

# Queensland Child Rights Report 2023



Queensland  
Family & Child  
Commission



## About the QFCC and this report

The Queensland Family and Child Commission (QFCC) is a statutory body of the Queensland Government. Its purpose is to influence change that improves the safety, wellbeing and rights of Queensland's children and their families. Under the *Family and Child Commission Act 2014*, the QFCC has been charged by government to review and improve the systems that protect and safeguard Queensland's children and young people. This report has been prepared following our explicit commitment to advancing children's rights, laid out in the QFCC's *Strategic Plan 2022–2026*.<sup>1</sup> Wherever possible, this report takes into account the views of children and young people, consistent with the QFCC's *Child and Youth Participation Framework*.<sup>2</sup>

This report may cause distress for some people. If you need help or support, please contact any of these services:

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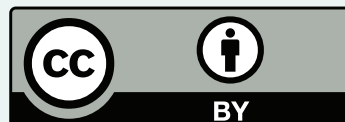
Queensland Family and Child Commission  
Level 8, 63 George Street  
PO Box 15217, Brisbane City East QLD 4002

**Email:** [info@qfcc.qld.gov.au](mailto:info@qfcc.qld.gov.au)

**Website:** [www.qfcc.qld.gov.au](http://www.qfcc.qld.gov.au)

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**The Queensland Family and Child Commission acknowledges Aboriginal and Torres Strait Islander peoples as the Traditional Custodians across the lands, seas and skies where we walk, live and work.**

**We recognise Aboriginal people and Torres Strait Islander people as two unique peoples, each with their own rich and distinct cultures, strengths and knowledge. We celebrate the diversity of Aboriginal and Torres Strait Islander cultures across Queensland and pay our respects to Elders past, present and emerging.**

**We acknowledge the important role played by Aboriginal and Torres Strait Islander communities and recognise their right to self-determination, and the need for community-led approaches to support healing and strengthen resilience.**



## Acknowledgements

The QFCC acknowledges the rights and special protections for children recorded in the *United Nations Convention on the Rights of the Child* (UNCRC).

We acknowledge the involvement of Youth Advocates Bri, Jessy, Maddie and Sarah throughout this piece of work. Their unique perspectives and innovative approaches have shed new light on complex issues. Their voices have elevated the conversation and ensured that the needs and aspirations of Queensland children and youth are at the forefront of our work.

We acknowledge the invaluable contribution of the Expert Review Panel members. Their meticulous attention to detail, insightful comments, and constructive feedback have been instrumental in refining our report. Their critical analysis and thoughtful suggestions have significantly

strengthened the report and challenged us to delve deeper into our research. Their dedication to advancing children's rights to the highest standards are truly inspiring.

The QFCC thanks the government and non-government agencies and individuals who contributed data and expertise to the report. We particularly appreciate the contributions of: the Department of Child Safety, Seniors and Disability Services; Department of Youth Justice, Employment, Small Business and Training; Queensland Police Service; Department of Education; Queensland Health; Queensland Human Rights Commission; Health and Wellbeing Queensland; Queensland Advocacy for Inclusion; Youth Advocacy Centre; True Relationships and Reproductive Health; Micah Projects; yourtown; and Youth Law Australia.

# Foreword from Youth Advocates

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As Youth Advocates, we firmly believe that the protection and empowerment of children and young people must be at the forefront of all discussions on child rights. Without understanding the fundamental rights of children and young people, they may not be adequately protected in government systems. Upholding and protecting the rights of children and young people is essential not only for their current livelihoods and enjoyment but also for their future.

All children and young people deserve to feel safe and loved, and for this to be possible, we need to recognise what we are doing well and where we need to improve to help all children and young people in Queensland. We must identify their rights and actively push for their protection to ensure that all children and young people have equal access to a good quality of life. It is crucial to understand how current systems impact children and young people, both positively and negatively, and work towards improving them.

While there are initiatives in place to support some communities, we must ensure that all communities of children and young people have equitable opportunities. We are particularly concerned about the over-representation of Aboriginal and Torres Strait Islander children in the child protection and youth justice systems, and the lack of support that incorporates their direct voices. The current implementation of laws violates human rights and places children at high risk of getting stuck in these systems, and this disproportionately affects Aboriginal and Torres Strait Islander children and young people. We need to have conversations around targeting inclusive solutions to provide support and opportunities for children and young people from diverse backgrounds and experiences.

We urge decision makers to base decisions on facts and evidence, rather than media and community responses, to better protect and uphold the rights of children. We urge all governments, communities, and individuals to take active steps towards recognising and upholding the rights of all children and young people, ensuring their protection and empowerment.

**Bri, Jessy, Maddie and Sarah**

*Youth Advocates*

Queensland **Family and Child** Commission

# A message from the Commissioner

---

**No Queenslanders would disagree that all children deserve to be safe, to live free from violence, to be happy, healthy, and have access to a quality educational experience.**

We undoubtedly agree that children thrive in families that love them and communities that value and respect them. The childhood and futures of Queensland's children should not be limited by experiences of poverty, disadvantage or discrimination. This is not a contested space. It is a common point of fierce agreement, where our values as individuals and as a society align. These values represent who we claim to be and who we tell the world we are. They are an expression of our commitment, as made by our nation over 32 years ago when we ratified the United Nations Declaration on the Rights of the Child (UNCRC), promising to uphold the rights of all children and young people in Australia.

While this may be true for many children in Queensland, the uncomfortable reality is that too many children do not experience equitable enjoyment of their rights. They routinely face significant violations, unaware of their rights and lacking meaningful avenues to access or actualise them. This fundamental injustice requires equity-focused advocacy to promote and protect the rights of children. As the Children's Commissioner, I am committed to extending this vision to recognise children and young people as rights holders, with their rights firmly established as human rights. We, as adults and duty bearers, including community members, government agencies, and service providers, have the responsibility to protect and promote the rights of children and young people.

Child rights reporting at a state level is an important opportunity to maintain the visibility of the rights and urgency of issues facing children who experience vulnerability, injustice and marginalisation. It allows us to capture the nuances of our specific context and communicate what is working well and what requires urgent action in the best interests of children. This report serves as an entry point for the Commission to engage in proactive monitoring and reporting on how well Queensland is upholding its promise to children. The Commission has a unique vantage point

to observe, report, and drive changes to improve the realisation of the rights of children and young people. I believe that, with our systemic oversight responsibilities in a rights-affirming jurisdiction, we should lean in a little more. It is my hope that this report establishes a point of truth and a trusted source of accountability.

To address the persistent challenges faced by children in Queensland, we need more than fragmented efforts and isolated initiatives. We need a comprehensive and coordinated approach. That is why I strongly advocate for the development and implementation of a dedicated Children's Plan for Queensland. A Children's Plan for Queensland should embody an expressed commitment and shared accountability among all stakeholders. It should serve as the roadmap for ensuring that the rights of children are not only recognised but also effectively realised. This plan must be the basis for measurement, allowing us to assess the performance and progress made in advancing children's rights. By aligning policy development and budgeting with the principles outlined in this plan, we can ensure that resources are directed to the areas of greatest need and have the greatest impact on children's lives.

The establishment of a Children's Plan for Queensland would signify our unwavering dedication to the rights, wellbeing and future of our children. It is a demonstration of our commitment to fulfilling the promise we made to them and to the international community when we ratified the UNCRC. It acknowledges that the rights of children are not negotiable, and their realisation requires deliberate and concerted efforts. Our commitment to this cause will shape a Queensland where every child thrives, their voices are heard, and their potential is unleashed.

**Natalie Lewis**  
*Commissioner*  
Queensland Family and Child Commission



**“**  
**My hopes for the future are to see those my age now, stress less but learn more, play more, earn more and enjoy full freedom of expression. I hope our voices are louder, that our opinions are heard more, influence more and are considered, regardless of our age.**  
**We are the future, so please listen.**

Female, 16 years,  
Growing Up in Queensland

# Purpose of this report

---

**There are approximately 1.2 million children and young people in Queensland. While many grow up feeling secure, valued and supported by their families and communities, this is not the case for all. The rights of many children and young people are jeopardised and not respected. This is a result of unequal opportunities, inadequate laws, limited access to resources, and planning that overlooks their needs and viewpoints, among many other factors.**

This report is the first annual Child Rights Report prepared by the QFCC. It details the children’s rights issues observed by the QFCC in our statutory role of reviewing and improving the systems that protect and safeguard children. The information in this report also informs the Queensland Government on how agencies are interpreting and implementing the *United Nations Convention on the Rights of the Child* (UNCRC). It establishes a way for measuring the broad spectrum of children’s rights, with an emphasis on the issues most relevant for children and young people in Queensland.

There is limited data collected on child rights in Queensland and nationally. In compiling this report we undertook a detailed analysis of available administrative data, qualitative insights, and legislative, policy and financial information. In this inaugural report, certain topics have been omitted due to limitations in the QFCC’s knowledge and expertise (for example, asylum seeker and refugee children and young people). We are committed to continuously enhancing our capabilities and working with partners to address areas of utmost concern and provide comprehensive coverage of children’s rights in future reports. This report covers the 12-month period from July 2021 to June 2022, unless otherwise stated.

## How to read this report

This report is structured to align with the Child Rights Monitoring Framework for Queensland (the Framework) developed by the QFCC (see Figure 1.1), in which children’s rights are clustered to accord with UNCRC reporting.<sup>1</sup> We also developed children’s rights indicators in consultation with government agencies and non-government sector representatives. The report takes into account the concluding observations of the UN Committee on the Rights of the Child (UN Committee) in 2019, following its examination of Australia’s combined fifth and sixth periodic reports.<sup>3</sup>

The report starts by outlining what a child-rights approach looks like and how it can be applied across government systems. There are separate chapters on civil rights and freedoms; violence against children; alternative care; disability, health and welfare; and education and play. At the beginning of each chapter, we highlight the timely and practical steps that the government can and should take to implement a rights-based approach across Queensland systems. In doing so, we also reflect on the progress made in addressing the UN Committee’s concluding observations and highlight areas where attention is still needed (the Australian Government is again due to report to the UN Committee in 2024). We also consider issues relevant since Australia’s last review by the UN Committee in 2019.

