



# Submission

## **Joint Parliamentary Committee on Human Rights Inquiry into Australia's Human Rights Framework**

*June 2023*

### **Introduction**

The Youth Affairs Council of South Australia (YACSA) is the South Australian peak body representing the interests of young people as well as the organisations, networks, and youth workers throughout the non-government youth sector. Our policy positions are independent and not aligned with any political party or movement.

The Federal Australian Government has an obligation to support young people and uphold their human rights. YACSA believes greater commitment to human rights obligations is urgently needed and that it is the Federal Government's responsibility to act.

YACSA supports the fundamental right all young people to participate in and contribute to all aspects of community life, particularly the decision-making processes that impact them and their lives. YACSA is pleased to respond to the Joint Parliamentary Committee on Human Rights' Inquiry into the Australian Human Rights Framework.

### **Key points**

- Young people will not get a 'fair go' without commitment to human rights obligations.
- Intergenerational inequality undermines the protection and promotion of human rights.
- The Australian Government must prioritise a Human Rights Act to address human rights violations.

### **Young People in Context**

Put simply, the 'generational bargain' is the transfer of resources, liabilities, rights, obligations and inequalities between generations. This notion features in the United Nations Convention on the Rights of the Child (UNCRC), ratified by Australia in 1990<sup>i</sup>. By ratifying the UNCRC, Australia (including Federal and all State/Territory Governments) confirmed commitment to promoting fundamental human rights and to supporting a progressive standard of living<sup>ii</sup>. However, despite a substantial period of economic growth for Australia, the generational bargain has been broken and this generation of young people in Australia will be the first since Federation to have a lower standard of living than their parents<sup>iii</sup>.

Demographic, economic, environmental and other policy decisions have grown intergenerational inequality substantially, leading young people today to experience distinctive challenging conditions previous generations have not experienced<sup>iv</sup>. Despite the Australian Government's plan to reaffirm human rights on the Australian value of a 'fair go'<sup>v</sup>, we know young people today have not so far, and

will not get, a 'fair go' in the future without redistributive policy reform<sup>vi</sup>. Without action, the persistent inequality between generations will undermine any protection and promotion of human rights.

## **Australia's Human Rights Framework**

Australia is signatory to a number of international human rights treaties which signifies voluntary agreement to obligations contained in those treaties. The Human Rights Framework was developed to improve the national culture of human rights as there is no legislation at a federal level providing protection for human rights, and most obligations from international treaties have not been incorporated into legislation. The Human Rights Framework (2010) was developed from an extensive consultation process in 2009 that produced a series of recommendations<sup>vii</sup>. Some recommendations are featured in the framework sought to educate and engage Australia on human rights as well as reaffirm commitment to, protect, and respect international human rights treaties.

To 'protect' and 'respect' human rights, the framework established the Parliamentary Joint Committee on Human Rights. The Joint Committee assesses federal legislation against seven main treaties Australia is a signatory to including the UNCRC. Much like other 'dialogue models', the Joint Committee findings are considered advice and do not necessarily impact the passage of legislation<sup>viii</sup>. While the Joint Committee increases transparency, given the lack of federal legislation to enforce compliance with rights and the lack of rights enshrined into legislation, it is clear the Joint Committee's effect has been limited<sup>ix</sup>. Rights compatibility issues raised by the Joint Committee typically get little attention during debate and Parliament is not obligated to consider evidence from the Joint Committee<sup>x</sup>. The United Nations Committee on the Elimination of Racial Discrimination concluded that recommendations of the Joint Committee are 'often not given due consideration' by legislators<sup>xi</sup> and the UN Human Rights Committee has also expressed concern for the ineffectiveness of the Joint Committee, recommending it be addressed<sup>xii</sup>. Additionally, there is no robust evidence demonstrating statements of compatibility for federal legislation has resulted in legislation that better adheres to Australia's obligations on human rights<sup>xiii</sup>. To improve the function of the Joint Committee and the effectiveness of statements of compatibility, Standing Orders of both Chambers of Parliament should be amended so proposed legislation cannot pass before a final report from the Joint Committee is tabled, the *Human Rights (Parliamentary Scrutiny) Act 2011* (Cth) should be amended to require statements of compatibility for all legislative instruments and this work needs to be supported by increased resources provided to the Joint Committee.

