

Submission to the Inquiry into Australia's Human Rights Framework

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Executive Summary

Guided by the United Nations Convention on the Rights of the Child (CRC) and informed by our work in over 190 countries improving the lives of children, UNICEF Australia welcomes the opportunity to provide a submission to the inquiry into Australia's human rights framework.

For most people, Australia is a great place to grow up and live, where human rights are respected and freedoms are enjoyed. However, this isn't the case for all people, including for some children, and concerningly we remain the only Western democracy left in the world without a national Human Rights Act in some form or anotherⁱ, which sets out our rights and how they should be protected.

Children are a unique cohort for governments to consider in this context. While they have specific needs and vulnerabilities when compared with adults, children also represent the future of our country, and their wellbeing (which is often tied to the realisation of their rights) forecasts the future wellbeing of Australia. When we invest in and provide for children's rights and wellbeing, that investment compounds and exponentially grows as they do, for them and for Australian society broadly.

A federal Human Rights Act can help us better realise the enormous benefits that come with providing for the rights of children, particularly so if it includes the broad array of rights contained in the CRC, acknowledging their uniqueness compared with adults. For children, and for all Australians, it would help prevent rights violations, provide remedies when breaches happen, and help guide decision making by ensuring that rights are considered when designing solutions for the problems we face.

More than a piece of law, a federal Human Rights Act is a compendium of the all the things we value most. Every child, every migrant, every parent or grandparent, will have in one place an expression of both the rights they are entitled to, and an articulation of the freedoms that Australia places so much value in.

The reform of Australia's human rights framework also presents an opportunity to make institutional and policy change, so that the work that our new Human Rights Act begins can be seen through to fruition and create genuine impact for every Australian, particularly for children. This broader change can be guided by the development of a landmark National Children's Plan. This new roadmap would place children at the centre of policy design, drawing together all the positive but at times disparate work happening across Australia for children, and helping to translate it from policy into impact. Explicit in this will be a need to broadly communicate and educate children and the public on their newly-held rights, so that every child and adult understands the role they have to play in making rights real.

Self-determination will need to be at the heart of all we do, so that the potential of every Aboriginal and Torres Strait Islander child can be realised in a way that Aboriginal children, families and communities deem best. This should include the creation of a National Aboriginal and Torres Strait Islander Children's Commissioner, to provide oversight of the unique way in which Aboriginal children experience and realise their rights.

Finally, this moment of self-reflection on our human rights framework is an opportunity to revisit our international human rights obligations, accepting the CRC and all of its associated protocols without reservation, to help make Australia a world-leader in children's rights on the global stage, and the greatest place in the world to grow up. UNICEF Australia is eager to work collaboratively with all involved to help make this vision a reality.

Summary of Recommendations

1. Legal reform of Australia's human rights framework

- *Enact a federal Human Rights Act, including all rights set out in the United Nations Convention on the Rights of the Child and Declaration on the Rights of Indigenous Peoples, to provide the best protection possible for Australia's children.*

2. Institutional and policy reforms to better realise children's rights

- *Commit to the adoption of a National Children's Plan, to provide a long-term, comprehensive and overarching framework for all policy and decision-making that affects children.*
- *Implement a national public education and awareness raising initiative about children's rights in our human rights framework, including in schools, to inform children and adults about the importance of rights and how to make them real.*
- *Enable the meaningful participation of children in the development of Australia's human rights framework, to ensure it is legitimate and achieves its desired outcomes.*
- *Embed the principle of self-determination in our human rights framework, matched with broader commitments to support self-determination of Aboriginal and Torres Strait Islander peoples, and establish a National Aboriginal and Torres Strait Islander Children's Commissioner.*

3. Australia's international human rights obligations

- *Revisit Australia's international human rights obligations by withdrawing our reservation to Article 37(c) of the Convention on the Rights of the Child, and ratifying the Third Optional Protocol to the Convention.*

Detailed Recommendations

1. Legal reform of Australia's human rights framework

Australia has already expressed its intent and obligation to be a rights-respecting nation under international law through our ratification of any number of international human rights treaties. This includes the CRC, the most ratified treaty in the world which represents a near universal appreciation of the huge impact and compounding reward that comes with investing in childhood.

For most children, Australia is a great place to grow up and experience a positive childhood, however, we know that this is not the case for all children. For some children, the full realisation of their rights is a goal we are falling short of. But by bringing our domestic laws into line with our obligations under international law and the CRC, we can place Australia on a pathway to achieving that goal.

