



Queensland
Family & Child
Commission

Submission

UN Committee on the Rights of the Child: Draft general comment No.27

August 2024

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1. Introduction

The Queensland Family and Child Commission (QFCC) welcomes the opportunity to contribute to the development of General Comment 27: Access to justice and effective remedies. This submission will discuss what systemic remedies could be introduced to improve the rights of First Nations children in the state of Queensland, Australia.

1.1 About the QFCC

The Queensland Family and Child Commission is a statutory body charged with reviewing and improving systems that protect and safeguard our children. The Commission has an explicit commitment to Aboriginal and Torres Strait Islander children and peoples. We respect the right to self-determination and the critical importance of continuing connection to kin, Country and culture in the lives of Aboriginal and Torres Strait Islander peoples.

The Family and Child Commission Act 2014 states that our responsibilities are to:

1. promote the safety, wellbeing and best interests of children and young people.
2. promote and advocate for the responsibility of families and communities to protect and care for children and young people; and
3. influence systemic change to improve the safety and wellbeing of children and young people by driving accountability, raising awareness, amplifying voices and advocating for change.

In 2023, the QFCC launched its inaugural [Queensland Child Rights report](#). The report reviews major issues affecting children, including youth justice, child protection, access to complaint mechanisms, disability and health, and education and play.

2. Background

Australia's federal system of government means that many arrangements critical to respecting and protecting the rights and well-being of children and young people are legislated and funded by state governments. This includes systems such as youth justice, child protection, education, hospitals and social housing.

Queensland has a robust Aboriginal and Torres Strait Islander community-controlled sector providing health services to local communities, and support for families and children in child protection and youth justice. Land councils and community corporations service cultural and economic needs. Queensland has a Human Rights Act and Commission, providing a basis for rights-based legal decisions. However, the Act has been underused in this respect since its introduction in 2020 and was suspended twice in 2023 regarding youth justice legislation.

At Australia's last census, (June 2021), there were 222,309 Aboriginal people, 25,169 Torres Strait Islander people and 25,641 with both Aboriginal and Torres Strait Islander heritage living in Queensland, together representing 5.2 per cent of Queensland's total population of 5,215,814.¹ The proportion of children aged under 18 who are Aboriginal and Torres Strait Islander is around 8%. However, First Nations children constitute 55% of the children in Queensland's youth justice system, 70% of the 310 Queensland children in detention², and almost 50% of the children in out of home care. They are also disproportionately represented in Queensland state (public) school suspensions and exclusions.

We assert that equitable access to justice for First Nations children and young people can only be obtained when systems and institutions are held accountable for upholding child rights. We propose that accountability in Queensland can be improved by introducing the following remedies.

3. Holistic definition of justice

Social Justice, embedded within a rights-based framework, enables us to see justice as the agency, belonging and identity that emerges from equality and equity of opportunity, systemic privilege and dignity. For justice to be practically meaningful to children and young people there must be a greater commitment by states to actions including:

- every child must be aware of their rights (greater investment in child rights education and awareness)
- every First Nations child can access child sensitive and culturally sensitive community-based courts
- every child should be able to access free legal aid, representation and services
- procedural fairness, representation and recourse where children have been suspended or excluded from school
- every child in conflict with the law can be diverted
- detention as a last resort
- every child survivor of gender-based violence, abuse of exploitation receives justice
- justice and support for children who directly experience or witness domestic and family violence.

4. Truth telling and transitional justice

The QFCC recognises the fundamental importance of truth telling in (post) colonial societies in building equality, justice and respect for First Nations self-determination.

The QFCC recognises the importance of legal reforms to ensure that First Nations peoples are participating in decision making for their own communities and for nation building. We note the Queensland Government's commitment to treaty and truth telling through the establishment of the Truth and Healing inquiry, but we remain acutely aware of the risk to these and other commitments to First Australians because of the ongoing fall out from 2023's failed referendum for a constitutionally enshrined Voice to Parliament. All components of the Uluru Statement from the Heart³ remain critically important in achieving equitable access to justice and full enjoyment of rights for Aboriginal and Torres Strait Islander peoples.