The framework included an aim to 'educate' the Australian community on human rights. As part of the framework, Government committed \$8.6 million over four years into education programs including the Federal Government working in conjunction with States and Territories to support young Australians to become active and informed citizens<sup>xiv</sup>. While the framework stated the Federal Government would 'enhance its support for human rights education across the community, including primary and secondary schools', beyond an acknowledgment that the 'National Statement of Learning for Civics and Citizenship' was already included in state and territory-based curriculum there was little incorporated in the framework to directly support young people's human rights education<sup>xv</sup>. So, while it is challenging to follow the implementation of this framework aspect, we can look to the results of the National Assessment Program for Civics and Citizenship (NAP-CC) to gauge whether young people in primary and secondary school experienced enhanced support to develop an understanding of rights. Although limited to assessment of students at year six and ten, the NAP-CC provides an indication of young people's understanding of civics and citizenship (including human rights) as well as their confidence to participate in civic life. Overall, since 2010 the proficiency of year six students has decreased, and the proficiency of year ten students has remained the same<sup>xvi</sup>. Additionally, since 2010 the NAP-CC indicates young peoples' confidence to engage in civic life has

decreased<sup>xvii</sup>. The specific commitment made by the Federal Government within the framework to work with State and Territory Governments to support young people to 'become active and informed citizens who are able to act with moral and ethical integrity and are committed to values of democracy, equity and justice' does not appear to have been realised.

The framework also sought to 'engage' the national and international community on human rights<sup>xviii</sup>. To send 'a clear message that we are committed to our international obligations', a standing invitation to the United Nations to examine Australia's ongoing protection of human rights and a commitment to develop a National Action Plan on Human Rights was made. Since this time, the United Nations has found Australia in violation of rights contained in international treaties more than a dozen times and this year the UN Subcommittee on the Prevention of Torture was forced to terminate their visit after being refused entry to multiple places of detention<sup>xix</sup>. Australia's inaction on implementing the Optional Protocol to the Convention against Torture (OPCAT) beyond extended deadlines sends a clear message regarding our commitment to international obligations. Additionally, the Federal Government's responses to recent Universal Periodic Reviews demonstrates the commitment to international obligations has not been fulfilled. For example, in response to recommendations to consolidate national efforts via a Federal Human Rights Act, the Australian Government refused to consider the recommendation further stating 'the Australian Government considers that existing mechanisms provide for the protection and promotion of human rights'<sup>xx</sup>. Australia also continues to use domestic laws, that are made regardless of obligations to rights contained in international treaties, to argue against UN Human Rights Committee determinations on Australia's human rights violations<sup>xxi</sup>.

### **The National Human Rights Action Plan**

The National Human Rights Action Plan (2012) sought to strengthen human rights protections and demonstrate Australia's 'ongoing commitment to its international human rights obligations'<sup>xxii</sup>. Key actions in the plan included ratifying the OPCAT, reviewing Australian Government reservations of a series of articles and many state/territory-based actions to address priority areas and the human rights of specific groups. While young people were recognised as being particularly vulnerable to rights violations within the action plan and specific actions acknowledged young people across areas like housing, poverty, youth justice, and mental health, the main basis for young people's human rights – the United Nations Conventions for the Rights of the Child – did not feature prominently within the action plan. The main actions included within the plan have not eventuated, Australia missed extended deadlines to ratify OPCAT requirements and has not reviewed reservations to articles like article 37(c) of the UNCRC<sup>xxiii</sup>.

### **A Federal Human Rights Act**

YACSA shares the concerns of the Australian Human Rights Commission that Australia currently does not adequately protect human rights<sup>xxiv</sup>. Existing mechanisms like anti-discrimination legislation, Parliamentary scrutiny and common law protections do not fully protect the rights of young people in Australia and avenues to address rights violations are even more limited. Articles within international treaties outline the standards government should adhere to, however, Australian governments regularly make decisions that directly conflict with human rights. The purpose of the UNCRC is to promote and protect the rights of children as well as establish UN member states commitment to social progress and improved standards of living<sup>xxv</sup>. However, government decision-making regularly ignores commitment to UNCRC and the specific rights it contains. Given the context of increasingly concerning intergenerational inequality during persisting housing, cost-of-living and mental health crises, strengthening Australia's adherence to international obligations is vital. Accepting the

recommendations made by UN committees and the National Human Rights Consultation to enact a Federal Human Rights Act must progress<sup>xxvi</sup>.

An effective Human Rights Act would need to include proactive measures that adequately obligate government decisions to have consideration for human rights to prevent violations. Governments are often not compelled to properly consider human rights in decision-making even when scrutiny is required. This has led to legislation that establishes systemic violations of young people's rights. A recent example of this was in Queensland where, despite the state jurisdiction having human rights legislation as well as Parliamentary scrutiny, the State Government still passed reforms to youth justice legislation antithesis to the clearly articulated human rights<sup>xxvii</sup>. While the Queensland Human Rights Act obligates the State Government to justify the limiting of any rights, it allowed the justification for these reforms within youth justice, that conflict with rights contained in the UNCRC, to be made on an entirely flawed premise and in direct conflict with exhaustive evidence on recidivism<sup>xxviii</sup>. Any federal legislation for human rights must ensure governments are not able to override their obligation to human rights and pass reform based on flawed reasoning and without adequate consultation.