<sup>i</sup> The Committee’s reporting guidelines can be accessed at, <https://www.ohchr.org/en/treaty-bodies/crc/reporting-guidelines>

## Key figures and statistics

There are **1.2 million** children and young people (under 18 years) in Queensland

**100,000** are Aboriginal and Torres Strait Islander

Over the past 12 months, approximately:

**19,600**

Domestic and Family Violence orders, where a child was named, were made

**32,000**

notifications were received by Child Safety

**12,000**

children lived in out-of-home care

**275**

children were in youth detention on an average day

**3400**

children under 12 years experienced homelessness or lived in severely overcrowded housing

**27%**

of households with children experienced food insecurity

**14,000**

contacts were made to Kids Helpline

**25%**

of children were overweight or obese

**48,000**

children under 14 years accessed the NDIS

**54,000**

children were enrolled in kindergarten

**570,000**

students were enrolled in state schools

**78,000**

students received disciplinary absences

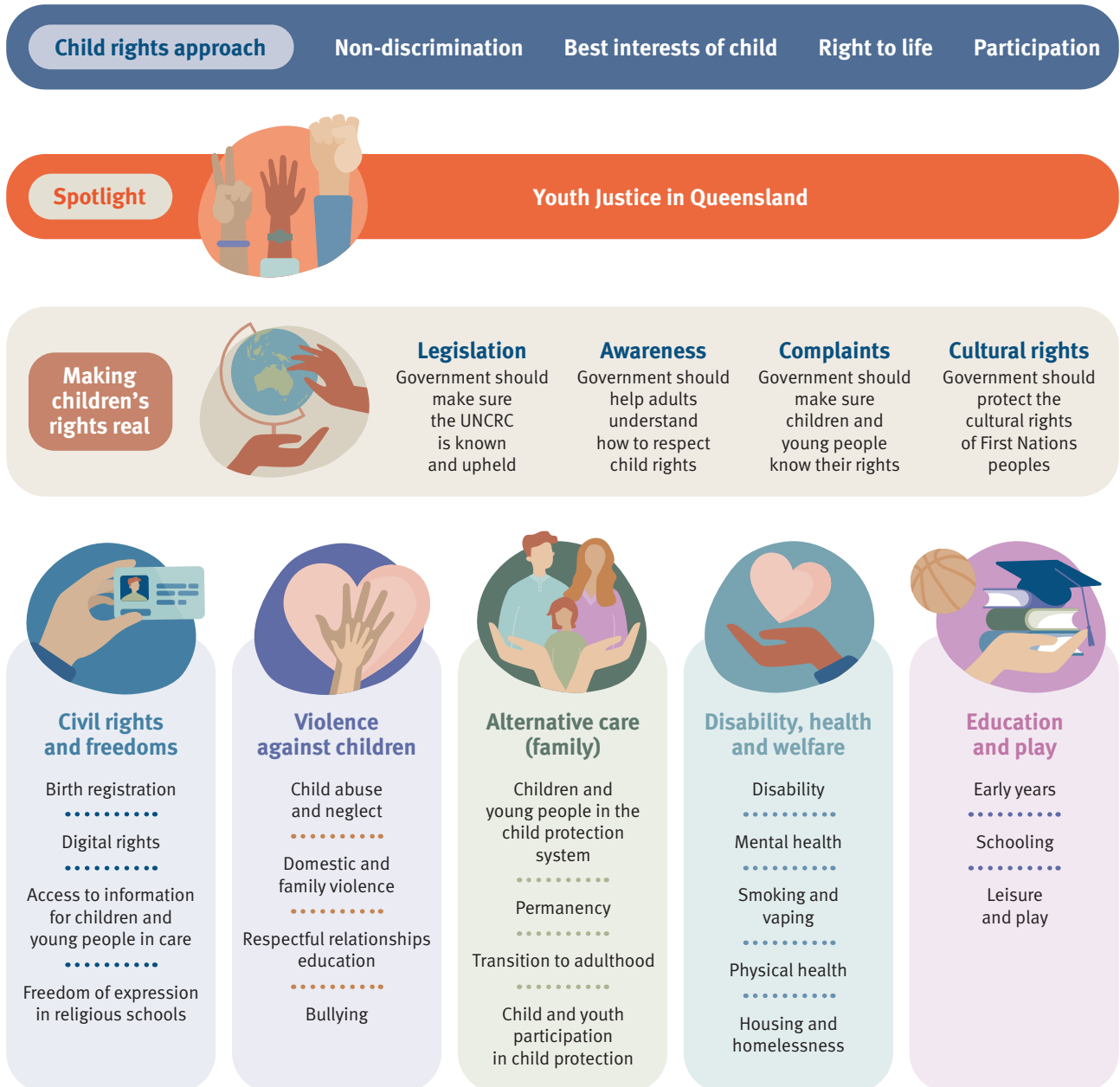
**63,000**

babies were born

**410**

children died, including 20 by suicide

Figure 1.1. Queensland Child Rights Monitoring Framework



## Shining a spotlight on youth justice

Each year we will shine a spotlight on a child rights topic of critical importance in Queensland. In this report given the ongoing calls for policy reform in youth justice, we have focused on youth justice (see [Chapter 3](#)).

Article 37 of the UNCRC states that the arrest, detention or imprisonment of a child must only be used as a measure of last resort and for the shortest possible time.<sup>4</sup> This is not the story in Queensland.<sup>ii</sup> In fact, Queensland has more children and young people in detention than any other state or territory in Australia, and Aboriginal and Torres Strait Islander children and young people continue to be disproportionately impacted.<sup>5</sup> A focus on improving youth justice is also essential for addressing the over-representation of Aboriginal and Torres Strait Islander people in the adult criminal justice system and closing the gap in Aboriginal and Torres Strait Islander incarceration rates.<sup>6</sup>

The QFCC has established a framework to report on internationally compliant, rights-based outcomes for children and young people involved in the youth justice system. There is a significant body of evidence that suggests the system is more likely to be effective if children and young people at risk of entering the youth justice system are viewed through a rights and wellbeing lens, rather than criminal or welfare lens. This approach is in line with international children's rights instruments, which the Australian Government has signed up to.<sup>iii</sup>

## Expert Review Panel

An Expert Review Panel (the panel) was established to independently evaluate the quality, accuracy and validity of the QFCC's rights-based approach. The panel of three child rights experts from across Australia assessed the methodology used, the quality of data and analysis, and the conclusions we have drawn. They also identified any errors, inconsistencies or weaknesses in the work and provided constructive feedback. The panel included:

- Professor John Tobin, University of Melbourne.
- Ms Amy Lamoin, ChildFund Australia.
- Associate Professor Faith Gordon, Australian National University.

## What we mean by 'child'

The QFCC typically defines 'young people' and 'youth' as being up to the age of 25 years but, for the purpose of this report, we define a child or young person as any person under the age of 18 years. This is in line with the UNCRC. Age range is indicated in the data where relevant. Our work takes into account all children, from diverse locations, backgrounds, ethnicities, needs and capabilities.

Given the spotlight on youth justice in this report, it is important to note that the minimum age of criminal responsibility in Queensland is currently 10 years. The QFCC has regularly advocated for raising this minimum age to 14 years, in line with recommendations by the United Nations.<sup>7</sup> In addition to minimum age, a presumption of *doli incapax* (criminal incapacity) applies to children under the age of 14 years in Queensland. In theory, *doli incapax* should act as a safeguard for children who lack the capacity to understand when a crime has been committed. In practice, *doli incapax* has proven difficult to administer. The 2018 *Report on Youth Justice* found that *doli incapax* is 'rarely a barrier to prosecution' in Queensland.<sup>8</sup>

ii On an average day in 2021–22 there were 275 children and young people aged 10 years and over in youth detention in Queensland.

iii Australia ratified the UNCRC in 1990, *Convention on the Rights of Persons with Disabilities* in 2008, and the *Optional Protocol of the Convention against Torture* in 2017.

# Our approach



## A child rights-based approach

The QFCC is committed to a child rights-based approach in all matters concerning children and young people. This approach is grounded in the idea that all children and young people are entitled to enjoy all their rights as articulated in the UNCRC. A child rights-based approach furthers the realisation of child rights as established in the UNCRC instruments by:<sup>9</sup>

- Using child rights standards and principles from the UNCRC to guide behaviour, actions, policies and programs, particularly:
  - non-discrimination (Article 2)
  - the best interests of the child (Article 3)
  - the right to life, survival and development (Article 6)
  - the right to be heard and taken seriously (Article 12)
  - the child’s right to be guided in the exercise of their rights by caregivers, parents and community members, in line with the child’s evolving capacities (Article 5).
- Building the capacity of children and young people as rights holders to claim their rights and the capacity of duty bearers to fulfil their obligations to children and young people.

A child rights-based approach can be contrasted with a welfare-based approach, which has tended to dominate policies and practices regarding children and young people (see Table 2.1). Under a welfare-based approach, the focus is on children and young people’s vulnerabilities and the need to provide them with protection. As summarised in the table below, children and young people are seen to be incompetent, lacking in expertise and entirely dependent on adults for protection. They are to be seen but not heard.<sup>10</sup>

Whereas, under a rights-based approach, greater attention is paid to children and young people’s strengths and evolving capacities. Their resilience, lived experiences and expertise are all valued

and recognised. They are not only seen but listened to and taken seriously in all matters affecting them. A rights-based approach demands a shift from children and young people’s silence to actively creating ways to facilitate their voice and participation in matters affecting them. It requires a recognition that children and young people’s capacities are constantly evolving and children and young people will increasingly possess insight and expertise into matters affecting them. It demands a far more active role for children and young people in the development of laws, policies and processes designed to ensure children and young people enjoy their rights under the UNCRC.

**In Growing Up in Queensland 2020, 58.3 per cent of young people aged 13 to 18 years agreed that they have a say in decisions that affect them. 60.3 per cent agreed that they have the information they need to make decisions about their life.**

A rights-based approach also guides the way in which issues concerning children and young people are identified and resolved:

- Identify what rights are being engaged by the actions (or omissions) of a government department or a body acting on behalf of government.
- Identify the scope and nature of the obligation on the government department or agency to respect, protect and fulfil the rights of the child or young person.
- Adopt a process that involves all relevant actors working collaboratively and across disciplines and sectors to develop a solution to the issue that will secure the child or young person’s rights (importantly, this process must be culturally sensitive and ensure the participation of children and young people in a manner consistent with Article 12 of the UNCRC).

