

Parliamentary Joint Committee on Human Rights inquiry into Australia's human rights framework

Save the Children response to question on notice received following 25 August 2023 hearing

14 September 2023

Question on notice received from Senator Lidia Thorpe

The Victorian Human Rights Act speaks about the rights of a child, yet in this country First Nations children are being taken from their families at increasing rates. How does the VIC Human Rights Act protect the rights of First children, by keeping them with their families and culture and how could the Federal Act fill that gap?

Save the Children's response

The Victorian *Charter of Human Rights and Responsibilities Act 2006* (the Charter) includes a number of relevant rights, including the right of every person to enjoy their human rights without discrimination, the right of families to be protected as the fundamental group unit of society, the right of children to be protected in their best interests, and cultural rights of Aboriginal persons, including the right to enjoy their identity and culture and maintain kinship ties.¹

The Charter plays a valuable role in protecting human rights. At the same time, it is far from comprehensive either in its incorporation of children's rights or in the remedies and accountability mechanisms that it includes. There is also significant scope for the Charter to be more comprehensively implemented and the scrutiny processes to be further strengthened. We refer to, and support, the Yoorrook Justice Commission's *Yoorrook for Justice* report into Victoria's child protection and criminal justice systems released in September 2023, which includes specific recommendations about how the Charter can be clarified and strengthened.² Additionally, there are actions which could be taken to further enhance the scrutiny of Bills engaging children's rights, particularly through the Scrutiny of Acts and Regulations Committee, before the Parliament of Victoria.³

Systemic racism, institutional violence and the continuing devastating effects of colonisation and dispossession have driven an unconscionable over-representation of First Nations children in out-of-home care. Addressing this requires strong human rights legislation at both State and Federal level.

¹ Sections 8(2), 17 and 19 of the Charter.

² Recommendations 5, 6 and 7 of the *Yoorrook for Justice* report. Available at: <https://yoorrookforjustice.org.au/>.

³ Michael Brett Young, *From Commitment to Culture: The 2015 Review of the Charter of Human Rights and Responsibilities Act 2006*, 2015. Available at: <http://vgls.sdp.sirsidynix.net.au/client/search/asset/1295292/0>. At page 183, the report highlights the example of the insufficient review of the Children, Youth and Families Amendment (Permanent Care and Other Matters) Bill 2014 as an example of gaps in the scrutiny process. Recommendations include the need to provide more time for scrutiny, greater use of the Scrutiny of Acts and Regulations Committee's powers and enhancing public engagement. These issues continue to be present, see Victorian Equal Opportunity & Human Rights Commission, *2022 Report on the Operation of the Charter of Human Rights and Responsibilities*, August 2023. Available at: <https://www.humanrights.vic.gov.au/resources/2022-report-on-the-operation-of-the-charter-of-human-rights-and-responsibilities-august-2023/>.

State Governments operate statutory child protection systems. However, the Federal Government holds many of the 'upstream' policy levers of government that can make the greatest difference to keeping children with their families and culture and preventing contact with child protection in the first place.

A Federal Human Rights Act could better protect the rights of First Nations children by keeping them with their families and culture by:

- Including all rights in the United Nations Declaration on the Rights of Indigenous Peoples and being clear about the Federal Government's responsibility to fully uphold the cultural rights and right to self-determination of First Nations peoples, including in decisions about their children and families.
- Including all rights in the UN Convention on the Rights of the Child and being clear about the Federal Government's responsibility to ensure that the underlying conditions and supports are in place for those rights to be realised. For example:
 - o Upholding children's rights to grow up safely with their families and enjoy their culture by enabling the necessary conditions and support for families and communities so that the culturally biased late interventions of statutory child protection systems are reduced.
 - o Upholding children's right to an adequate standard of living by preventing families from experiencing poverty. This would in turn help avoid the tendency of child protection systems to treat poverty as equivalent to 'neglect' and associated with other types of maltreatment, and removing children from their families for that reason.
 - o Upholding children's participatory rights and their right to be heard and taken seriously on all decisions that affect them. This would enable better outcomes for children by ensuring their views and experiences are meaningfully and safely taken into account, both in government policy-making and individual decisions that affect them directly.
 - o Upholding the best interests of the child as the primary consideration in all actions concerning them. This includes recognising the links between family and culture, and the perspectives of First Nations peoples in informing what those best interests are.⁴
- Ensuring these rights are accompanied by strong remedies and accountability so that they are upheld in practice.

⁴ Commission for Children and Young People, *In the Child's Best Interests: Inquiry into compliance with the intent of the Aboriginal Child Placement Principle in Victoria*, 2015. Available at: <https://ccyp.vic.gov.au/inquiries/systemic-inquiries/in-the-childs-best-interests/>.