The enactment of a federal Human Rights Act can help us do exactly this. It can help prevent human rights violations from occurring, provide avenues and remedies when rights are breached, and can help governments make better laws and policies by mandating the consideration of rights in their development and subsequent delivery, not just for children but for all Australians. It would also improve our standing on the global stage – multiple human rights committees, reports, and foreign governments, have called for Australia to enact a federal Human Rights Act over the past decade.ⁱⁱ

Thankfully, there is much inspiration we can draw from when designing our own human rights framework, including the recent experiences of Queensland, Victoria and the ACT through their Human Rights Charters and Acts. The Australian Human Rights Commission (AHRC) has also released their proposed model for a federal Human Rights Act,ⁱⁱⁱ the broad intent of which UNICEF Australia supports.

The proposed ARHC model would help improve the realisation of children's rights in Australia, particularly if it included the full spectrum of CRC rights, acknowledging that children are a distinct group with unique needs separate of adults. The inclusion of United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) rights would similarly better realise the rights of children. This inclusion would recognise the significant intersection between the rights of children and the rights of Aboriginal and Torres Strait Islander peoples, the importance of a child's right to culture as an enabler for the access of all their rights, and the specific attention needed on the rights of Aboriginal children who continue to face unacceptable disparities in life outcomes.

As an aspirational framework outlining the rights of every Australian, our federal Human Rights Act should be as comprehensive as possible, particularly for children given the unique nature of their needs including increased vulnerability when compared with adults. Although there may be challenges in the full expression of these rights in a federal Human Rights Act, including associating direct remedies with specific rights, they can likely be overcome, particularly when viewed within the context of our federal Human Rights Act as more than an expression of legal rights – it is an expression of the things we as a society value most, which must surely include children.

Recommendation

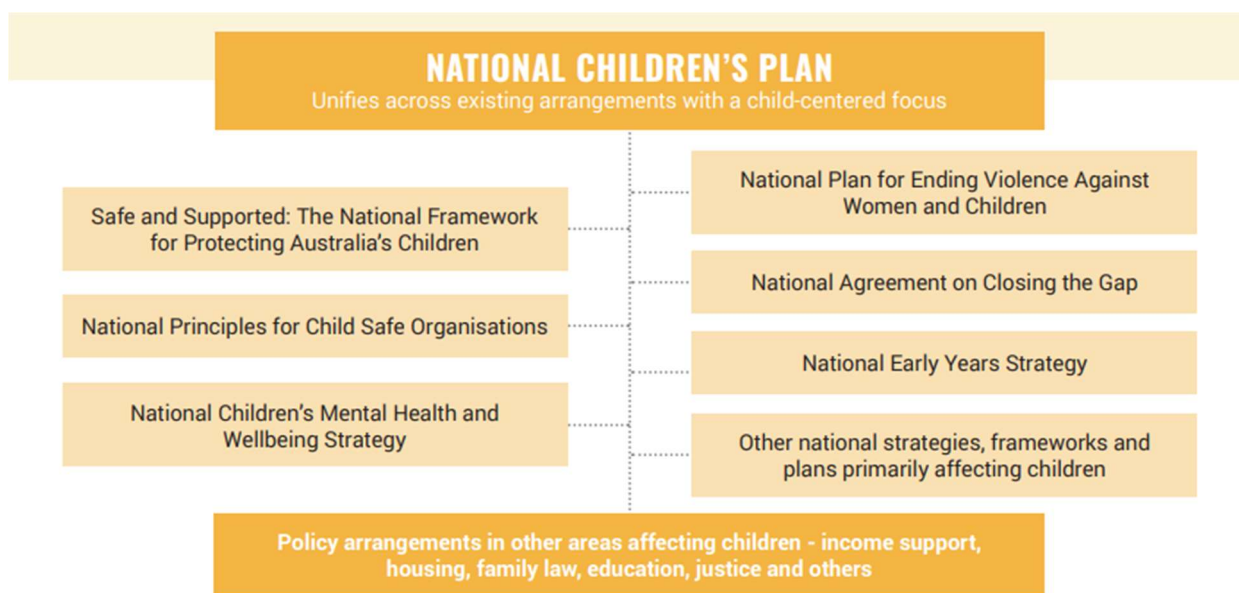
Enact a federal Human Rights Act, including all rights set out in the United Nations Convention on the Rights of the Child and Declaration on the Rights of Indigenous Peoples, to provide the best protection possible for Australia's children.

2. Institutional and policy reforms to better realise children's rights

In addition to legal reform of Australia's human rights framework, there are complementary institutional and policy reforms also needed to better realise children's rights. These reforms are varied in nature, cutting across both portfolios and jurisdictions. To this end, a nationally coordinated approach is best-suited, and the adoption of a National Children's Plan can provide just this.

A National Children’s Plan would provide a long-term, comprehensive and overarching framework for all policy and decision-making that affects children, with clear policy and investment commitments and implementation plans to ensure they are translated to effective action. By providing a clear vision for childhood in Australia - the first chapter in all our lives - a National Children’s Plan would effectively articulate a roadmap for the ambitions of Australian society as a whole.

