

Date: 01 September 2023
To: **Parliamentary Joint Committee on Human Rights**
Inquiry into Australia's Human Rights Framework
From: Natalie Lewis, Commissioner
Subject: Questions on notice (1 of 2)
Requested by: Senator Stewart
Decision required by: 5 September 2023

Question: How effective have your child impact statements been in achieving desired outcomes?

The Queensland Family and Child Commission (QFCC) has developed a *Queensland Child Rights Impact Assessment* (QCRIA) tool to support decision making in alignment with the United Nations Convention on the Rights of the Child. The QCRIA tool provides a structured process to assist decision makers to consider how, and to what extent, a decision, legislation, policy or program, will likely impact children's rights.

Unlike Human Rights Impact Assessments, Child Rights Impact Assessments are not a requirement in Queensland. Therefore, there is no current obligation or normative practice to evaluate the potential impacts of policies, legislation, programs and budget on children and young people. The QFCC has imbedded the QCRIA within its project and governance processes to ensure alignment of its work with upholding and promoting children's rights. Using an action-research approach, throughout 2023–24 the QFCC is refining the QCRIA tool and undertaking a targeted consultation to extend implementation to other government departments and proactively examine the potential impact of laws, policies and budget decisions on children and young people.

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How can state-based Commissioners for Young People/Commissioners for Aboriginal and Torres Strait Islander Children work in a more coordinated/impactful way? What's the gap and how can the government help support a more coordinated/impactful approach in your opinion?

The National Children's Commissioner and state-based Children's Commissioners, Guardians and Advocates 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 legislative frameworks, functions, powers, level of independence and resourcing vary greatly across each jurisdiction, however, we share a commitment to promoting and upholding the rights of children and young people across Australia.

In 2023, the Australian First Nations Children's Commissioners, Guardians and Advocates met for the first time and identified 11 joint advocacy priorities. The First Nations Caucus are also members of the Australian and New Zealand Children's Commissioners and Guardians (ANZCCG) group of national, state and territory children and young people commissioners, guardians, and advocates. Investment in a dedicated National Commissioner for Aboriginal and Torres Strait Islander children and young people, as well as reciprocal roles in each jurisdiction, is a critical step in progressing these important priorities issues.

While there have been certain advancements in Australia and various plans and strategies aimed at benefiting children and young people, the system lacks cohesion, leading to instances where children and young people slip through the cracks. There are few references to the *United Nations Convention on the Rights of the Child* (the Convention) within national plans and a lack in national leadership to imbed the United Nations Committee on the Rights of the Child's successive recommendations to:

- a) Enact comprehensive national child rights legislation fully incorporating the Convention and providing clear guidelines for its consistent and direct application throughout the states and territories of the State party;
- b) Ensure that the resources of the Parliamentary Joint Committee on Human Rights are adequate and sufficient to effectively examine, including in consultation with the

National Children's Commissioner and other interested parties, all proposed legislation and its impact on children's rights;

- c) Guarantee that all proposed legislation is fully compatible with the Convention.

A federal Human Rights Act provides an opportunity for the Commonwealth to promote consistent, rights affirming standardisation particularly in the administration of statutory child protection and youth justice systems. Importantly, it will also ensure accountability for the protection, promotion and fulfilment of children's rights, and upholding Australia's obligations in international law for all children and young people, regardless of where they live in Australia.





THE QUEENSLAND CHILD RIGHTS IMPACT ASSESSMENT

Human rights in Queensland

The *Human Rights Act 2019* (the HRA) requires all public entities in Queensland to act compatibly with human rights and to give proper consideration to the rights laid out in the Act before making decisions.

An act or decision will be compatible with human rights if it does not limit a human right, or limits a human only to the extent it is reasonable and justifiable under the Act.

Every act, policy or decision by a public entity in Queensland must be assessed for compatibility with these rights.