**Table 2.1.** Rights-based approach compared with welfare-based approach

Welfare-based approach	Rights-based approach
<ul style="list-style-type: none"> <li>• Victims and passive recipients of assistance</li> </ul>	<ul style="list-style-type: none"> <li>• More than victims — potential agents and collaborators</li> </ul>
<ul style="list-style-type: none"> <li>• Vulnerable and in need of protection</li> </ul>	<ul style="list-style-type: none"> <li>• Protection necessary but capacity for supported decision-making</li> </ul>
<ul style="list-style-type: none"> <li>• Incompetent and incapable</li> </ul>	<ul style="list-style-type: none"> <li>• Evolving capacities</li> </ul>
<ul style="list-style-type: none"> <li>• Entirely dependent on adults' welfare/beneficence</li> </ul>	<ul style="list-style-type: none"> <li>• Capacity for resilience and independence and interdependence with adults</li> </ul>
<ul style="list-style-type: none"> <li>• Lacking in expertise</li> </ul>	<ul style="list-style-type: none"> <li>• Possessing relevant and relative expertise</li> </ul>
<ul style="list-style-type: none"> <li>• Object of intervention</li> </ul>	<ul style="list-style-type: none"> <li>• Subject with entitlements under the UNCRC</li> </ul>
<ul style="list-style-type: none"> <li>• Do not require access to information about circumstances</li> </ul>	<ul style="list-style-type: none"> <li>• Require access to appropriate information about circumstances</li> </ul>
<ul style="list-style-type: none"> <li>• Silenced (seen but not heard)</li> </ul>	<ul style="list-style-type: none"> <li>• Active participants (seen, heard, listened to and taken seriously)</li> </ul>
<ul style="list-style-type: none"> <li>• Deficits based approach</li> </ul>	<ul style="list-style-type: none"> <li>• Strengths based approach</li> </ul>

An important reference point for determining breaches and progress is the UN Committee's concluding observations<sup>11</sup> as well as international human rights instruments (i.e. conventions and declarations). These instruments have created an obligation on Australia in international law to observe the rights they set out. While the Australian Government is primarily responsible for meeting international human rights obligations, states and territories have a significant role to play in human rights implementation.

Queensland has its own legislative and administrative powers, and Human Rights Commission, which allows it to promote and protect human rights at a jurisdictional level. Queensland can also contribute to the reporting process for international human rights treaties to provide a comprehensive picture of human rights implementation across the country.

Ongoing areas of concern and recommendations from the previous concluding observations include, calling for urgent measures to be taken to protect children and young people: from violence, in alternative care, in relation to mental health, from environmental damage and climate change, who are seeking asylum, refugees, and in situations of migration, and in the administration of justice.

## Child and youth participation

Children and young people have the right to be actively involved and influence decision-making on issues that affect their lives (Article 12, UNCRC). This is the case at both a macro level (such as the development of this report) and at a micro level (such as decisions about education, health and service provision).

The QFCC's *Child and Youth Participation Framework* outlines our approach to affirming child rights across our work.<sup>12</sup> We know that children and young people have a significant role to play in shaping economic, social and cultural success across Queensland. We cannot develop sound policy, programs and services without meaningful child and youth participation and embedding their voices in change.

We invited members of our Youth Advisory Council to be actively involved in developing our approach to monitoring child rights and preparing this report. Youth Advocates provided insight, guidance and feedback on this report and on the issues that impact children and young people. They also helped to raise awareness about child rights and promote positive change in their communities.

The unfiltered quotes, voices, experiences and stories of children and young people are highlighted throughout this report, as well as the stories shared by our partners. These contributions provide direct insights into the lived experiences and realities of children and young people in Queensland and inform our proposals for change.

**“ I think accountability is a huge part to ensuring youth voices are heard. To do this in my opinion would be to make sure there are regular consultations with youth, listening to them, recognising what they are saying and doing something with it. Whether the doing be to implement the solutions they are saying, working collaboratively to do so or to amplify their voices.**

Youth Advocate, Jessy

## Impacts of COVID-19

While many of the COVID-19 restrictions pre-date the timeframe for this report, it would be remiss not to address the far-reaching impacts of the pandemic on the rights of children and young people. While we are yet to learn the long-term consequences of the pandemic, evidence shows that COVID-19 negatively impacted on Queensland children's full enjoyment of their rights. This includes the right to an education that develops children to their fullest potential, an adequate standard of living that meets their physical and emotional needs, and the right to meet with other children and young people. While reading this report, it is important to consider the findings in the context of the period of pandemic.

***“COVID-19 is not just a test of health systems, it attacks the way children access education, the way their families earn an income, and how safe they feel in their homes and communities.”<sup>iv</sup>***

The COVID-19 pandemic caused unprecedented school closures across the state and locally in 2020 and 2021. While school closures in Queensland were shorter than in other jurisdictions, the long-term impacts are unknown. Research shows that school closures increased social isolation, negatively impacted mental health and delayed education. Online learning also exacerbated existing inequalities.<sup>13,14</sup>

Through the QFCC's *Growing Up in Queensland* projects, young people described their struggle with online learning, the negative impacts on their academic performance and consequences for entry into further study.<sup>15,16</sup> Many children young people also reported poor mental health and social isolation.<sup>17</sup>

iv Unicef (2020). [https://www.unicef.org/malaysia/media/1361/file/COVID\\_Newsletter\\_1.pdf](https://www.unicef.org/malaysia/media/1361/file/COVID_Newsletter_1.pdf)

“ Let teenagers and school age students have a say in how their learning progresses during the time away from school. Online learning just isn't viable for everyone.

15 years,  
Growing Up in Queensland

“ I would address young people specifically and cater my speech around the key issues affecting them such as mental health during lockdowns and organisations that can assist with mental health.

Female, 16 years,  
Growing Up in Queensland

“ I know I personally will get lower grades because I do better on exams which covid 19 has stopped me from getting which will bring down my average grades.

Male, 17 years,  
Growing Up in Queensland

“ I would provide a page for kids about COVID-19 to give information to young children who may not hear the news or get told by parents.

Male, 13 years,  
Growing Up in Queensland

“ Covid-19 I do a vocational pathway at school so I can't do my work online as it is majority practical.

Male, 18 years,  
Growing Up in Queensland

“ Employ a youth representative that brings a young voice to speak about the issues to connect with the young people better and to communicate from a different perspective.

Non-binary, 17 years,  
Growing Up in Queensland

Young people were also asked to reflect on the way government leaders communicated to the public about COVID-19. They told us they want clear, youth-friendly, accessible and balanced information. They said that social media channels should have been used alongside traditional media to clearly communicate the reasons for restrictions and vaccination information. Many wanted leaders to frame information in a positive manner and to provide reassurance. Young people wanted a chance to ask leaders questions.<sup>18</sup>

“ Have frequent community and state-wide online forums with members of the state government and the health department, which would keep kids informed with government decisions and also be an opportunity for kids to ask questions they might of had.

Male, 15 years,  
Growing Up in Queensland

“ **Make it more understandable and use language that isn’t too complicated.**

Male, 17 years,  
Growing Up in Queensland

“ **Let them know that it’s not that scary but you just gotta be careful and smart.**

Male, 17 years,  
Growing Up in Queensland

“ **The vaccine information was confusing for me. It was hard to understand why I didn’t have to get it then all of a sudden I did.**

Non-binary, 15 years,  
Growing Up in Queensland

“ **I would let them know that you’re not alone, and that it won’t last forever.**

Female, 16 years,  
Growing Up in Queensland

The pandemic also impacted the youth justice system in Queensland. Children and young people were held in isolation for long periods, with many detained in watchhouses.<sup>19,20</sup> Further inquiry is needed to understand (and prevent) the impacts of confinement for children and young people, such as those receiving specialist disability care or in youth detention facilities.

COVID-19 led to increased pressures on families that heightened the risk of child abuse and neglect, including financial stress, domestic and family violence, housing instability, online bullying and grooming, and mental health problems.<sup>21</sup> For example, while the data indicated a reduction in number of

reports of suspected child abuse and neglect during the initial national lockdown (April 2020), they increased from May 2020, as restrictions eased and students returned to school. The number of reports exceeded pre-pandemic levels. The system saw a steady increase in child protection notifications and entries into care, and this persisted throughout the period of COVID-19 restrictions.<sup>22</sup> The statistics demonstrate the importance of children and young people having an external source to report to.

Families continue to struggle with the enduring economic impacts of COVID-19, including lack of housing availability and affordability and increased cost of living (see [Chapter 8](#)).<sup>23</sup>

## First Nations children and young people

The QFCC has made an explicit commitment to Aboriginal and Torres Strait Islander children, young people and their families and to embed culturally safe and responsive design, practices and delivery in our work. We recognise that self-determination, healing, dignity and respect are all fundamental elements needed to improve outcomes and relationships.<sup>24</sup>

Aboriginal and Torres Strait Islander children and young people represent the future of the world's oldest continuing culture. They have the right to share their culture and language and enjoy continuity of care and upbringing within their culture, to develop a sense of identity within their community (Article 30, UNCRC).<sup>v</sup> The QFCC is working to ensure that a child rights-based approach is integrated in all its work, with a core aim being: the realisation of human rights for all Aboriginal and Torres Strait Islander children, young people, adults and communities.

**In Queensland, there are over 100,000 Aboriginal and Torres Strait Islander children and young people under the age of 18 years. Almost a third (29.3 per cent) of the population of Aboriginal and Torres Strait Islander children and young people live in Queensland.**

Aboriginal and Torres Strait Islander children and young people remain one of the most disadvantaged groups in Australia, experiencing poverty, exclusion, racial discrimination, criminalisation and removal from their homes and cultures. This reflects serious systemic denials of human rights and further exacerbates intergenerational trauma. The *Family Matters Report 2021*<sup>25</sup> demonstrated that Aboriginal and Torres Strait Islander children are still being removed from family and kin at disproportionate rates. Commonwealth, state and territory governments have committed to reducing the over-representation of Aboriginal and Torres Strait Islander children and young people in out-of-home care by 45 per cent by 2031 through the *National Agreement on Closing the Gap*.<sup>26</sup> According to the *Family Matters Report 2021*, if current approaches continue to be taken, representation is expected to increase to 54 per cent by 2030.<sup>27</sup>

Governments have an obligation to protect Aboriginal and Torres Strait Islander children's rights if they cannot live with their own family (Article 20, UNCRC). These actions include: eliminating racism; ensuring that resources such as funding, materials, policy and programs protect the enjoyment of rights; and respecting the role of Aboriginal and Torres Strait Islander parents, extended family and community in childrearing responsibilities. The *United Nations Declaration on the Rights of Indigenous Peoples* (UNDRIP) recognises the rights of Aboriginal and Torres Strait Islander families and communities to retain shared responsibility for the upbringing, training, education and wellbeing of their children and young people in line with culture and customs.<sup>28</sup> Many Aboriginal and Torres Strait Islander community-controlled organisations are making great effort to work closely with children, young people and families, in a culturally safe environment, to provide wraparound support and give families a voice in decision-making about their children.