It would also unify the various existing national plans, frameworks, strategies and agreements relating to children, connecting and filling the gaps between them, and create a cohesive, coordinated and joined-up system that is organised around children. It would connect portfolios that are not usually thought of as ‘children’s portfolios’, recognising the different roles and responsibilities of the Federal, State and Territory governments, while highlighting their shared objectives and interests, and opportunities for collaboration, coordinated investment and shared accountability for outcomes.



UNICEF Australia, Save the Children/54 Reasons, and the Australian Child Rights Taskforce (2023), Blueprint for a National Children's Plan

The Plan would centre, and take as its starting point, children themselves, and would be deeply and directly informed by children. It would also include commitments to whole-of-government mechanisms to ensure strong accountability for delivering on outcomes. These could include tools to consider the impact of government decision-making like child rights impact assessments, and making children visible in child-responsive budgeting. The National Children’s Commissioner has a unique role as the independent Commissioner and member of the Australian Human Rights Commission. This role would be recognised and promoted in the National Children’s Plan, and embedded – with appropriate resourcing – across all aspects of the Plan.

Through its implementation, a National Children’s Plan would both begin and outline a clear pathway to comprehensively incorporating the CRC into Australian policy and law, helping Australia meet its international human rights obligations, outlining a pathway to the better realisation of children’s rights in Australia, and ultimately leading to better outcomes for children, their families and communities.

Recommendation

Commit to the adoption of a National Children’s Plan, to provide a long-term, comprehensive and overarching framework for all policy and decision-making that affects children.

While a comprehensive National Children’s Plan would include a significant effort made in child and human rights education, it is worth specifically calling out as a pressing need within Australia’s human rights framework. For children’s rights to be made real, they must be understood by all, both children and adults.

This national conversation on children’s rights would be situated within the broader discourse on human rights in Australia, helping drive an appreciation for the shared values that can be drawn from our human rights framework, and the role that each of us has to play in respecting, protecting and fulfilling them.

Child rights education could include comprehensive public education and awareness processes about children’s rights, targeting both children (including through school curricula) and adults, with specific dimensions for those working with children, and those in positions of responsibility for children. It would build the capacity of children and adults to act on children’s rights, including through the provision of training, resources and other supports.

To maximise effectiveness, this communication and education with children would be done in a child-friendly way, explaining Australia’s human rights framework, the CRC, what children’s rights mean in practice, and how children can be involved in learning about, advocating for and enjoying their rights.

Recommendation

Implement a national public education and awareness raising initiative about children’s rights in our human rights framework, including in schools, to inform children and adults about the importance of rights and how to make them real.

For Australia’s human rights framework to be legitimate, it should be developed and designed in a way which is human rights-respecting. A key pillar of the child-rights framework is a child’s right to be involved in decisions that affect them. The meaningful involvement of children in the development of our human rights framework is more than just the right thing to do, it is the smart thing to do. Policies designed in consultation with those they are made for are more tailored to need and fit-for-purpose, producing better outcomes, improving efficiency, and saving resources.

At all points, children’s involvement should be meaningful, safe, and supported by appropriate resourcing. There should be clarity at each stage about the extent of children’s participation and influence, taking into account children’s evolving capacities, and with explicit discussion of the potential for change and limitations on influence arising from their involvement. There would also be benefit in focusing on enabling participation that is representative and reflective of the diversity of children and their experiences in Australia. In particular, this should include children who are often experiencing marginalisation and whose experiences are typically not represented in processes such as these.

Including children’s unique expertise and insights into their own lives, their needs, and how they experience their rights, in the development of our national human rights framework, will be crucial to ensuring it actually delivers its desired intention in relation to children and their families.

Recommendation

Enable the meaningful participation of children in the development of Australia’s human rights framework, to ensure it is legitimate and achieves its desired outcomes.

The importance of the principle of self-determination cannot be understated in its contribution to unlocking access to rights for Aboriginal and Torres Strait Islander peoples and children. This significance is acknowledged in the AHRC’s proposed model for a federal Human Rights Act,^{iv} but self-determination embedded in our laws and human rights framework will need to be matched with broader commitments and actions, should we wish to achieve the positive outcomes that will undoubtedly come with a commitment to self-determination for Aboriginal peoples.

SNAICC outline in their submission to this inquiry a series of measures which will help realise the benefits for Aboriginal children that we hope a reformed national human rights framework would provide. These include ensuring the framework aligns with the National Agreement on Closing the Gap, adequate resourcing for Aboriginal community-controlled organisations, shared decision-making with Aboriginal peoples and communities via peak bodies, and meaningful involvement of Aboriginal children in this inquiry and in all decisions affecting them. UNICEF Australia supports these recommendations which we believe will enable this reform to deliver better outcomes for Aboriginal children.