¹

Australian Bureau of Statistics, 2023, *Estimates of Aboriginal and Torres Strait Islander Australians*, <https://www.abs.gov.au/statistics/people/aboriginal-and-torres-strait-islander-peoples/estimates-aboriginal-and-torres-strait-islander-australians/latest-release>, viewed 19 Aug 2024.

²

Youth Justice pocket stats March 2024, available from https://desbt.qld.gov.au/_data/assets/pdf_file/0019/23581/yj-pocket-stats-2024.pdf viewed 129 August 2024.

³

4. A Plan for Children in Queensland

Translating child rights principles into practice requires leadership by governments. It also requires legislation compatible with the United Nations Convention on the Rights of the Child a comprehensive agenda, permanent mechanisms to promote coordination and monitoring and children visible in policy development through quality consultation and impact assessments.

A holistic Children's plan for Queensland that includes all children under the age of 18 would:

- Express a shared vision for children and childhood in Queensland, co-designed with children and families
- Place children and young people authentically and meaningfully at the centre,
- Coordinate our approach with a comprehensive and long-term framework demonstrating clear policy, funding and administrative mechanisms
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- Have clear accountability mechanisms so we can ensure service delivery attends to the rights and needs of children and young people.

Introducing unambiguous rights based language to policy will promote collaborative understanding and shared accountability across Government departments and bridge gaps to ensure there are cohesive and interconnected systems in place to support and promote the rights of the child.

The appointment of a Queensland Minister for Children to lead coordination at a Ministerial and portfolio level would provide a governance structure that ensures commitments to whole of government mechanisms and indicators.

5. An independent statutory First Nations Children's Commissioner

Alongside the appointment of a Queensland Minister for Children, establishing a dedicated, independent and appropriately resourced First Nations Children's Commissioner would provide further accountability to First Nations children and young people that experience ongoing systemic harm, inequalities and injustice. The Commissioner would use a rights-based approach to advocate for and prioritise work that will change outcomes for First Nations children and young people and report on key issues of significance for them.

A dedicated Commissioner for First Nations Children in each state is already a joint Federal-State commitment though Action 7 in the National [Safe and Supported: Aboriginal and Torres Strait Islander First Action Plan 2023-2026](#), endorsed by Queensland.

A dedicated Commissioner provides a mechanism for children and young people to be part of decision-making structures, key to shifting outcomes.

The authority for the First Nations Children's Commissioner to intervene in individual matters and act as a referral agency will also provide First Nations children and young people access to a culturally appropriate, rights-affirming complaints mechanism that will provide effective remedies.

6. Queensland's Youth Justice system

Commonly, we consider 'justice' in Queensland criminologically – justice being the mechanism by which we 'right wrongs' through a legal, moral and behaviourist framework – binding children and young people who have committed an offence to punishment and othering, until such time as they are perceived to deserve re-inclusion.

Inter and intra-structural discrimination perpetuates racism, inequity and lack of agency which continues to significantly harm First Nations children and young people who are drastically over-represented at every point of the youth justice system. The disparity continues to worsen. There are several pathways forward that would enable improvements to social justice outcomes for youth justice in Queensland:

Independent oversight and advocacy body for youth experiencing courts and/or detention in Queensland

The Queensland Government has a range of internal and external oversight functions for youth detention with no single point of oversight. This makes the system less accountable and safe for children in detention, creates confusion and inefficiencies among existing oversight bodies, and does not enable child complaints.

Despite this we continue to note a high volume of concerning violations of children's rights in detention settings in Queensland⁴.

It is critical for states to have a clear, independent, and resourced oversight model to respond promptly to violations of children's rights including victimisation, violence, and lack of access to education etc.

Several services provide support and advocacy using a case management approach and the Queensland Government has internal review teams that assess youth detention centres according to criteria from the *Youth Detention Inspectorate Expectations for Queensland Youth Detention Centres*. However, an independent body with a rights-based mandate as well as powers to enter, assess, investigate and remedy child rights violations in Queensland detention centres would be better placed to address individual instances of rights violations as well as inform broader systemic recommendations and change.