Under *Safe and Supported: The National Framework for Protecting Australia's Children 2021–2031* (the National Framework), governments have agreed to prioritise preventative measures that strengthen families rather than punish them.<sup>29</sup> Providing a space for Aboriginal and Torres Strait Islander children and young people to yarn and tell stories is vital. Children and young people have the right to be heard and taken seriously (Article 12, UNCRC). Children and young people need support to regain and preserve their sense of identity, belonging and competence. Through the National Framework, a clear and resourced pathway has the potential to transform Australia's child and family service systems and uphold genuine self-determination for Aboriginal and Torres Strait Islander peoples.

<sup>v</sup> In 2009, Australia supported the *United Nations Declaration on the Rights of Indigenous Peoples* (UNDRIP).

Our aspiration is captured through the words of First Nations children in the Imagination Declaration:

*“When you think of an Aboriginal or Torres Strait Islander kid, or in fact, any kid, imagine what’s possible. Don’t define us through the lens of disadvantage or label us as limited... We urge you to give us the freedom to write a new story. We want to show the world Aboriginal genius.”<sup>vi</sup>*

Systemic change is required to meet the specific needs and rights of Aboriginal and Torres Strait Islander women and girls. Consistent with the UNCRC, the state is obligated to respect, protect and fulfil women’s and girl’s rights, and prevent acts that impair the recognition, enjoyment or exercise of those rights. The *Wiyi Yani U Thangani (Women’s Voices): Securing Our Rights, Securing Our Future Report*<sup>30</sup> elevates the voices of Aboriginal and Torres Strait Islander women and girls in a national conversation around how to best promote their human rights and the rights of their communities. The voices of girls aged 12 to 17 years informed the report’s findings and actions to progress First Nations gender justice and gender equality.

A First Nations Voice to Parliament (the Voice) is about guaranteeing Aboriginal and Torres Strait Islander people, including children and young people, have a say in matters that affect them. On 11 May 2023, the Queensland Parliament passed the *Path to Treaty Act 2023*.<sup>31</sup> These laws enable government to establish a First Nations Institute to help prepare and support First Nations people for treaty negotiations with the state. A Truth-telling and Healing Inquiry will also be set up to examine and report on the effects of colonisation on Aboriginal and Torres Strait Islander people.

The QFCC has encouraged the state government to ensure truth-telling sessions facilitate conversations with Aboriginal and Torres Strait Islander children, young people and their families in ways that are safe, accessible and meaningful. We acknowledge the significant contributions Aboriginal and Torres Strait Islander peoples have made to history and society. It is important that their achievements are recognised and celebrated through truth-telling processes, as well as the Path to Treaty process.<sup>32</sup> In the words of the Uluru Statement:

*“We seek constitutional reforms to empower our people and take a rightful place in our own country. When we have power over our destiny our children will flourish. They will walk in two worlds and their culture will be a gift to their country.”<sup>vii</sup>*

vi The Imagination Declaration 2019. <https://mailchi.mp/aimementoring/applications-are-open-1376029?e=223f267282>

vii Uluru Statement from the Heart 2017. <https://ulurustatement.org/>

Spotlight

# Youth Justice in Queensland



# A child rights approach would:

- Urgently address the incompatibility of the *Strengthening Community Safety Act 2023* with human rights principles and reinstate the protections provided by the *Human Rights Act 2019*.
- Raise the minimum age of criminal responsibility to 14 years.
- Address the missed compliance deadline for the *Optional Protocol to the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (OPCAT)—specifically, establish effective oversight mechanisms to monitor and prevent human rights violations in places of detention, including those detaining children and young people.
- Continue the commitment to reduce the over-representation of Aboriginal and Torres Strait Islander children and young people in the Queensland youth justice system.
- Uphold the principle of self-determination, by:
  - Strengthening the Aboriginal and Torres Strait Islander community-controlled sector, including adequate resourcing to design and lead youth justice responses for children, young people and families.
  - Expanding family-led decision-making across Queensland.
- Conduct a comprehensive review of bail and remand laws to ensure fairness and proportionality for children and young people. The review should also identify any unintended consequences for specific groups, such as the use of harsh bail conditions instead of therapeutic alternatives.
- Redirect investments into evidence-based diversion programs that steer children and young people away from the criminal justice system.
- Implement rights-respecting practices throughout the youth justice system, with a focus on prioritising the wellbeing of children and young people. Prioritise non-judicial measures, such as diversion, mediation, and counselling, for children and young people accused of having committed crimes. Whenever possible, opt for non-custodial sentences like probation or community service.
- Improve access to court assessments for children and young people involved in legal proceedings and ensure continuity of health and therapeutic care for those within the system.
- Ensure that children and young people with disability are not detained unsentenced and that their detention is subject to regular judicial review. While children and young people with disability are still being detained, ensure appropriate supports and accommodations are provided during their detention period.
- Continue the progress that has been made in removing spit hoods from watchhouses, by introducing additional measures to eliminate harmful and inhumane practices that violate the human rights of detained children and young people. This includes addressing isolation and detention in adult facilities (i.e. watchhouses).
- Enhance support for children and young people during their transition out of detention, with a focus on successful reintegration into community and securing housing upon release.
- Promote children and young people’s active participation in decision-making processes that affect them and provide comprehensive rehabilitation programs tailored to their needs.
- Explore the feasibility of implementing multi-agency collaborative panels earlier to prevent children and young people’s interaction with the youth justice system.
- Ensure that children and young people in the youth justice system receive information about their rights and how to make complaints.
- Provide transparent information about the allocation of youth justice funding and in particular investment in prevention and early intervention funding (differentiating new and existing).
- Establish a youth justice peak body to strengthen the sector’s advocacy and representation.
- Ensure public accessibility to judicial and administrative judgments and decisions regarding children and young people. This includes disclosing the criteria used to assess the best interests of the child.

The incarceration of children and young people represents the most severe form of punishment within the criminal justice system. Article 37 of the UNCRC states that the arrest, detention or imprisonment of a child must only be used as a measure of last resort and for the shortest possible time. This chapter puts a spotlight on youth justice and explores what is currently happening in Queensland.

## Criminalisation of children and young people

On an average day in 2021–22, there were 275 children and young people aged 10 years and over in youth detention in Queensland.<sup>viii</sup> This figure is significantly higher than every other state in Australia and an increase from the 2020–21 average of 229. Males make up the vast majority of children and young people in youth detention in the state (on average between 86 per cent and 90 per cent). In 2021–22, the proportion of females in youth detention was 11 per cent, slightly up from the previous year (10 per cent).<sup>33</sup>

Aboriginal and Torres Strait Islander children and young people are drastically over-represented at every point of the youth justice system, and this disparity continues to worsen. Aboriginal and Torres Strait Islander children and young people account for 65–72 per cent of children and young people in youth detention on an average day.<sup>34</sup> This is at odds with the *National Agreement on Closing the Gap* which aims to reduce the rate of Aboriginal and Torres Strait Islander children in detention by at least 30 per cent by 2031.<sup>35</sup>

**In 2021–22, Aboriginal and Torres Strait Islander children and young people were over 21.4 times more likely to be in youth detention than non-Indigenous children and young people.<sup>36</sup>**

### *Minimum age of criminal responsibility*

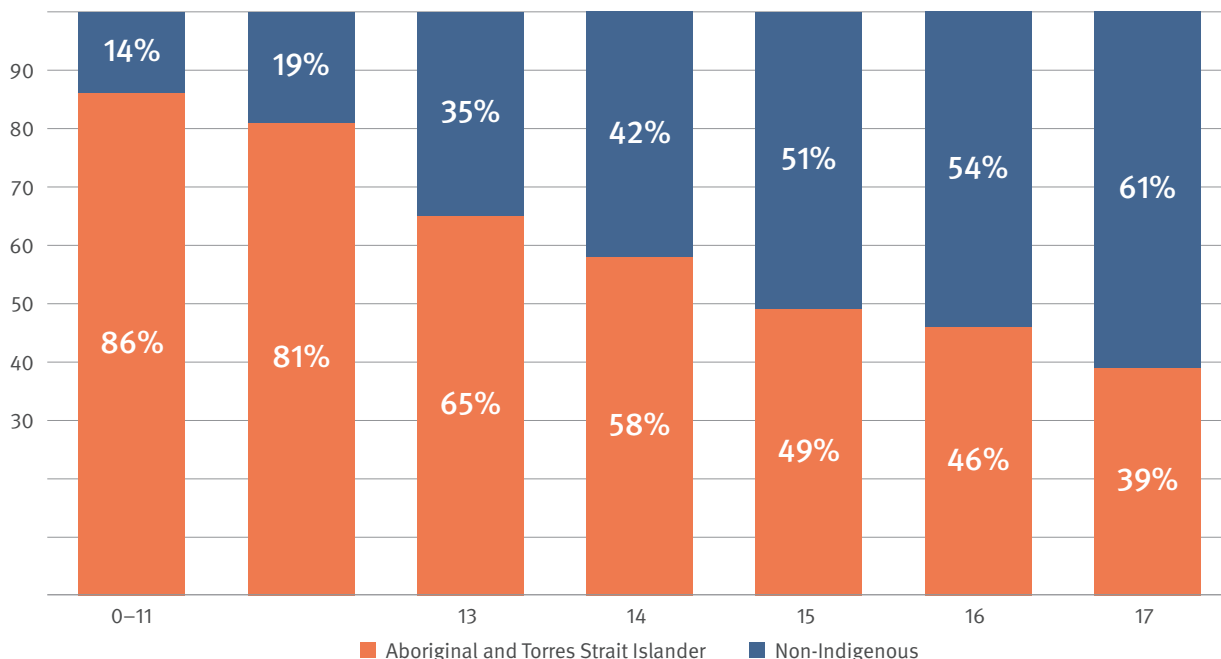
In Queensland, children continue to be held criminally responsible from the age of 10 years, despite recommendations made by the UN Committee<sup>ix</sup> and the Council of Attorneys-General to raise the age to 14 years.<sup>37</sup> In early 2022, the Queensland Parliament's Community Support and Services Committee examined the Criminal Law (Raising the Age of Responsibility) Amendment Bill 2021, which sought to raise the minimum age of criminal responsibility to 14 years. The Committee recommended the Bill not be passed but did recommend the Queensland Government continue to work with all state and territory Attorneys-General to consider increasing the minimum age of criminal responsibility from 10 to 12 years, falling short of the UNCRC recommendations.<sup>38</sup>

Aboriginal and Torres Strait Islander children are the most profoundly affected by the current age of criminal responsibility. Figure 3.1 shows that Aboriginal and Torres Strait Islander children are especially over-represented in the younger age groups (10–14 years of age).

viii The average daily number of young people in youth detention is calculated based on the number who were physically located in a detention centre at 11:59pm on each day during the period.

ix The UN Committee encourages States parties to take note of scientific findings in the fields of child development and neuroscience, and to increase the minimum age of criminal responsibility to at least 14 years. The UN Committee also recommends that no child be deprived of liberty, unless there are genuine public safety or public health concerns, and encourages State parties to fix an age limit below which children may not legally be deprived of their liberty, such as 16 years of age. See General Comment No. 24 (2019) on children's rights in the child justice system.

