



Submission to the Parliamentary Inquiry into Australia's Human Rights Framework

June 2023

Introduction

As South Australia's Commissioner for Children and Young People, I welcome the opportunity to provide a submission to the Parliamentary Joint Committee on Human Rights Inquiry into Australia's Human Rights Framework.

My mandate is to promote and advocate for the rights, interests and wellbeing of all children and young people in South Australia. My role includes ensuring that the State meets its obligations in relation to the United Nations Convention on the Rights of the Child (UNCRC).

Although Australia has ratified the UNCRC and other international human rights treaties, Australia's current legal framework for protecting human rights is inadequate and piecemeal. This Inquiry presents an opportunity to fully implement these obligations, including articles of the UNCRC, into domestic law.

A Human Rights Act is needed at both a state and federal level to contribute towards better realisation of children's rights in Australia. To be effective, a new National Human Rights Framework must ensure people of all ages and backgrounds both understand and can exercise their rights, and that leaders and decision-makers are aware of their obligations and accountable for decisions and outcomes that affect children's lives.

Background and summary of recommendations

This submission focuses on children and young people, drawing on my experience as their systemic advocate in South Australia. It is informed by my engagement with tens of thousands of children and young people since 2017, including insights from children aged 8 to 12 years old as part of my annual Student Voice Postcards initiative, and from young people who are members of my Advisory Council. It is also informed by conversations with a range of adults – including parents, educators, service providers and advocates – who have raised systemic concerns about decisions and actions that appear to breach fundamental rights for children.

I aspire to a South Australia and an Australia where leaders, decisionmakers, organisations, and service providers across every sector and community proactively consider children's rights as core business rather than an afterthought.

Many children and young people are leading happy and healthy lives and feel respected by the adults around them. However, 1 in 6 children in Australia are growing up in poverty,¹ and too many children experience discrimination because of their background or because they are children.² Children and young people are often excluded from decisions that affect them, and they generally lack the power and resources to hold decision-makers or service providers to account.

Many children do not know that they have rights, or what they are or whether and how they're protected. Where children are aware that governments have a responsibility to protect their rights, there is often a gap between their expectations and how policies, systems and laws operate in practice.

My annual *Child Rights Progress Reports* monitor the South Australian government's progress in meeting its obligations under the UNCRC in seven key areas: child health, child justice, child protection, disability, education, environment and physical punishment.³ A Human Rights Act would significantly aid all Australian governments to fulfil these obligations and better respond to systemic human rights concerns that are repeatedly raised by the Committee on the Rights of the Child and other international treaty bodies.

When describing the community and world they want to live in, children and young people focus on equality, fairness, and respect. A Human Rights Act would protect these values and ensure children's rights are at the centre of laws, policies and decision-making, and provide clear pathways to seek justice when children's rights are ignored or breached.

The Universal Declaration of Human Rights and the UNCRC both recognise that childhood is entitled to special care and assistance and that children require special safeguards and additional protections to adults. Australia's new Human Rights Framework should reflect this. Specifically, I recommend that the Australian Government:

1. **Introduce a federal Human Rights Act as part of a new National Human Rights Framework that is grounded in children's rights.**
2. **Address poverty as a systemic barrier to children's rights and strengthen human rights protections for future generations.**
3. **Provide comprehensive human rights education for all people to know their rights and for public authorities to know their obligations.**
4. **Promote accountability and measure progress on children's rights over time.**

If you would like to discuss anything further, please do not hesitate to contact my office.

Yours sincerely,



Helen Connolly

Commissioner for Children and Young People
Adelaide, South Australia

1. Introduce a federal Human Rights Act as part of a new National Human Rights Framework that is grounded in children's rights.

I support the introduction of a federal Human Rights Act as part of a new National Human Rights Framework. The new Framework should clearly articulate children's rights and be grounded in the UNCRC.