Given Australia is a signatory to the International Covenant on Economic, Social and Cultural Rights (ICESCR), the Australian Government is obligated to provide citizens with a basic standard of living including food, housing and the continuous improvement of living conditions (as per Article 11)<sup>xxix</sup>, and article 27 of the UNCRC outlines that every child has rights to a standard of living adequate for physical, mental, moral and social development including food, clothing and housing. Yet young people today will be the first generation since Federation to have a lower standard of living than their parents. They remain the most likely age cohort to experience homelessness and are disproportionately impacted by the current rental crisis but there is no federal funding to address youth homelessness. Further, throughout the current cost-of-living crisis, the majority of young people report going without food for at least a day and report the rising cost of fruit and vegetables makes fresh food inaccessible<sup>xxx</sup>. Concerningly increasing costs for essentials like housing, that directly impact young people's living standards, have not been addressed adequately by governments. As a result, standards of living could continue to decline despite the obligations on Australian governments.

Also necessary for an effective Act, are pathways to justice when the violation of rights occurs that include review mechanisms to ensure similar violations do not happen again. Currently, even when violations are identified, redress is difficult, and systemic change rarely occurs. While outside the jurisdiction of a federally based human rights Act, an example of this is youth justice systems across Australia where reviews, inquiries and Royal Commissions have detailed serious rights violations numerous times, but little systemic reform has occurred. We know that children and young people involved in youth justice are likely to be Aboriginal or Torres Strait Islander, and/or living with a disability (sometimes undiagnosed) and have likely had adverse childhood experiences. Yet, this cohort experience significant compounding human rights violations with extremely limited recourse available.

YACSA believe rights contained in the UNCRC must be included within federal human rights legislation as young people are particularly vulnerable to rights violations. Ensuring the interpretation of federal human rights legislation is based on international treaties, including the UNCRC, is vital for the effective consideration of human rights. Another key element for effective human rights legislation is incorporating a positive duty for rights consideration on public authorities including government agencies, offices and departments. Including an additional duty to ensure public authorities engage with young people adequately, not just on youth-specific decisions, but on all decisions that impact their lives is needed as young people often do not feel adequately represented in civic processes<sup>xxxi</sup>. As proposed by the Human Rights Commission, a duty for public authorities to

ensure equal access to justice would assist young people as a cohort vulnerable to rights violations in relation to justice.

## Conclusion

Australia has a long history of a passive approach to human rights obligations<sup>xxxii</sup>. By failing to action recommendations to enact a federal Human Rights Act, successive federal governments have allowed rights violations to persist and this has resulted in a wide range of issues that disproportionately impact on young people and their rights including widening intergenerational inequality<sup>xxxiii</sup>, proliferation of precarious and low-paid employment<sup>xxxiv</sup>, poverty-inducing social support<sup>xxxv</sup>, consistent rates of homelessness and housing stress<sup>xxxvi</sup>, increasing economic insecurity regardless of employment<sup>xxxvii</sup>, high rates of discrimination experienced by LGBTIQ+ young people<sup>xxxviii</sup> as well as young people living with a disability<sup>xxxix</sup> and the overrepresentation of Aboriginal and Torres Strait Islander children and young people within child protection and youth justice systems<sup>xl</sup>. Given young people are worse off than older cohorts in Australia<sup>xli</sup> and will experience a lower standard of living across their lifetime<sup>xlii</sup> and that young people do not feel represented by decision-makers<sup>xliii</sup>, it is vital they are able to adequately participate in any process for federally legislated protection and promotion of human rights and they be considered as a key stakeholder as well as a priority population.