Figure 3.1. Proportion of child defendants by First Nations status, age at the time of offence (Queensland, 2021–22)



Source: Queensland Children’s Court Annual Report 2021–22, using data obtained from the Department of Children, Youth Justice and Multicultural Affairs (former). ‘Other’ includes those who do not identify as Aboriginal or Torres Strait Islander, or whose status is unknown or not stated.

### International human rights

Under the UNCRC, children and young people have the right to get legal help and be treated fairly if they have been accused of breaking the law (Article 40, UNCRC). Children and young people who break the law must not be treated cruelly. They must not be put in a prison with adults and must be able to keep in contact with their family (Article 37, UNCRC).

While Articles 37 and 40 of the UNCRC specifically address the due process rights of the child, the government also has an obligation to uphold all rights under the UNCRC regardless of whether a child or young person is involved with the criminal justice system. For example, all children and young people have the right to a full life, where they are able to survive and develop (Article 6, UNCRC). Children and young people have the right to be free from discrimination (Article 2, UNCRC) and have their opinions heard and taken seriously (Article 12,

UNCRC). Children and young people have the right to be protected from harm (Article 19, UNCRC). Children and young people have the right to good quality health care (Article 24, UNCRC) and to a standard of living that is good enough to meet their physical and mental needs (Article 27, UNCRC). Children and young people have the right to share their culture, language and religion with others (Article 30, UNCRC).

The United Nations General Comment No. 24 (2019) on children’s rights in the child justice system guides governments on how to respect, protect and fulfill the rights of children and young people who come into contact with the justice system. It covers various aspects of youth justice, including the treatment of children in pretrial detention, right to a fair trial, access to legal representation, use of diversion measures, and rehabilitation and reintegration of children and young people who have offended.<sup>39</sup>

There are other international human rights instruments that protect the rights of children and young people involved with the youth justice system, including:

- The *United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (CAT), ratified by Australia in 1989.
- The *Optional Protocol to the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (OPCAT), ratified by Australia in 2017.
- The *United Nations Convention on the Rights of Persons with Disabilities* (CRPD), ratified by Australia in 2008.
- The *United Nations Declaration on the Rights of Indigenous Peoples* (UNDRIP), supported by Australia in 2009.
- The *United Nations Standard Minimum Rules for Administration of Juvenile Justice* (Beijing Rules).
- The *United Nations Guidelines for the Prevention of Juvenile Delinquency* (Riyadh Guidelines).
- The *United Nations Rules for the Protection of Juveniles Deprived of Their Liberty* (Havana Rules).
- The *United Nations Standard Minimum Rules for Non-Custodial Measures* (Tokyo Rules).

## Youth justice policy and legislation in Queensland

### Youth Justice Act 1992:

**This act sets out Queensland's criminal jurisdiction relating to children, underpinned by a charter of youth justice principles. These principles include that the community should be protected from offences and, in particular, recidivist high-risk offenders, and that the youth justice system should uphold the rights of children, keep them safe and promote their physical and mental wellbeing. Consideration should be given to a child's age, maturity and, where appropriate, cultural and religious beliefs and practices.**

Following a review of Queensland's youth justice system in June 2018, the *Atkinson Report on Youth Justice* recommended the state government adopt four pillars as its policy position on youth justice:<sup>40</sup>

- Intervene early.
- Keep children out of court.
- Keep children out of custody.
- Reduce re-offending.

The report highlighted the need for a focus on education, vocational training and employment. It suggested increasing options for police to divert child offenders from prosecution, such as through restorative justice programs, as well as expanding options for courts to divert children from detention centres, such as through probation, community-based supervision or treatment programs. The report also recommended increasing options for families to receive support and services to prevent youth offending and intervene early when there are signs of problematic behaviour.<sup>41</sup>

In December 2018, this position was accepted in the government's *Working Together Changing the Story Youth Justice Strategy 2019–2023*.<sup>42</sup> Despite this commitment and significant investment, in recent years we have observed a shift away from the four pillars, to enacting policies that continue to disproportionately impact Aboriginal and Torres Strait Islander children and young people and increase the likelihood of unsentenced detention.<sup>43</sup>

In February 2021, the Queensland Government announced tough new measures to further address youth crime, focusing on serious repeat offenders and strengthening bail laws for children and young people. This included legislative changes to strengthen how children and young people who offend are dealt with in the court system, such as:

- a presumption against bail for children and young people who commit certain offences while on bail for a prescribed indictable offence (for example, unlawful use of a motor vehicle as a passenger (or passenger in a stolen vehicle) and entering premises with intent to commit an indictable offence)

- courts having the ability to consider whether parents, guardians and others are willing to support the child or young person to comply with bail conditions before bail is granted<sup>x</sup>
- a new principle in the Youth Justice Act stressing that the community should be protected from recidivist high-risk offenders
- legislating the requirement that in sentencing children and young people, courts consider whether offences were committed while on bail.

In 2021, the Queensland Government also established the Youth Justice Taskforce (the Taskforce), to focus on serious repeat offenders and these new reforms.<sup>44</sup>

*In the news:*  
**Tougher laws made even tougher**

*“The construction of two new youth detention centres.”*

*“Young offenders will be in custody for longer to make sure they can complete requisite rehabilitation and reform programs set out by the courts.”*

<https://statements.qld.gov.au/statements/96885>

In March 2023, the Queensland Government passed amendments to the Youth Justice Act with the introduction of the *Strengthening Community Safety Act 2023*.<sup>45</sup> The government asked parliament to override the application of the Human Rights Act to provisions of the bill which it admitted were **incompatible** with the *Human Rights Act 2019* and could not be justified,<sup>46</sup> including making breach of bail an offence for children and young people and enable their bail history to be considered during sentencing. This is the first time Queensland has overridden its Human Rights Act. In doing so, it has placed significant limitations on children’s rights. The Queensland Human Rights Commission stated:

*“Some of the rights unreasonably limited by the Bill are specially protected under international law and should never be subject to such an override... A dangerous precedent will be established for future governments to override human rights as a result of a public controversy. It is at these times of heightened public anxiety that maintaining robust protections of human rights is of greatest importance.”<sup>47</sup>*

The new measures signal a sharp withdrawal<sup>xi</sup> from the government’s *Working Together Changing the Story Youth Justice Strategy 2019–2023* and significantly undermine the possibility of realising the strategy’s goals, including keeping children and young people out of court and out of custody.<sup>48</sup>

x In 2022–23 the Intensive Bail Initiative (IBI) operates in five locations, through which the Family Partnership service, aims to support families to aid a child or young person’s compliance with their bail conditions. The Family Partnership service includes brokerage funds to purchase specialised services, or goods to enable a family’s commitment to the court.

xi Other amendments to the *Youth Justice Act 1992* signalling a withdrawal from the *Working Together Changing the Story Youth Justice Strategy 2019–2023* include the *Community Services Industry (Portable Long Service Leave) Act 2020* and the *Youth Justice and Other Legislation Amendment Act 2021*.

## Human rights legislation in Queensland

On 1 January 2020, substantive provisions of the *Human Rights Act 2019* commenced, placing new obligations on public entities in Queensland. Section 33 of the Act specifically applies to children and young people in the criminal process, stating that:<sup>49</sup>

- An accused child who is detained, or a child who is detained without charge, must be segregated from all detained adults.
- An accused child must be brought to trial as quickly as possible.
- A child who has been convicted of an offence must be treated in a way that is appropriate for the child's age.

There are also other rights protected in the Human Rights Act including:

- recognition and equality before the law (section 15)
- right to life (section 16)
- protection from torture and cruel, inhuman or degrading treatment or punishment (section 17)
- right to privacy, family and home (section 25)
- protection of children (section 26(2))
- cultural rights of Aboriginal peoples and Torres Strait Islander peoples (section 28)
- right to liberty and security of person (section 29)
- humane treatment when deprived of liberty (section 30)
- right to a fair hearing (section 31)
- rights in criminal proceedings (section 32)
- right not to be tried or punished more than once (section 34)
- retrospective criminal laws (section 35)
- right to education (section 36)
- right to access health services (section 37).

## Our oversight of the youth justice system

One of the key roles of the QFCC is to oversee and publicly report on the performance of the youth justice system. We draw on the experiences of children and young people, insights of stakeholders, available data and evaluations of system performance to identify changes to laws, policies, programs and services that can improve outcomes for children, young people and their families.

### *Changing the Sentence: Overseeing Queensland's youth justice reforms*

In 2019, the QFCC examined activities and projects related to pillars two and three of *Working Together Changing the Story: Youth Justice Strategy 2019–23*: 'keep children out of court' and 'keep children out of custody'. We also considered the over-representation of Aboriginal and Torres Strait Islander children and young people in the youth justice system. Our report, *Changing the Sentence: Overseeing Queensland's youth justice reforms*,<sup>50</sup> highlighted the need for investment in prevention and early intervention. The system needs to focus on reducing factors that contribute to children and young people committing crime, and specialised services for children and young people in the statutory system who are committing most of the crime.

If there is to be a genuine impact on youth crime, children and young people must be treated consistently with a child rights approach, which places an emphasis on the rehabilitation and social reintegration of children who engage in criminal behaviour, rather than a law and order approach which places an emphasis on punishment. Decision-making about services and support for Aboriginal and Torres Strait Islander children and young people must also be transferred to local communities and community-controlled organisations.