This means focusing on children as active citizens entitled to a full range of civil, political, social, economic and cultural rights, and acknowledging that rights are universal, inalienable, indivisible and interrelated – that they are for everyone, everywhere and all the time. This includes recognising and protecting children's rights in relation to physical punishment, including that children should be safe from violence from parents and anyone who looks after them (Article 19), at school (Article 28) and protected against cruel and degrading treatment (Article 37). This means implementing the Committee on the Rights of the Child's recommendation to outlaw corporal punishment in all settings, including in the home, in public and private schools, in detention centres and alternative care settings, and to repeal the legal defence of 'reasonable chastisement'.⁴

I worry about...

"not having a right. and being taken advantage of by somebody."

– 11 year old

"children who have had their rights and fortunes stolen"

– 12 year old

The new Act and Framework should fully implement articles of the UNCRC and embed the following principles of a children's rights approach, as outlined in the *The Right Way*,⁵ a practical guide developed by the Children's Commissioner for Wales to help public authorities give effect to children's rights in decision-making, policy and practice:

- **Embedding children's rights** – children's rights are at the core of decision-making, planning and service delivery.
- **Equality and non-discrimination** – every child has opportunities to make the most of their talents and potential.
- **Empowering children** – every child has access to information and resources that enable them to exercise their rights, and hold accountable the individuals and institutions that affect their lives.
- **Participation** – every child has meaningful opportunities to influence decisions about their lives.
- **Accountability** – public authorities are accountable to children for decisions, actions and outcomes that affect children's lives.

These principles are not intended to be used in a particular order, but rather they should be used together to inform decision-making. According to a 2022 evaluation of *The Right Way*, the framework was widely considered to be effective in 'measuring rights-based

practice and putting action to the pledges and promises that are made with good intention'.⁶

Existing human rights Acts and Charters in Victoria, Queensland and the Australian Capital Territory are leading the way and providing better outcomes related to health, wellbeing and safety, housing and relationships, education and employment. A range of case studies demonstrate the difference a Human Rights Act can make to children's lives, particularly those who are most marginalised and face discrimination on multiple grounds. This includes in situations where:

- Children are at risk of being suspended, excluded or expelled, including due to unidentified or unsupported disability.⁷
- School fees discriminate against low-income families or children granted refugee status or seeking asylum.⁸
- Children are denied family relationships and connection to culture, including in the context of out-of-home care placements, youth detention, or parental incarceration.⁹
- Children in youth detention are denied proper education, cultural rights, isolated, and remanded in custody for long periods of time or detained in adult prisons.¹⁰
- Children living with complex disability, mental health and behavioural needs are in voluntary out of home care placements due to being unable to live safely at home.¹¹
- Policies and services, including in education and healthcare settings, discriminate against trans or gender diverse young people.
- Children and families are at risk of homelessness, including in the context of unlawful evictions or domestic violence.¹²



Who are you and what do you care about?

Helen, The Commissioner for Children and Young People, wants to know!
Please flip the postcard over and answer a few questions.

I welcome key elements of the model proposed in the Australian Human Rights Commission's *Free & Equal Position Paper*,¹³ in particular the 'positive duty' to give proper consideration to and act compatibly with human rights. This is critical insofar as it will go beyond existing legislation that focuses on negative protections against discrimination.

The 'participation duty' that will require public authorities to ensure the participation of children in decisions 'that directly or disproportionately affect their rights' is also welcome. However, it is critical that participation is meaningfully supported and understood as a process rather than an end in itself. The right to be heard (Article 12) is the right that children and young people consistently report having least access to, yet as the Committee on the Rights of the Child has emphasised, Article 12 is not only central to the 'correct application of Article 3 [the best interests of the child]', but also a guiding principle of the UNCRC, meaning that it 'should also be considered in the interpretation and implementation of all rights'.¹⁴

A Human Rights Act is also needed at a state level to ensure full protection of human rights in South Australia, and the implementation of a Commonwealth Act should accelerate progress at a state and territory level. Clear articulation of human rights in both state and federal legislation will:

- Lead to better decision-making and improve access to services, thereby helping to address discrimination, break cycles of disadvantage, and improve the wellbeing of children, families and communities. This is especially important when state and federal services overlap.
- Increase awareness and understanding of rights and promote transparency and trust in government, particularly when supported by comprehensive education (see Recommendation 3).
- Embed proactive and early consideration of rights to prevent human rights breaches, thereby reducing costly Royal Commissions.
- Provide guidance to navigate complex situations by ensuring human rights considerations are built into decision-making from the outset. This is particularly important in the context of crises which may disproportionately impact children's rights, such as the COVID-19 pandemic.¹⁵

"Kids want to be included. The government & world leaders hold our future, yet exclude us from shaping it. If we are to trust others, they should trust us and include us in what may very well shape our lives."

– 14 year old

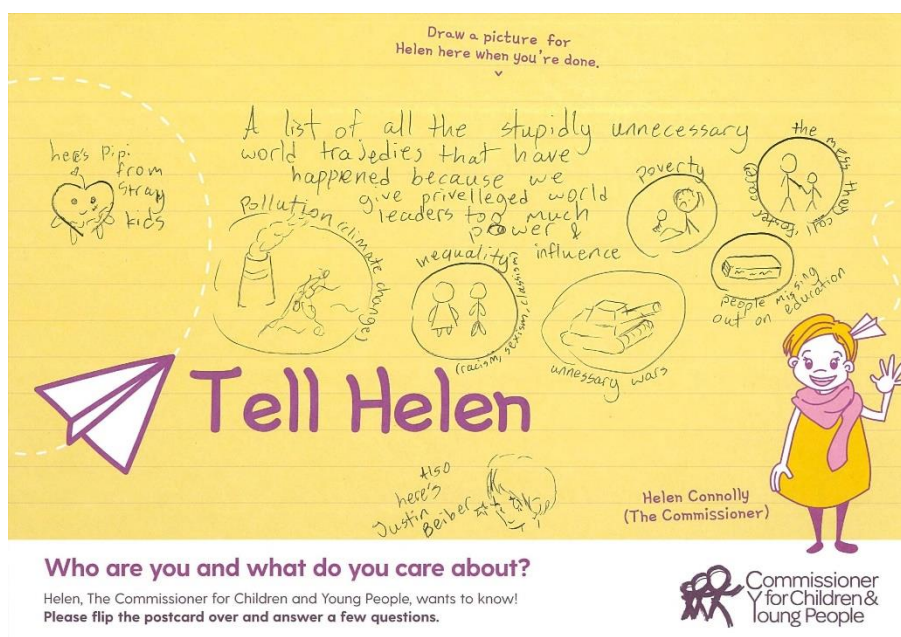
2. Address poverty as a systemic barrier to children's rights and strengthen human rights protections for future generations.

To complement a Human Rights Act as part of a new Human Rights Framework, I recommend that the Australian government introduce:

- A **Child Poverty Act** that will measure, identify and act on reducing child poverty as a systemic barrier to the realisation of children's rights;¹⁶ and
- A **Future Generations Act** that will consider the impact of decisions on future generations and strengthen human rights protections for future generations.

Addressing the structural factors that create and perpetuate poverty is key to ensuring Australian governments meet their human rights obligations. New Zealand's *Child Poverty Reduction Act 2018* requires the government to set targets and report annually on measures related to the causes and consequences of child poverty, as well as how each Budget is reducing child poverty. Since the Act commenced, New Zealand has implemented a range of policies to facilitate progress towards child poverty reduction. The latest Child Poverty Report shows child poverty rates are trending downwards on all nine income and material hardship measures.¹⁷

Recognising that decisions taken today can have a discriminatory impact on future generations is also critical to advancing and protecting human rights, as detailed in my submission to the Department of Treasury's *Measuring What Matters Inquiry*.¹⁸ Wales' *Well-being of Future Generations (Wales) Act 2015* requires public services to collaborate towards seven national wellbeing goals, including prosperity, equity, cohesive communities, thriving culture and global responsibility. The Welsh government reports annually on progress, including a specific report on children's wellbeing.¹⁹



3. Provide comprehensive human rights education for all people to know their rights and for public authorities to know their obligations.