Children's rights are human rights

Australia has ratified the [United Nations Convention on the Rights of the Child](#) (UNCRC), which outlines specific rights for children. Children need additional rights and protections due to the legal constraint of their age, their limited life experience, reduced developmental maturity and reliance on adults for care and access to services.

There is some overlap between children's rights as provided under the HRA and the more comprehensive set of rights under the UNCRC. For example, section 33 of the HRA relates to the treatment of children in the criminal justice process, as does article 40 of the UNCRC.

For government and non-government agencies, undertaking assessments against the UNCRC can help to make sure actions and decisions are compatible with the full range of children's rights.

Child Rights Impact Assessment

The QFCC has developed the Queensland Child Rights Impact Assessment (QCRIA) to help decision-makers use the UNCRC to assess the impact of their work on children's rights. Queensland Government agencies are encouraged to use the QCRIA to inform legislation, policy, practice and program development. Non-government organisations are also encouraged to use the QCRIA to support policy and service delivery, and to inform decision-making processes.

The QCRIA has been designed to provide a starting point for agencies to apply a child rights lens to their decision-making. By using the QCRIA, organisations can strengthen policy instruments, reduce unintended or unanticipated impacts, and improve the outcomes delivered to the whole community.

The QCRIA should be conducted at the start of a decision-making process to provide agencies with enough time to:

- consider potential current and future impacts of the decision on children
- actively seek the perspectives and views of children about the decision being made, and;
- consider ways to mitigate impacts prior to a decision being made.

View the [full text](#) of the UNCRC or read a [summary](#).

The Queensland Child Rights Impact Assessment

All actions taken by public entities in Queensland must be lawful.

Project name

Date

Key contact

Endorsing executive member

Action being assessed

Summarise the issue being addressed and the proposed solution.

- [project name] is a review of / new initiative ...
- [project name] will [project objective] ...

1. Identify engaged rights

- Use the check boxes to identify the articles of the UNCRC that will be directly engaged by the action. Articles **marked with an asterisk (*)** are identified as most likely to be engaged through the delivery of policy and projects in Queensland.
- Indicate how each article will be limited, infringed or impacted.

ALL children's rights should be considered before acting or making decisions. The number of children affected is nonconsequential – all children are equally entitled to enjoy their rights.

(The Articles below are summarised by [UNICEF](#). The full text of the UNCRC is available from the [United Nations website](#))

Article 1 - definition of the child.

☐

Everyone under the age of 18 has all the rights in the Convention.

Article 2 - non-discrimination.

☐

The Convention applies to every child without discrimination, whatever their ethnicity, gender, religion, language, abilities or any other status, whatever they think or say, whatever their family background.

Article 3 - best interests of the child.*

☐

The best interests of the child must be a top priority in all decisions and actions that affect children.

Article 4 - implementation of the Convention.*

☐

Governments must do all they can to make sure every child can enjoy their rights by creating systems and passing laws that promote and protect children's rights.

Article 5 - parental guidance and a child's evolving capacities.

☐

Governments must respect the rights and responsibilities of parents and carers to provide guidance and direction to their child as they grow up, so that they fully enjoy their rights. This must be done in a way that recognises the child's increasing capacity to make their own choices.

Article 6 - life, survival and development.

☐

Every child has the right to life. Governments must do all they can to ensure that children survive and develop to their full potential.

Article 7 - birth registration, name, nationality, care.

☐

Every child has the right to be registered at birth, to have a name and nationality, and, as far as possible, to know and be cared for by their parents.

Article 8 - protection and preservation of identity.

☐

Every child has the right to an identity. Governments must respect and protect that right, and prevent the child's name, nationality or family relationships from being changed unlawfully.

Article 9 - separation from parents.

☐

Children must not be separated from their parents against their will unless it is in their best interests (for example, if a parent is hurting or neglecting a child). Children whose parents have separated have the right to stay in contact with both parents, unless this could cause them harm.