### **Yarning for Change: Listen to my Voice**

Through *Yarning for Change: Listen to my voice*, the QFCC heard from 76 Aboriginal and Torres Strait Islander children and young people about their experiences of the Queensland youth justice system. We heard that young people want to be listened to, respected and actively involved in the decisions that impact them.<sup>51</sup>

**“ ...just everyone making all of the decisions for me without like, letting me have a say as well. Like, I would like to know more about what’s going on around me so I’m not left stressing out and over thinking in myself.**

Female, age undisclosed, Yarning for Change

Children and young people shared their experiences in the child protection system, detention periods, court proceedings and interactions with law enforcement. Disconnection from kin, community and culture; disengagement from education during and after detention; and experiences of discrimination were critical contributors to youth crime and the most significant obstacles to children and young people’s wellbeing. Children and young people emphasised the significance of relationships and having individuals who care and support them. They said that the people in the system and their communities make the most significant difference.

*Yarning for Change* provides a crucial opportunity to integrate the perspectives of Aboriginal and Torres Strait Islander children and young people into discussions about how to enact meaningful change and what is most likely to succeed for them and their communities.

### **Child Rights Youth Justice Monitoring Framework**

In 2022, the QFCC designed a framework to monitor child rights in the youth justice system. The data-based framework has two system-wide performance measures (recidivism and diversion) underpinned by children and young people’s experience within the system. We measure system delivery that is critical to child rights across three pillars: treatment of the accused; health and wellbeing; and culture and identity. The whole system is enabled by adequate funding.

A child rights approach is essential in a youth justice context because it recognises that every child has the right to be treated equally, without discrimination based on their status or circumstances. It prioritises the best interests of the child in all actions concerning them, ensures that they have the right to participate in decisions affecting them, and guarantees their right to life, survival and development. A child rights approach also provides a long-term solution to youth offending by addressing the root causes of crime and recognising the specific needs of children and young people who come into contact with the youth justice system. It is more effective in reducing crime than a punitive approach and is more cost-effective than custodial measures. By promoting child rights, the system can foster public trust and confidence and protect children from unjustified incursions on their rights.<sup>52</sup>

## System-wide performance

### Recidivism

If the system is consistently upholding children and young people's rights and applying the principle of diverting offenders from further progression into the youth justice system, it should contribute to lower rates of recidivism. In 2021–22, 86.6 per cent of the young people who were released from a youth detention centre in Queensland reoffended within six months (i.e. had a subsequent charged offence). That figure was 87.2 per cent for Aboriginal and Torres Strait Islander children and young people.<sup>53</sup>

The interplay between recidivism and diversion is complex. For example, it is possible that as diversion increases, the rate of recidivism may also increase as those who have committed more serious offenses make up a larger proportion of those in the statutory system. The data shows that a small proportion of offenders (17 per cent) are disproportionately responsible for offences committed by young people in Queensland (48 per cent of all convicted charges).<sup>54</sup>

Many of the children and young people who shared their experiences through *Yarning for Change* had experienced multiple admissions to youth detention. One young person had been in youth detention 28 times. The United Nations has stated that the overuse of detention in the administration of justice to children is exacerbated by:

*“a lack of effective child welfare systems; lack of support for family environments; excessive criminalisation; low minimum age of criminal responsibility; harsh sentencing; discrimination; socioeconomic reasons; and a lack of resources in the administration of justice.”<sup>55</sup>*

### Diversion

The UNCRC recognises the need for diversion measures as a means of preventing young people from entering the criminal justice system. General Comment No. 24 (2019) on children's rights in the child justice system emphasises the importance of diversion as a preferred approach for the majority of cases. The General Comment calls for governments to invest in prevention, early intervention and multidisciplinary approaches, as well as to extend the range of offences for which diversion is possible. The General Comment also stresses the need for diversion to be an integral part of the child justice system, and the importance of protecting children's human rights and legal safeguards in diversion processes and programs (in accordance with Article 40 of the UNCRC). This includes recognising the need for alternative measures for children under the age of criminal responsibility and setting the minimum age of criminal responsibility to at least 14 years of age.

The *Atkinson Report on Youth Justice* states that diverting low-risk young offenders from the criminal justice system is 'the most effective and efficient way to proceed'. Children and young people who are first arrested before the age of 14 years may be three times more likely to become chronic adult offenders than those first arrested after 14 years.<sup>56</sup> Youth justice diversion programs play a crucial role in steering children and young people away from the formal criminal justice system, promoting their rehabilitation<sup>57</sup> and supporting restoration of harm done to victims.<sup>58</sup> Community-designed and community-based diversion programs have proven to be highly effective in reducing reoffending rates and providing positive outcomes for children and young people. These programs prioritise a holistic approach, addressing underlying issues and engaging with local communities.<sup>59,60</sup>

Recognising the unique cultural context and challenges faced by Aboriginal and Torres Strait Islander children and young people, diversion practices led by Aboriginal and Torres Strait Islander communities have shown promising results. First Nations-led place-based approaches have demonstrated remarkable success in reducing crime, criminal justice system contact, and youth justice contact. These approaches have also yielded significant cost savings, along with notable improvements in cultural, social, and health and wellbeing measures.<sup>61</sup> By adopting community-driven strategies, positive outcomes can be achieved across multiple domains. These initiatives involve community elders and leaders promoting cultural connections, healing and accountability. Aboriginal and Torres Strait Islander-led diversion programs foster a sense of empowerment and reduce the risk of reoffending among children and young people.<sup>62</sup>

In Queensland, services are delivered **across the youth justice system** to support low-risk, medium-risk and serious repeat offenders. The Youth Justice Department funds non-government organisations to provide early intervention and prevention services to complement early childhood development, health services and educational services. Services include family wellbeing services, adolescent sexual offending services, On Country program, bail support services, young offender support services and legal advocacy services. Youth Justice also partner with other government departments to identify and engage with at-risk children and young people, divert them from the youth justice system, and follow up on complex bail monitoring strategies.<sup>63</sup>

The Justice Reform Initiative recently highlighted evidence-based alternatives to detention in Queensland. The report sets out examples of community-led programs, place-based initiatives, services, policies and alternative justice approaches (including at the point of contact with police and courts) that are working to reduce the numbers of people in prisons across Australia and internationally.<sup>64</sup> Diversion strategies must also

be approached through a child protection lens, recognising that children and young people involved in the justice system often require support and guidance rather than punishment. By prioritising the wellbeing and development of young people, diversion programs can create opportunities for growth and positive change.

*Working Together Changing the Story* contains principles and actions to divert children from the justice system.<sup>65</sup> In 2021, the QFCC provided an analysis of the activities and projects to keep children out of court and out of custody. The report found evidence of initiatives that showed success in reducing re-offending, however the lifespan of funding is often limited and programs are not designed to provide ongoing support to children and young people once their court proceedings or bail conditions are completed. For diversion activities to contribute to long-term changes, they must involve the child or young person's family, and provide health, social and emotional support.<sup>66xii</sup> While we acknowledge the vast scope of diversionary programs that are needed to address youth offending and the significant and dedicated work being undertaken across Queensland, the data we consider in this initial report are forms of diversion by police and courts.

### **Police diversion**

In 2021–22, the police issued 14,589 cautions to young people, an increase of 6.6 per cent from the previous year.<sup>67</sup> This exercise of police discretion is a positive step forward, as police are an important link between a child or young person and diversion or early intervention programs. As of February 2023, 26.4 per cent of current Queensland Police Service officers were trained to administer cautions to children and young people and 5.7 per cent had completed a Police Youth Diversion Online Learning Product. From September 2022, all recruits will complete youth justice, police cautioning and police youth diversion training as part of the Recruit Training Program. The material provides theory and practical elements for cautioning youths.<sup>68</sup>

xii The Queensland Audit Office is undertaking an audit to assess whether youth justice strategies and programs are effective in reducing crime by serious repeat offenders and improving community safety. It is anticipated to be tabled in early 2024.

### **Court diversion**

Restorative justice seeks to address the needs of both the offender and the victim. It aims to repair the harm caused by the offense by involving all affected parties in a dialogue or mediation process. This approach allows victims to have a voice, express their feelings, and receive answers to their questions. At the same time, it offers offenders an opportunity to take responsibility for their actions, make amends and understand the consequences of their behaviour.<sup>69</sup> Restorative justice processes are voluntary and often require significant work by frontline staff to ensure that children and young people and their families are ready and willing to engage in the process. In 2021–22, there were 3004 restorative justice referrals (43 per cent were for Aboriginal and Torres Strait Islander children and young people), a 5 per cent decline from the previous year.<sup>70</sup> Restorative justice processes include group conferencing (involving an offender and victim) and alternative diversion processes (offender only). In 2021–22, a total of 1527 children and young people participated in a restorative justice process (38 per cent were Aboriginal and Torres Strait Islander children and young people).<sup>71</sup>

### **Funding**

Funding matters in youth justice because it directly affects the availability and quality of prevention, program and service delivery, rehabilitation and reintegration services. By investing in these areas, the youth justice system can reduce recidivism rates, promote positive behaviour change and support the successful transition of children and young people back into their communities. Additionally, funding allows the implementation of evidence-based practices and the provision of adequate staffing and resources. This includes qualified professionals, such as case workers, counsellors, psychologists and educators, who can provide appropriate support and guidance. Insufficient funding can result in understaffed facilities, limited access to resources and reduced program availability. This compromises the quality of care and support for children and young people in the justice system.

The Productivity Commission’s report of youth justice services<sup>72</sup> showed that the average cost per day per child or young person in community-based services was \$245 in 2021–22, a decrease from \$259 in 2020–21. By comparison, the average cost per day per child or young person in detention-based services was \$2086 in 2021–22, an increase from \$1920 in 2020–21. Community-based services are generally more cost-effective than detention-based services. Community-based options, such as diversion programs, probation, counselling and rehabilitation services, offer a more supportive and less restrictive environment for children and young people. Adequate funding is needed to establish and maintain these programs, which can provide tailored service delivery, address underlying issues, and promote positive behaviour change.