Comprehensive human rights education should be a foundation of a new Human Rights Framework that is easily understood by people of all ages and backgrounds, including children and young people. It is also critical that all individuals and authorities are supported to understand and fulfil their children's rights obligations, including parents, educators, service providers, community organisations, and decisionmakers across all sectors.

When I have asked children aged 8 to 12 years old what they want grownups to know via my Student Voice Postcards Initiative, several children highlighted that 'children have rights too' or that children 'should have rights'. It does not seem reasonable to expect children to be informed about their rights if they are telling us that these rights are not consistently being upheld in their interactions with adults and service systems, including in schools, workplaces and across the community.

I want grownups to know...

"Kids are very smart and should have rights!"

– 10 year old

"that we have our rights and we can not be forced to do something."

– 11 year old

Although human rights are mentioned in Australian Curriculum documents, the delivery of the curriculum is inconsistent across schools and sectors. Many children and young people report making it through their years of schooling without learning about human rights or the systems and processes that affect their lives. This is reflected in results from the most recent National Assessment Program – Civics and Citizenship (the NAP-CC). In 2019, only 53% of Year 6 students and only 38% of Year 10 students across Australia attained the proficient standard for civics and citizenship.²⁰

The experiences shared by young people in Years 10 to 12 who are members of my Advisory Council also reflect this inconsistency. Some young people reported that rights were covered in a 'very basic' way in their civics and citizenship education. They also reported that human rights are generally 'not spoken about a lot', although some older students who had completed legal studies reported covering rights in more depth.

Young people need information about rights from a younger age, including about what rights are, why they are important, and what they can do if their rights have been breached. Some members of my Advisory Council were calling for rights education that 'puts rights into context' and highlights how they are relevant to their lives in Australia and in the twenty-first century. This is critical, as many of them reported that their rights education was limited to other places and time periods, such as in the context of Second World War, or through looking at the American Constitution to 'see what rights they have there.'

Human rights education needs to be relevant to twenty-first citizenship and consider children's rights in the context of climate change or digital environments. Improving access to human rights education will give effect to the Mparntwe Education Declaration, which aspires to all young Australians becoming 'confident and creative individuals, successful lifelong learners, and active and informed citizens.'²¹

The world would be better if...

"everyone had equal rights including women, no more racism & no climate change."

- 10 year old

"if there were equal human rights around the world"

- 11 year old

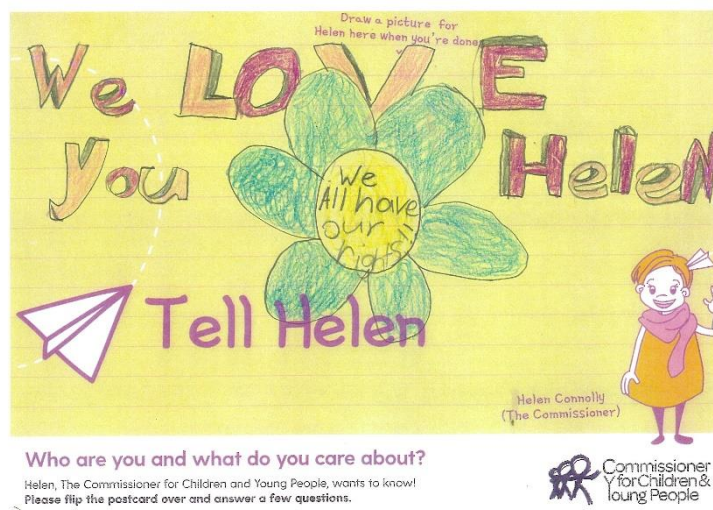
4. Promote accountability and enable measurement of progress on human rights over time.