Matched with this is the need for a National Aboriginal and Torres Strait Islander Children’s Commissioner. Australia already has a National Children’s Commissioner, but a dedicated Children’s Commissioner for Aboriginal children is needed to provide national oversight on Aboriginal children’s rights, acknowledging the unique ways in which Aboriginal children experience and realise their rights in Australia. This role would need to be legislatively entrenched, with an appropriate mandate, and suitably resourced and empowered. SNAICC and King & Wood Mallesons have prepared an options paper which presents a model for a National Aboriginal and Torres Strait Islander Children’s Commissioner that is consistent with international principles for national human rights institutions.^v

Recommendation

Embed the principle of self-determination in our human rights framework, matched with broader commitments to support self-determination of Aboriginal and Torres Strait Islander peoples, and establish a National Aboriginal and Torres Strait Islander Children’s Commissioner.

3. Australia’s international human rights obligations

The reform of Australia’s human rights framework presents an opportunity to also revisit our international human rights obligations, particularly those relating to children through the CRC. UNICEF Australia has an ambition for Australia to be a world-leader in children’s rights, and revisiting Australia’s reservation to Article 37(c) of the CRC, as well as ratifying the Third Optional Protocol to the CRC, would certainly help us achieve that ambition.

Article 37(c) prohibits the detaining of children in the same settings as adults, and while Australia has historically refused this obligation on the basis of reservations including the at times necessity to do so, the Article itself provides an exception, allowing for flexibility in circumstances where it is in the best interests of the child.^{vi} Withdrawing our reservation to Article 37(c) would help ensure we are making decisions in the best interests of children and providing better protection for those children who are detained.

The Third Optional Protocol to the CRC allows children to raise concerns about their rights directly with the United Nations (UN). By ratifying this Protocol, Australia could show a renewed and more ambitious commitment to children’s rights in our reformed human rights framework by allowing children to better realise their rights, exercising their voice and agency by taking matters to the UN. This would build on the positive steps Australia has recently taken in implementing new national youth engagement initiatives such as the Youth Steering Committee and Youth Advisory Groups.^{vii}

UNICEF Australia has the greatest ambitions for Australia and believes that revisiting our reservation to Article 37(c) of the CRC, along with ratification of the Third Optional Protocol, would increase our standing as a good global citizen in the international community, at the same time as better realising the rights of Australian children at home.

Recommendation

Revisit Australia’s international human rights obligations by withdrawing our reservation to Article 37(c) of the Convention on the Rights of the Child, and ratifying the Third Optional Protocol to the Convention.

About UNICEF Australia

UNICEF believes in a fair chance for every child and we are the world's leading organisation working to protect and improve the lives of children in over 190 countries. At UNICEF Australia we work to protect and promote children's rights by advocating for the rights of children in Australia and overseas.

UNICEF Australia would welcome the opportunity to expand further on the measures we have outlined in this submission.

ⁱ Australian Human Rights Commission (2023), *Ten common questions about a Human Rights Act for Australia*, https://humanrights.gov.au/sites/default/files/content/letstalkaboutrights/downloads/HRA_questions.pdf

ⁱⁱ Committee on Economic, Social and Cultural Rights, *Concluding observations on the fifth periodic report of Australia*, 11 July 2017, [6]; *Report of the Special Rapporteur on the Rights of Indigenous Peoples on her visit to Australia*, 8 August 2017, [32] and [107](f); Committee on the Elimination of Racial Discrimination, *Concluding observations on the eighteenth to twentieth periodic reports of Australia*, 8 December 2017, [6]; Committee on the Elimination of Discrimination against Women, *Concluding observations on the eighth periodic report of Australia*, 25 July 2018, [12](a); Human Rights Council, *Report of the Working Group on the Universal Periodic Review: Australia*, 24 March 2021, [146.49].

ⁱⁱⁱ Australian Human Rights Commission (2023), *A National Human Rights Act for Australia*, https://humanrights.gov.au/sites/default/files/free_equal_hra_2022_-_main_report_rgb_0_0.pdf

^{iv} Australian Human Rights Commission (2023), *A National Human Rights Act for Australia*, https://humanrights.gov.au/sites/default/files/free_equal_hra_2022_-_main_report_rgb_0_0.pdf

^v The Paris Principles are the United Nations Principles Relating to the Status of National Human Rights Institutions: [Paris Principles | UNICEF](#)

^{vi} Committee on the Rights of the Child, *Concluding observations: Australia*, 20 October 2005, CRC/C/15/Add.268, [7]-[8].

^{vii} <https://www.youth.gov.au/>