The Queensland Government has made a significant investment in outsourced service delivery, with approximately \$30.5 million invested in 2022–23, a six-fold increase in the last ten years.<sup>73</sup>

**“ Instead of what happens after a teen does something and gets into trouble, more action should be put into keeping us out of trouble in the first place. Take preventative measures instead of dealing with consequences.**

Female, 15 years, Growing Up in Queensland

## Treatment of the accused

In January 2023, Australia failed to meet the extended compliance deadline for the Optional Protocol to the Convention Against Torture (OPCAT). Ratified by Australia in 2017, OPCAT is important in protecting the rights of people in places of detention. Implementation requires compliance with OPCAT obligations by all states and territories. Some progress has been made, such as the establishment of the Commonwealth Ombudsman's Office as both the Commonwealth National Preventive Mechanism (NPM) and the coordinator of the Australian NPM network, the designation of some NPMs and the passing of dedicated OPCAT legislation. There is still much work to be done to meet basic OPCAT commitments. The UN Subcommittee on the Prevention of Torture (UNSPT) suspended its visit to Australia in October 2022 and terminated it in February 2023 due to a lack of cooperation by some states, including Queensland (prevented access into mental health facilities). The UNSPT cited this as "a clear breach by Australia of its obligations under OPCAT." Australia is one of only four countries to have ever had the UNSPT suspend or terminate a visit.<sup>74</sup>

### Watchhouses

A watchhouse is a facility, usually attached to a police station, designed to hold people (with or without charge) for a short period of time.

**“** It was horrid. The most...yeah, it's so bad in there...captivity at its best. No sunlight. The radio – broken... no yard time. Hygiene very bad, you can't brush your teeth. You get a shower if you're lucky.

Male, 18 years, Yarning for Change

**“** If you come on weekends, they don't give you showers, they make you wait until Monday... if you're locked in on Friday, you've got to stay in there in your same clothes. And don't have a shower until Monday...and they make you drink a tap on top of the toilet... the tap on top of the toilet.

Male, 18 years, Yarning for Change

In the General Comment No. 24 (2019) on children’s rights in the child justice system, the UN Committee stated:<sup>xiii</sup>

*“Every child deprived of liberty is to be separated from adults, including in police cells. A child deprived of liberty is not to be placed in a centre or prison for adults, as there is abundant evidence that this compromises their health and basic safety and their future ability to remain free of crime and to reintegrate. The permitted exception to the separation of children from adults stated in article 37 (c) of the Convention – “unless it is considered in the child’s best interests not to do so” – should be interpreted narrowly and the convenience of the States parties should not override best interests. States parties should establish separate facilities for children deprived of their liberty that are staffed by appropriately trained personnel and that operate according to child-friendly policies and practices.”*

Table 3.1 shows that there were 8030 admissions of children and young people into police watchhouses or stations in 2021–22 in Queensland (for the purposes of this report, we refer to being held in a ‘watchhouse’ as being held in either a police station or a police watchhouse<sup>xiv</sup>).

The data shows that children as young as 10 are being detained in watchhouses. This contravenes the UNCRC and highlights the limited ability of *doli incapax* as a safeguard to protect young children. In its previous concluding observations, the UN Committee expressed its serious concerns with children and young people in detention not being separated from adults. In 2019, the UN Committee recommended that, in cases where detention is unavoidable, the government should ensure that children are detained in separate facilities, including during pretrial detention, and their detention should be regularly and judicially reviewed.<sup>75</sup>

Table 3.2 shows the length of stay of children and young people held in police watchhouses in 2021–22. The QFCC is deeply concerned about the use of watchhouses to detain children and young people, and even more concerned about the use of police stations for detention. We question the provision of services, supports and facilities that can be provided to a child or young person held in a police station for a week or more.

**Table 3.1.** Number of times children and young people were held in custody in a watchhouse or police station (Queensland, 2021–22)

Age	10	11	12	13	14	15	16	17	Total
Number	46	111	453	907	1474	1813	1670	1556	8030

Source: Queensland Police Service, March 2023.

Notes:

1. This data is preliminary and may be subject to change.
2. Data relates to the number of times a person was in a police watchhouse for all reasons between 1 July 2021 to 30 June 2022.
3. A person in a watchhouse multiple times in the period is counted multiple times.
4. A person in a police watchhouse for multiple days is counted as once (regardless of length of stay).
5. Data does not represent the average number of days spent by children in a police watchhouse.
6. Age of a person is calculated as at the date of starting police custody.

xiii General Comment No. 24 (2019) on children’s rights in the child justice system. <https://www.ohchr.org/en/documents/general-comments-and-recommendations/general-comment-no-24-2019-childrens-rights-child>

xiv Holding cells at a police station are intended to hold prisoners for short periods (i.e pending release or transfer to a watchhouse). While also for temporary holding, watchhouses are designed to hold persons overnight or for 24 hours or longer. Extracted from Queensland Police Service Operational Procedures Manual: Chapter 16 – Custody. <https://www.police.qld.gov.au/qps-corporate-documents/operational-policies/operational-procedures-manual>

Queensland is yet to fully implement its requirements under OPCAT, which would improve independent oversight of youth detention facilities. The *Inspector of Detention Services Act 2022* establishes an independent inspector of detention services within the Queensland Ombudsman who has functions including inspecting places of detention, such as youth detention centres and watchhouses. Police stations are not listed as a place of detention in the Act. The Act sets a minimum standard to inspect each youth detention centre at least once every year.<sup>76</sup> The *Monitoring of Places of Detention (Optional Protocol to the Convention Against Torture) Act 2023* came into effect on 2 June 2023. The Act is intended to remove barriers that prevented UN officials from visiting places of detention in 2022.<sup>77</sup> Even with the passage of this legislation, steps must be taken to ensure that there is sufficient resourcing and description of the functions within the independent inspector to consider the special needs for children and young people in places of detention to meet the minimum requirements under OPCAT.

**“ It suffices to say that conditions in watchhouses are harsh and that adult detainees are often drunk, abusive, psychotic or suicidal. Although children may be kept in separate cells, those cells are usually open to the sights and sounds of the watchhouse. Equally, there is no facility to deliver education or the therapeutic interventions that are sometimes available in detention centres.**

Magistrate Mac Giolla Ri, Mt Isa<sup>xv</sup>

**Table 3.2.** Number of times children and young people were held in watchhouses and police stations by length of stay (Queensland, 2021–22)

Length of stay	Watchhouses	Stations
1 day or less	5822	1021
2 days	354	4
3 to 4 days	390	4
5 to 7 days	288	1
8 to 14 days	144	1
15 or more days	0	1
<b>Total</b>	<b>6998</b>	<b>1032</b>

Source: Queensland Police Service, March 2023.

Notes:

1. This data is preliminary and may be subject to change.
2. Data relates to the number of times a person was in a police watchhouse for all reasons between 1 July 2021 to 30 June 2022.
3. A person in a watchhouse multiple times in the period is counted multiple times.
4. A person in a police watchhouse for multiple days is counted as once.
5. Data does not represent the average number of days spent by children in a police watchhouse.
6. Length of stay has been calculated as the difference between custody start time and custody end time in minutes, and then converted to days.
7. Police watchhouses are based on those where the organisational unit name contains 'station' but included in the police watchhouses data.

Not only does this practice violate children’s rights, it also breaches the Queensland Police Service Operational Procedures Manual<sup>78</sup> and the charter of principles in the Youth Justice Act.<sup>79</sup> With the state government’s recent measures to address youth crime, we expect the number of children and young people being held in police watchhouses to increase. The Youth Advocacy Centre has shared similar concerns raised by children and young people held in Queensland watchhouses, including a lack of: access to family, adequate food and nutrition, information about their rights, health care, exercise, hygiene, education and activities.<sup>80</sup>

xv Re Richard Jones (a pseudonym) [2023] QChCM 1. <https://archive.sclqld.org.au/qjudgment/2023/QChCM23-001.pdf>

## Case study

### BA, DC, FE v State of Queensland [2022] QCAT 332

On 30 June 2022, the Queensland Human Rights Commission referred a matter to the Queensland Civil and Administrative Tribunal (QCAT) relating to three complainants who alleged age discrimination and limitations of their human rights. The complainants, all under the age of 18 years at the time, complained about detention in the Cairns watchhouse for periods longer than two days, the conditions of that detention and failure to segregate children from adults.

QCAT firstly found that a complainant did not need to be 18 years or older to make a valid complaint of discrimination on their own behalf and did not require a litigation guardian (provided they were ‘Gillick competent’). QCAT assessed the competency of each of the applicants and directed that one of the applicants be appointed a litigation guardian. QCAT considered that the rights to equality, protection of families and children, and fair hearing were limited by requiring a litigation guardian. That limitation was justified to ensure a fair hearing for all parties based on reliable and informed instructions from a competent party.

### *Unsentenced detention*

Unsentenced detention is when a person is detained while awaiting the outcome of their court matter or sentencing. The use of unsentenced detention for children and young people in Queensland has risen in recent years, remaining above the national average.<sup>81</sup> This results in many children and young people experiencing imprisonment unnecessarily and for longer periods of time than is required.<sup>xvi</sup> On an average day in 2021–22, 238 children and young people were in detention in Queensland who were not sentenced. This figure increased from 202 in the previous year. It means that 86 per cent of young people in custody are unsentenced and have spent on average 43 nights in detention unsentenced, a substantial increase from the average of 36 nights in 2020–21. Most of these children and young people are being held in custody by a court until their next court appearance.<sup>82</sup>

The Youth Justice and Other Legislation Amendment Bill 2021 substantially increased the use of unsentenced detention in Queensland’s youth justice system. In the statement of compatibility under the *Human Rights Act 2019*, it was considered that while reversing the onus of bail would lead to more children experiencing limitations to their right of liberty,

this was outweighed by the importance of protecting community safety in situations of unacceptable risk to the community.<sup>83</sup>

Many children and young people are serving more time in custody than would otherwise have been ordered by the courts. Over 2021–22, in 75.9 per cent of all court appearances involving a child or young person on remand (with at least one proven finalisation), they were released from custody with no time remaining to serve. This figure was 74.4 per cent for Aboriginal and Torres Strait Islander children and young people.<sup>84</sup>

**“ In my view, it becomes a cruel and unusual punishment to detain a child for what is presently an unknown period, in knowledge of the fact that he should, ultimately, in all likelihood, not be sentenced to detention for the offences for which he is being held in custody.**

Judge Horneman-Wren SC, Ipswich<sup>xvii</sup>

xvi In the UN Committee’s 2019 concluding observations concerns were expressed about the high number of children in detention, including on remand. The UN Committee recommended that the Government actively promote non-judicial measures, such as diversion, mediation and counselling, for children accused of criminal offences and, wherever possible, the use of non-custodial sentences such as probation or community service.

xvii *R v Nathan* (a pseudonym) [2023] QChC 4. <https://archive.sclqld.org.au/qjudgment/2023/QChC23-004.pdf>

### Time to judicial outcome

Improvements have been made to reduce the average time taken to finalise matters in 2021–22 compared with the previous year (down from 102 days to 84 days for the Children’s Court and down from 304 days to 286 days for the Children’s Court of Queensland).<sup>85</sup> Timely judicial processes must not compromise a defendant’s ability to receive adequate legal support, have a voice in their matter and receive proper cognitive and mental health assessments.