Youth Affairs Council of South Australia Inc  
GPO Box 2117  
Adelaide SA 5001

Level 4, 182 Victoria Square, Tarntanyangga  
Adelaide SA 5000

(08) 8211 7546  
yacsa@yacsa.com.au  
www.yacsa.com.au



**youth affairs council**  
OF SOUTH AUSTRALIA

- 
- <sup>i</sup> Australian Human Rights Commission 2019, *About Children's Rights*, Australian Human Rights Commission, Australian Human Rights Commission, viewed 6 June 2023, <<https://humanrights.gov.au/our-work/childrens-rights/about-childrens-rights>>.
- <sup>ii</sup> United Nations (General Assembly) 1989, *United Nations Convention for the Rights of the Child (General Assembly Resolution 44/35)*, United Nations (General Assembly), viewed 28 May 2023, <<https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-child>>.
- <sup>iii</sup> Coram, V 2022, 'Perceptions of Intergenerational Inequality in Policymaking and Possible Responses: The Case of Australia', *Youth*, vol. 2, no. 1, pp. 515-525, doi: 10.3390/youth2040037.
- <sup>iv</sup> Wyn, J, Cahill, H, Woodman, D, Cuervo, H, Chester, J, Cook, J & Reade, J 2017, *Gen Y on Gen Y*, Youth Research Centre, University of Melbourne, viewed 1 June 2023, <<https://education.unimelb.edu.au/ycr/publications>>.
- <sup>v</sup> Attorney-General's Department 2010, *Australia's Human Rights Framework*, Commonwealth Government of Australia, Canberra, pp. 4.
- <sup>vi</sup> Coram, V 2020, *Future Benefits, Future Burdens: Age, Policy Attitudes and Values in Australia*, School of Social Science, University of Adelaide, viewed 1 June 2023.
- <sup>vii</sup> Brennan, F 2009, *National Human Rights Consultation Report*, Commonwealth Government of Australia, Canberra.
- <sup>viii</sup> Williams, G & Reynolds, D 2015, 'The Operation and Impact of Australia's Parliamentary Scrutiny Regime for Human Rights', *Monash Law Review*, vol. 41, no. 2, pp. 506-507.
- <sup>ix</sup> Williams, G & Burton, L 2013, 'Australia's Exclusive Parliamentary Model of Rights Protection', *Statute Law Review*, vol. 34, no. 1, pp. 58-59.
- <sup>x</sup> Hutchinson, Z 2018, 'The Role, Operation and Effectiveness of the Commonwealth Parliamentary Joint Committee on Human Rights after Five Years', *Australasian Parliamentary Review*, vol. 33, no. 1, pp. 72-107.
- <sup>xi</sup> United Nations Committee on the Elimination of Racial Discrimination 2017, *Concluding Observations on the Eighteenth to Twentieth Periodic Review of Australia (CERD/C/AUS/CO/18-20)*, United Nations Committee on the Elimination of Racial Discrimination, Geneva.
- <sup>xii</sup> United Nations Human Rights Committee 2017, *Concluding Observations on the Sixth Periodic Review of Australia (CCPR/C/AUS/CO/6)*, United Nations Human Rights Committee, Geneva.
- <sup>xiii</sup> Williams & Reynolds, *Operation and Impact of Australia's Parliamentary Scrutiny*.
- <sup>xiv</sup> Attorney-General, *Human Rights Framework*.
- <sup>xv</sup> Attorney-General, *Australia's Human Rights Framework*, pp. 5.
- <sup>xvi</sup> O'Malley, K, Kwong, R, Fraillon, J, Fallas, J, Murphy, M, Nixon, J, Lee, E, Macaskill, G & Mogul, V 2020, *National Assessment Program Civics and Citizenship (NAP-CC) 2019: Technical Report*, Australian Curriculum – Assessment and Reporting Authority, Sydney.
- <sup>xvii</sup> O'Malley, et al, *National Assessment Program Civics and Citizenship*.
- <sup>xviii</sup> Attorney-General, *Human Rights Framework*, pp.7.
- <sup>xix</sup> Croucher, R, Finlay, L, Hollonds, A, Oscar, J, Gauntlett, B, Tan, C, Patterson, K & Jenkins, K 2023, 'Urgent Action Needed Following Termination of UN Inspection', *Australian Human Rights Commission*, 21 February, viewed 1 June 2023, <<https://humanrights.gov.au/about/news/urgent-action-needed-following-termination-un-inspection>>.
- <sup>xx</sup> Attorney-General's Department 2021, *National Report of Australia – Universal Periodic Review 2021: Annex 1 – Australia's Second Cycle UPR Recommendations 2015 Status of Implementation*, Commonwealth Government of Australia, Canberra.
- <sup>xxi</sup> O'Brien, W & Fitz-Gibbon, K 2016, 'Cemented in Their Cells: A Human Rights Analysis of Blessington, Elliot and the Life Imprisonment of Children in New South Wales', *Australian Journal of Human Rights*, vol. 22, no. 1, pp. 111-133.
- <sup>xxii</sup> Attorney-General's Department 2012, *Australia's National Human Rights Action Plan 2012*, Commonwealth Government of Australia, Canberra.
- <sup>xxiii</sup> Australian Human Rights Commission 2011, *Submission to the Committee on the Rights of the Child*, Australian Human Rights Commission, Sydney.
- <sup>xxiv</sup> Australian Human Rights Commission 2022, *Free & Equal Position Paper: A Human Rights Act for Australia*, Australian Human Rights Commission, Sydney.
- <sup>xxv</sup> United Nations (General Assembly) 1989, *United Nations Convention for the Rights of the Child (General Assembly Resolution 44/35)*, United Nations (General Assembly), viewed 28 May 2023, <<https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-child>>.
- <sup>xxvi</sup> Bulbeck, N 2023, 'Governing in Troubled Time: Exploring Australia's Commitment to Human Rights Through Statements of Compatibility under the Human Rights (Parliamentary Scrutiny) Act 2011 (Cth)', *Bond Law Review*, vol. 35, no.1, pp. 37-82.
- <sup>xxvii</sup> Queensland Human Rights Commission 2023, *Submission to Economics and Governance Committee: Strengthening Community Safety Bill 2023*, Queensland Human Rights Commission, Brisbane.
- <sup>xxviii</sup> Petrich, D, Pratt, T, Jonson, C & Cullen, F 2021, 'Custodial Sanctions and Reoffending: Meta-Analytic Review', *Crime and Justice*, vol. 50, no. 1, pp. 353 – 424.
- <sup>xxix</sup> United Nations (General Assembly) 1966, *International Covenant on Economic, Social and Cultural Rights (General Assembly Resolution 2200 (XXI))*, United Nations (General Assembly), viewed 28 May 2023,