A Child-Centred Court Panel as a true alternative to court processes and sentencing

In Queensland, detention for children who have committed offences has been consistently ineffective in preventing re-offending. Our legal obligations to protect and affirm children's rights are not being met. The more Queensland court processes make orders for prevention, early intervention, diversion and shared accountability with services connected to a child, the less likely offending behaviour will become. Including family, community and connected services within judicial processes means courts can have a greater impact on addressing underlying developmental and social factors, sharing information and ensuring accountability and collaboration for effective service delivery.

The QFCC has proposed a Child-centred Court Panel (CCP) pilot program for children who offend in Queensland. This pilot is designed to enhance and build on the Youth Murri Court, with a key addition being the power to be a holistic and thorough alternative to the court process and sentencing.

4

Queensland Family and Child Commission, 2023, Queensland Child Rights Report, Spotlight: Youth Justice in Queensland, p.20, available from <https://www.qfcc.qld.gov.au/child-rights/report>

7. First Nations children and Queensland's education system

In 2023, 42,498 Queensland state school students, from Prep to Year 12, experienced at least one suspension, exclusion or enrolment cancellation. First Nations children are over-represented. A total of 67,210 First Nations students were enrolled in Queensland state schools in February 2024, making up 11.7% of all Queensland's state school students, but on average 15% of the suspensions and exclusions.

Over the last six months we have spoken to students who were suspended or excluded from school. Poor communication with the student and their family about the disciplinary matter, and a disinterest by educators in hearing the student's point of view, were cited. Knowledge of appeal rights was limited. These young people identified a desire to be heard when they were involved in a dispute at school. They wanted to be actively engaged in decisions that affected them.

The Queensland Education department plans to establish a Queensland Aboriginal and Torres Strait Islander Early Childhood, Education and Training Consultative Body to provide a mechanism for representation of First Nations' children, young people and their families. Earlier this year the QFCC led the consultation with First Nations communities about the role of this body.

This new body would have a more robust platform for its work if Queensland's Education Act referenced the Convention, the Queensland Human Rights Act and the special place of Indigenous peoples in Australian society.

Longer term, equity and justice for First Nations children can only be attained through access to culturally appropriate learning and a school environment that is supportive of and connected to community. Both poor access to mainstream education, and access to poorly provided western education, are realities for First Nations school children, their parents and grandparents. Disengagement from the curriculum or from a school can be a precursor to disengaging from education completely.

There is currently an inadequate child sensitive complaints mechanism for First Nations school children or for school children more generally in Queensland.

In summary, a child rights approach to education in Queensland would:

- Promote youth and child participation in school level decision-making
- provide an accessible and child sensitive complaints mechanisms at the school level
- require teachers to build cultural competency and understanding of the history of the First Nations communities
- use restorative practices to resolve incidents in schools
- have an equity-based funding model.

8. First Nations children and climate justice

In *Daniel Bill and Others v Australia* 2019 fourteen Torres Strait Islander Traditional Owners, including six children, lodged a formal complaint with the United Nations Human Rights Committee arguing that Australia's inaction on climate change would damage their livelihood, culture and traditional way of life. They further argued that Australia had failed to implement mitigation measures including an adaptation program to ensure the long-term habitability of the islands.

The Human Rights Committee found the Australian Government has obligations to provide complaints with an effective remedy including full reparations to individuals whose rights have been violated. The Committee requested that Australia compensate Torres Strait Islanders for the harm suffered, engage in consultations with their communities, and take action to secure the safety of Torres Strait Islander communities and implement measures to combat the effects of climate change.

The Australian Government has since failed to comply or take further action, and this matter has now moved to the Australian Federal Court. Given the urgency for communities in the Torres Strait, the intergenerational impacts, that First Nations peoples are on the front line of climate change nationwide, and that climate associated events are becoming more frequent and severe, consideration could be given to accessible alternative dispute models which can be more flexible, rapid, less adversarial, more culturally appropriate and can foster cooperation.