Article 10 - family reunification. Governments must respond quickly and sympathetically if a child or their parents apply to live together in the same country. If a child's parents live apart in different countries, the child has the right to visit and keep in contact with both of them.	☐
Article 11 - abduction and non-return of children. Governments must do everything they can to stop children being taken out of their own country illegally by their parents or other relatives, or being prevented from returning home.	☐
Article 12 - respect for the views of the child.* Every child has the right to express their views, feelings and wishes in all matters affecting them, and to have their views considered and taken seriously. This right applies at all times, for example during immigration proceedings, housing decisions or the child's day-to-day home life.	☐
Article 13 - freedom of expression. Every child must be free to express their thoughts and opinions and to access all kinds of information, as long as it is within the law.	☐
Article 14 - freedom of thought, belief and religion. Every child has the right to think and believe what they choose and also to practise their religion, as long as they are not stopping other people from enjoying their rights. Governments must respect the rights and responsibilities of parents to guide their child as they grow up.	☐
Article 15 - freedom of association. Every child has the right to meet with other children and to join groups and organisations, as long as this does not stop other people from enjoying their rights.	☐
Article 16 - right to privacy.* Every child has the right to privacy. The law should protect the child's private, family and home life, including protecting children from unlawful attacks that harm their reputation.	☐
Article 17 - access to information from the media. Every child has the right to reliable information from a variety of sources, and governments should encourage the media to provide information that children can understand. Governments must help protect children from materials that could harm them.	☐
Article 18 - parental responsibilities and state assistance. Both parents share responsibility for bringing up their child and should always consider what is best for the child. Governments must support parents by creating support services for children and giving parents the help they need to raise their children.	☐
Article 19 - protection from violence, abuse and neglect. Governments must do all they can to ensure that children are protected from all forms of violence, abuse, neglect and bad treatment by their parents or anyone else who looks after them.	☐
Article 20 - children unable to live with their family. If a child cannot be looked after by their immediate family, the government must give them special protection and assistance. This includes making sure the child is provided with alternative care that is continuous and respects the child's culture, language and religion.	☐
Article 21 - adoption. Governments must oversee the process of adoption to make sure it is safe, lawful and that it prioritises children's best interests. Children should only be adopted outside of their country if they cannot be placed with a family in their own country.	☐
Article 22 - refugee children. If a child is seeking refuge or has refugee status, governments must provide them with appropriate protection and assistance to help them enjoy all the rights in the Convention. Governments must help refugee children who are separated from their parents to be reunited with them.	☐
Article 23 - children with a disability. A child with a disability has the right to live a full and decent life with dignity and, as far as possible, independence and to play an active part in the community. Governments must do all they can to support disabled children and their families.	☐
Article 24 - health and health services. Every child has the right to the best possible health. Governments must provide good quality health care, clean water, nutritious food, and a clean environment and education on health and well-being so	☐

