are incompatible with children's rights, including to criminalise breach of bail by children and allow children to be detained for extended periods in police watch houses as formalised detention centres.⁸ We make the following observations about these overrides:

- It cannot be credibly argued that the rights-incompatible measures were responding to 'exceptional circumstances' as required by the Human Rights Act, when compared to the examples in the Act: 'war, a state of emergency, an exceptional crisis situation constituting a threat to public safety, health or order'. Despite the rhetoric in some sections of the media and parts of the community, there is no evidence that a 'youth crime crisis' exists, nor that the measures requiring overrides would be effective in preventing or reducing children's contact with the youth justice system.
- It is at least arguable that other measures enacted since the Human Rights Act commenced have also been incompatible with human rights, even though they were not the subject of an override declaration. A recent example is the removal of the fundamental child rights principle that detention of children must be a last resort.⁹
- The operation of the override provisions to date highlights the need for strengthened human rights scrutiny of legislation at every stage of its development, including at introduction into Parliament.
- We also recommend that the Human Rights Act be strengthened to ensure that it can only be overridden in truly exceptional circumstances.

Further information

We would be delighted to provide further information to assist this important review. To discuss, please contact:

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⁸ Strengthening Community Safety Bill 2023, passed 16 March 2023; Child Protection (Offender Reporting and Offender Prohibition Order) and Other Legislation Amendment Bill 2022, passed 24 August 2023.

⁹ Queensland Community Safety Bill 2024, introduced 1 May 2024. We note the Government has reportedly indicated it has legal advice that removing, or rewording, this principle does not violate the Human Rights Act.