---

<<https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-economic-social-and-cultural-rights>>, article no. 11.

<sup>xxx</sup> Walsh, L, Cordoba, B, Waite, C & Cutler, B 2022, *The 2022 Youth Barometer*, Monash Centre for Youth Policy and Education Practice, Melbourne.

<sup>xxxi</sup> Coram, *Perceptions of Intergenerational Inequality*.

<sup>xxxii</sup> Rice, S 2022, 'A Timeless Analysis of Australia's Human Rights Failings', *Alternative Law Journal*, vol. 47, no. 1, doi:10.1177/1037969X221083731.

<sup>xxxiii</sup> Griffiths, K & Wood, D 2019, *Generation Gap: Ensuring a Fair Go for Younger Australians*, Grattan Institute, Melbourne.

<sup>xxxiv</sup> de Fontenay, C, Lampe, B, Nugent, J & Jomini, P 2020, *Productivity Commission Working Paper: Climbing the Jobs Ladder Slower – Young People in a Weak Labour Market*, Productivity Commission, Melbourne.

<sup>xxxv</sup> Australian Institute of Health and Welfare (AIHW) 2021, *Income Support for Young People*, viewed 1 June 2023, Commonwealth Government of Australia, <<https://www.aihw.gov.au/reports/children-youth/income-support>>.

<sup>xxxvi</sup> Pereth, C, Jagatap, S, Baird, V, Kos, A, Di Nicola, K & Sadler, P 2023, *A Safe Place to Call Home: Mission Australia's Homelessness and Stable Housing Impact Report*, Mission Australia, Sydney.

<sup>xxxvii</sup> Walsh et al, *2022 Youth Barometer*.

<sup>xxxviii</sup> Cutler, B, Gallo Cordoba, B, Walsh, L, Mikola, M & Waite, C 2022, *Queer Young People in Australia: Insights from the 2021 Youth Barometer Report*, Monash Centre for Youth Policy and Education Practice, Melbourne.

<sup>xxxix</sup> Hall, S, Fildes, J, Liyanarachchi, D, Plummer, J & Reynolds, M 2020, *Young, Willing and Able: Youth Survey Disability Report 2019*, Mission Australia, Sydney.

<sup>xl</sup> Australian Institute of Health and Welfare (AIHW) 2023, *Youth Justice in Australia 2021-22*, Commonwealth Government of Australia, viewed 1 June 2023, <<https://www.aihw.gov.au/reports/youth-justice/youth-justice-in-australia-2021-22/contents/summary>>.

<sup>xli</sup> Productivity Commission 2020, *Productivity Commission Research Paper: Why Did Young People's Income Decline?*, Productivity Commission, Canberra.

<sup>xlii</sup> O'Keeffe, P, Johnson, B & Daley, K 2022, 'Continuing the Precedent: Financially Disadvantaging Young People in 'Unprecedented' COVID-19 Times', *Australia Journal of Social Issues*, vol. 57, no. 1, pp. 70-87, doi:10.1002/ajs4.152.

<sup>xliii</sup> Coram, *Perceptions of Intergenerational Inequality*.