that children can stay healthy. Richer countries must help poorer countries achieve this.	
Article 25 - review of treatment in care. If a child has been placed away from home for the purpose of care or protection (for example, with a foster family or in hospital), they have the right to a regular review of their treatment, the way they are cared for and their wider circumstances.	☐
Article 26 - social security. Every child has the right to benefit from social security. Governments must provide social security, including financial support and other benefits, to families in need of assistance.	☐
Article 27 - adequate standard of living. Every child has the right to a standard of living that is good enough to meet their physical and social needs and support their development. Governments must help families who cannot afford to provide this.	☐
Article 28 - right to education. Every child has the right to an education. Primary education must be free and different forms of secondary education must be available to every child. Discipline in schools must respect children's dignity and their rights. Richer countries must help poorer countries achieve this.	☐
Article 29 - goals of education. Education must develop every child's personality, talents and abilities to the full. It must encourage the child's respect for human rights, as well as respect for their parents, their own and other cultures, and the environment.	☐
Article 30 - children from minority or indigenous groups.* Every child has the right to learn and use the language, customs and religion of their family, whether or not these are shared by the majority of the people in the country where they live.	☐
Article 31 - leisure, play and culture. Every child has the right to relax, play and take part in a wide range of cultural and artistic activities.	☐
Article 32 - child labour. Governments must protect children from economic exploitation and work that is dangerous or might harm their health, development or education. Governments must set a minimum age for children to work and ensure that work conditions are safe and appropriate.	☐
Article 33 - drug abuse. Governments must protect children from the illegal use of drugs and from being involved in the production or distribution of drugs.	☐
Article 34 - sexual exploitation. Governments must protect children from all forms of sexual abuse and exploitation.	☐
Article 35 - abduction, sale and trafficking. Governments must protect children from being abducted, sold or moved illegally to a different place in or outside their country for the purpose of exploitation.	☐
Article 36 - other forms of exploitation. Governments must protect children from all other forms of exploitation, for example the exploitation of children for political activities, by the media or for medical research.	☐
Article 37 - inhumane treatment and detention. Children must not be tortured, sentenced to the death penalty or suffer other cruel or degrading treatment or punishment. Children should be arrested, detained or imprisoned only as a last resort and for the shortest time possible. They must be treated with respect and care, and be able to keep in contact with their family. Children must not be put in prison with adults.	☐
Article 38 - war and armed conflicts. Governments must not allow children under the age of 15 to take part in war or join the armed forces. Governments must do everything they can to protect and care for children affected by war and armed conflicts.	☐
Article 39 - recovery from trauma and reintegration. Children who have experienced neglect, abuse, exploitation, torture or who are victims of war must receive special support to help them recover their health, dignity, self-respect and social life.	☐

Article 40 - juvenile justice. ☐

A child accused or guilty of breaking the law must be treated with dignity and respect. They have the right to legal assistance and a fair trial that takes account of their age. Governments must set a minimum age for children to be tried in a criminal court and manage a justice system that enables children who have been in conflict with the law to reintegrate into society.

Article 41 - respect for higher national standards. ☐

If a country has laws and standards that go further than the present Convention, then the country must keep these laws.

Article 42 - knowledge of rights.* ☐

Governments must actively work to make sure children and adults know about the Convention. The Convention has 54 articles in total.

Articles 43–54 contain methods to ensure children's rights are formally in place internationally, including how the convention will be administered. They do not need to be addressed in a child rights impact assessment.

Use this space to identify how the specific rights being engaged may be limited, infringed, or impacted upon by the action. Use short sentences or dot points.

Example:

Article 16 (right to privacy)

- The project will gather private information of children who have spent time in youth detention.*
- For those children, the right to privacy may be impacted.*

2. Accountability

Consider who is accountable for limitations, infringements, or impacts on the articles discussed in section one, and how these impacts will be managed.

Consider:

- Who is accountable for the impact on the identified articles?*
- How will the impacts be monitored and evaluated?*
- What complaints mechanisms are in place for children?*

3. Mitigating factors

Identify what can be put in place to mitigate the impact on the articles listed in section one. Consider if all options have been considered and if any options will be less restrictive to child rights.

Consider:

- What is the agency doing to make sure the identified rights are respected and protected?*
- What responsibilities have they been given to make sure they are responding effectively to balance and protect children's rights?*
- Are there any programs in place to reduce the impact of the activity on children's rights?*
- Can the activity be modified to reduce the impact?*

4. Overall assessment

Noting the articles identified above, will there be an appropriate balance between children's rights and the objectives of the action? Will the action be compatible with children's rights under the United Nations Convention on the Rights of the Child?

- ☐ The action is compatible with children's rights under the United Nations Convention on the Rights of the Child.
- ☐ The action is not compatible with children's rights under the United Nations Convention on the Rights of the Child.
 - *Summarise how children's rights will be protected as the action is implemented.*
 - *State how the objectives of the action might outweigh the impacts.*
 - *Are there any ongoing rights concerns, or recommendations to achieve the appropriate balance?*

(use two to three paragraphs)