In order to be effective, a new Human Rights Framework should enable the measurement and independent monitoring of Australia's progress in advancing and protecting human rights. As such, I support the AHRC's recommendation regarding the development of a Human Rights Indicator Index that will measure progress, identify priorities and guide actions.

The Index should reflect a 'whole of life' view and focus on present and future generations of children and young people. The AHRC submission provides several examples to consider in the design of such an index, including the United Kingdom's *Is Britain Fairer?* model and New Zealand's Child and Youth Wellbeing Strategy and Human Rights Action Plan.

Previous national human rights action plans, including under the 2010 Framework, are considered to have achieved limited outcomes, primarily due to a lack of funding, lack of buy-in from states and territories, lack of measurable targets or indicators, and a lack of monitoring and oversight. A different approach is needed to translate ambition into real action – one that learns from the past and is adequately and sustainably resourced. To further promote accountability, I recommend that Australian governments take measures to:

- Strengthen parliamentary oversight of Australia's human rights obligations. This includes processes to seriously consider and respond to all observations by international treaty bodies such as the Committee on the Rights of the Child, which are currently too often ignored. This could include governments being required to report on recommendations made by UN Committees and their progress on those recommendations on an annual basis.
- Enhance parliamentary scrutiny of human rights.²²
- Build and invest in community capacity to realise human rights.



¹ Australian Council of Social Services. *Poverty in Australia 2022: A Snapshot*. (October 2022) https://povertyandinequality.acoss.org.au/wp-content/uploads/2022/10/Poverty-in-Australia-2020_A-snapshot.pdf.

² Evans-Whipp, Tracy. *Teenagers' experiences of discrimination: Growing Up in Australia Snapshot Series – Issue 1*. (2021). (Melbourne: Australian Institute of Family Studies, 2021). <https://growingupinaustralia.gov.au/sites/default/files/publication-documents/lsac-snapshot-1-discrimination.pdf>.

³ Commissioner for Children and Young People. *Child Rights Progress Reports*. (2020) <https://www.ccyp.com.au/wp-content/uploads/2022/01/Child-Rights-Progress-Reports-2020.pdf>. (2021) <https://www.ccyp.com.au/wp-content/uploads/2022/02/Child-Rights-Progress-Reports-2021.pdf>. (2022). <https://www.ccyp.com.au/wp-content/uploads/2022/12/2022-Combined-Child-Rights-Progress-Reports-FINAL.pdf>.

⁴ United Nations Committee on the Rights of the Child. *Concluding Observations on the combined fifth and sixth periodic reports of Australia*. (1 November 2019). https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Countries.aspx.

⁵ Children's Commissioner for Wales. *The Right Way: A Children's Rights Approach in Wales*. (2017). <https://www.childcomwales.org.uk/wp-content/uploads/2017/04/The-Right-Way.pdf>.

⁶ Children's Commissioner for Wales. *Ambition to Action: A Summary Report*. (2022). https://www.childcomwales.org.uk/wp-content/uploads/2022/03/AmbitionToAction_ENG.pdf.

⁷ Human Rights Law Centre. *Victoria's Charter of Human Rights and Responsibilities in Action: Case studies from the first five years of operation*. (March 2012). www.hrlc.org.au/files/VictorianCharter_in_Action_CASESTUDIES_march2012.pdf, Case Study 56.

⁸ ACT Human Rights Commission. *Annual Report 2013-14*. (2014). <https://hrc.act.gov.au/wp-content/uploads/2015/04/2014-09-15-Final-WCAG-2-0-Compliant.pdf>, 39.

⁹ ACT Human Rights Commission. *Annual Report 2019-20*. (2020). <https://hrc.act.gov.au/wp-content/uploads/2020/12/ACT-HRC-Annual-Report-2019-20-2.pdf>, 28.

¹⁰ Human Rights Law Centre and *Certain Children v Minister for Families and Children* [2017] VSC 251. *Charter of Rights*. Case 86: Supreme Court finds that children held in maximum security prison were deprived of their human rights. <https://charterofrights.org.au/101-cases/2022/10/25/case-86-supreme-court-finds-that-children-held-in-maximum-security-prison-were-deprived-of-their-human-rights>.

¹¹ Queensland Human Rights Commission. *Putting People First: The First Annual Report on the Operation of Queensland's Human Rights Act 2019-20*. (2020). https://www.qhrc.qld.gov.au/_data/assets/pdf_file/0005/29534/Human-Rights-Act-Annual-

[Report-2019-20.pdf](#), 114. See also Commissioner for Children and Young People. Submission to the Social Development Committee Inquiry into NDIS participants with complex needs living in inappropriate accommodation. (August 2022). <https://www.ccyp.com.au/wp-content/uploads/2022/09/2022-08-31-Submission-to-SDC-Inquiry-re-NDIS-participants-with-complex-needs-in-inappropriate-accommodation.pdf>.

¹² Queensland Human Rights Commission. *Putting People First: The First Annual Report on the Operation of Queensland's Human Rights Act 2019-20*. (2020). https://www.qhrc.qld.gov.au/_data/assets/pdf_file/0005/29534/Human-Rights-Act-Annual-Report-2019-20.pdf, 112.

¹³ Australian Human Rights Commission. Free and Equal. Position Paper: A Human Rights Act for Australia. (2022). https://humanrights.gov.au/sites/default/files/free_equal_hra_2022_-_main_report_rgb_0_0.pdf.

¹⁴ United Nations Committee on the Rights of the Child. *General Comment No. 12: The right of the child to be heard*. (2009). <https://www.refworld.org/docid/4ae562c52.html>

¹⁵ Victorian Equal Opportunity and Human Rights Commission. Report on the Operation of the Charter of Human Rights and Responsibilities. (2021). https://cms.humanrights.vic.gov.au/wp-content/uploads/2022/12/Resource-Charter_Report-2021.pdf.

¹⁶ Commissioner for Children and Young People. Leave No One Behind: What children and young people have said about living in poverty. (2019). <https://www.ccyp.com.au/wp-content/uploads/2022/03/Leave-No-One-Behind.pdf>.

¹⁷ Te Kāwanatanga Aotearoa, New Zealand Government. *Child Poverty Report 2022*. <https://budget.govt.nz/budget/2022/wellbeing/child-poverty-report/index.html>.

¹⁸ Commissioner for Children and Young People. Measuring What Matters. https://treasury.gov.au/sites/default/files/2023-03/c2023-379612-commissioner_for_children_and_young_people_south_australia.pdf

¹⁹ Welsh Government. *Wellbeing of Wales, 2022: Children and Young People's Wellbeing*. (2022). <https://www.gov.wales/wellbeing-wales-2022-children-and-young-peoples-wellbeing-main-points.html>.

²⁰ Australian Curriculum Assessment and Reporting Authority. *National Assessment Program - Civics and Citizenship 2019 National Report*. (2020). <https://nap.edu.au/docs/default-source/default-document-library/20210121-nap-cc-2019-public-report.pdf>.

²¹ Australian Government Department of Education, Skills and Employment. *The Alice Springs (Mparntwe) Education Declaration*. (2019). <https://www.education.gov.au/download/4816/alice-springs-mparntwe-education-declaration/7180/alice-springs-mparntwe-education-declaration/pdf>.

²² Australian Human Rights Commission. Free and Equal. Position Paper: A Human Rights Act for Australia. (2022). https://humanrights.gov.au/sites/default/files/free_equal_hra_2022_-_main_report_rgb_0_0.pdf, Chapter 13.