### Separation

Separation (also known as isolation or solitary confinement) is a form of deprivation of liberty.<sup>xviii</sup> It limits opportunities for children and young people to experience leisure and recreation, with possible detrimental impacts on health and wellbeing.<sup>86</sup> Despite this evidence, children and young people are being routinely subject to separation in Queensland detention centres. In response to a parliamentary question about the number of times and duration that children and young people had spent in separation, the following data were provided for 2021–22:

- there were 30,255 instances of separation between 6 and 12 hours
- there were 519 instances of separation between 12 and 24 hours
- there were 83 instances of separation lasting more than 24 hours.

There were 2863 separations involving young people under 14 years of age and 25,801 separations involving Aboriginal and Torres Strait Islander children and young people.<sup>87</sup> In its 2019 concluding observations, the UN Committee explicitly recommended prohibiting the use of isolation on children and young people.<sup>88</sup>

A Cairns Magistrate recently published evidence about a 13-year-old boy who suffers from Foetal Alcohol Syndrome and Attention Deficit Hyperactivity Disorder. During the last 87 days he spent in detention, he had been confined to his cell for 20 hours or more per day for 78 days. For ten of those days, he was confined to his cell for 24 hours per day.

**“ To detain a 13 and 14 year old child in a detention centre for such a long period of time is a significant punishment. To detain a young person who has your deficits and impairments, for the offence in question, for such a long period of time is, in my view, completely contrary to the regime of the Youth Justice Act and the youth justice principles. Particularly principle 18, that a child should be detained in custody for an offence, whether on arrest, remand or sentence, only as a last resort and for the least time that is justified in the circumstances.**

Magistrate Fantin, Cairns<sup>xix</sup>

Through *Yarning for Change*, young people told the QFCC that they felt isolated during their time in detention when they were forced to remain in their rooms for long periods of time. Their separation was due to either behavioural issues (of theirs or other young people) or staffing shortages.<sup>89</sup>

xviii Article 37 (c) of the UNCRC states that every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person. General Comment 24 adds that solitary confinement should not be used for a child. Any separation of the child from others should be for the shortest possible time and used only as a measure of last resort for the protection of the child or others.

xix *R v TA* [2023] QChC 2. <https://archive.sclqld.org.au/qjudgment/2023/QChC23-002.pdf>

“ At this point in time, ‘separation’ mostly means locking children in their cells because the ratio of staff to children is below the level set in the Certified Industrial Agreement between the Department and the unions representing the staff at the centre. The separation report confirms that when staff numbers at [detention centre] falls below a certain point, children are locked in their cells. Such staff numbers ought to be entirely predictable. One would have hoped that such occasions would be rare but a review of David’s (pseudonym) separation report discloses that out of the 21 days covered by the report, David’s unit was appropriately staffed on only 1 day... On average, David was locked in his cell, for 21 hours and 23 minutes per day or, to put it another way, David was only out of his cell for 2 hours and 37 minutes instead of the expected 12 hours per day.

Magistrate Mac Giolla Ri, Mt Isa<sup>xx</sup>

The Department of Youth Justice has provided information about the use of separation in Queensland youth detention centres, including compliance with the requirements outlined in the **Youth Justice Regulation 2016**. Separations approved under the Regulation must be absolutely necessary for the protection of a person, property or to restore order in the detention centre. Separations must also respect and uphold the human rights of the child or young person affected. Separations are broken into two categories, non-incident and incident related

separations. A non-incident related separation is required when a young person is ill, when a young person requests it or for routine security purposes. Incident related separations require approval from a relevant delegate with the approval level increasing the longer the separation continues.<sup>90,91</sup>

### **Restrictive practices**

The UNCRC states that no child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment (Article 37, UNCRC).

In August 2022, the Queensland Parliament Estimates Committee heard that safety hoods (‘spit hoods’) had been used eight times on children and young people in watchhouses between 2019 and 2022.<sup>92</sup> The Queensland Police Service reviewed this practice and, in September 2022, announced a ban on the use of spit hoods in police watchhouses. Spit hoods have since been removed from police watchhouses, however further protections are needed to ban their use through legislation.

The Queensland Police Service reports that over 2021–22, there were 2490 instances of force<sup>xxi</sup> used by police on children and young people. 62 per cent of these were on Aboriginal and Torres Strait Islander children and young people, and 80 per cent were on males. In at least 77 incidents, the child or young person was injured as a result. There were 333 reported instances where force was used on children under 14 years of age.<sup>93</sup>

With the commencement of the new *Strengthening Community Safety Act 2023*, we are concerned that fewer children and young people will be diverted from the youth justice system creating further pressure on detention centres. The inevitable consequence will be more children and young people held in police watchhouses for longer, exposing them to unacceptable physical and psychological harm. As the data shows, Aboriginal and Torres Strait Islander children and young people will be disproportionately impacted by this decision.

xx *Commissioner of Police v David Taylor* (a pseudonym) [2023] QChCM 2. <https://archive.sclqld.org.au/qjudgment/2023/QChCM23-002.pdf>

xxi Use of force includes firearm, taser, spithood, batons, oleoresin capicum (oc) spray, open/closed hand tactics, restraining accoutrements, police dog, police horse, other object and police pursuit. Timeframe covers July 2021 to June 2022.

### **Criminalising children and young people in care**

Children and young people with experience in out-of-home care are at particular risk of having contact with the youth justice system. In its 2019 concluding observations, the UN Committee highlighted the over-reliance on police and the criminal justice system when dealing with children and young people's behavioural problems and an under-reliance on appropriate therapeutic services.<sup>94</sup>

Government youth justice data shows that, on 30 June 2022, 3.8 per cent of children and young people on a child protection order were also on a youth justice order. For Aboriginal and Torres Strait Islander children and young people this figure increased to 5.9 per cent.<sup>95</sup> This data excludes children and young people who are remanded in custody or on conditional bail programs, and so the actual figure is likely to be significantly higher. Data from the 2022 Queensland Youth Justice Census shows that 28 per cent of children and young people in detention were on an active child protection order.<sup>96</sup> The Australian Institute for Health and Wellbeing has previously reported an overlap of 54 per cent.<sup>97</sup>

## **Case study**

The following information is an extract of a recent case heard in the Mt Isa Magistrate Court on 3 February 2023. The full decision can be found online in the [Childrens Court of Queensland library](#). This case was selected as it summarises familiar experiences of children and young people in out-of-home care and all-too-common breaches of their rights, including access to education and facilitation of family contact.

A review of Isla's (pseudonym) circumstances for the bail applications disclosed the following causes of Isla's offending since going into the care of Child Safety:

- Isla was placed in a care home with girls who are known juvenile property offenders and she has bonded with those girls. It is reasonably clear that this is what led to her property offending, though it is not in evidence that these particular girls are her co-accused on the current offences.
- Isla has had four different Child Safety case workers. It is not difficult to see how such a fragmented relationship with Child Safety could be perceived by Isla as a lack of care and, figuratively, drive her into the arms of her anti-social peers, from whom she can expect more meaningful acceptance and interaction.
- Isla has not attended school, despite expressing desire to attend school and even to play basketball at school. On 31 January, almost 5 months after she came into the care of Child Safety, Isla still did not have an enrolment, so there is still no school she can attend.
- Isla has not seen her siblings or had consistent contact with them. Her younger siblings, for whom she was often a primary carer, are now also in the care of Child Safety and are placed in a remote community to which Isla has previously had substantial connection. A Christmas visit to her siblings was arranged by Child Safety but Isla missed the plane. Isla told the Court that she had no idea a visit had been arranged.

The QFCC has found that children living in out-of-home care often receive harsher treatment when they come into contact with the criminal justice system, compared with other children.<sup>98</sup> For example, they are more likely to be refused bail due to lack of appropriate accommodation within the community. Children known to both the child protection and youth justice systems have a greater likelihood of experiencing poorer life outcomes, such as poor mental and physical health and increased difficulties connecting to their culture and accessing education, employment and housing.

“ And they didn’t give my mum a chance. They just stole me...I reckon if I stayed, if I wasn’t in child safety, I would’ve got to know my culture... I was learning a bit of language when I was younger with all my family, my Dad’s brother and now, I hardly know any of my culture. I could’ve known.

Male, 17 years, Yarning for Change

In a recent Children’s Court case involving a 16-year-old with cognitive impairment, the magistrate had no option but to deny the young person bail, despite the young person already serving 44 days in detention, as Child Safety was not able to provide an appropriate placement that would meet his needs (his cognitive ability was assessed to be of a child aged approximately 5–6 years).<sup>99</sup>

When the government removes children and young people from their parents, it assumes the role of both guardian and duty bearer. The government has a responsibility to ensure that children and young people in the child protection and youth justice systems are properly cared for and live a full life. It must work towards what is in the best interests of the child or young person.

## Health and wellbeing

Children and young people in the youth justice system have higher rates of mental health concerns, traumatic experiences and cognitive and intellectual disabilities.<sup>100,101</sup> Evidence shows that their experience in the youth justice system not only leads to further trauma and poorer health but increases the likelihood of reoffending.<sup>102,103</sup>

The QFCC heard from young people that attending programs helped keep them strong while in detention. However, they said they did not always have access to programs, and this was a particular issue for girls.<sup>104</sup>

“ They have programs sort of much easier and better. But this side doesn’t have programs, whereas that side, they go to school, get programs and what not.

Female, 16 years, Yarning for Change

### *Mental health, alcohol and drugs*

Adverse childhood experiences and trauma are drivers of offending behaviour.<sup>105</sup> Multiple adverse childhood experiences have a cumulative effect on children and young people’s brains, wellbeing and development. They contribute to poorer health outcomes and increase the likelihood of significant social disadvantage.<sup>106,107</sup> 2022 youth justice census data estimates that 35 per cent of children and young people in youth justice custody had at least one mental health or behavioural disorder (suspected or diagnosed) and 83 per cent used at least one substance (alcohol, tobacco or other drug). 40 per cent used ice and other methamphetamines.<sup>108</sup>

Available data also shows that children and young people are self-harming and attempting suicide while in detention in Queensland (Table 3.3). Research has found that adverse childhood experiences are a major risk factor for suicide in children and young people involved in the youth justice system.<sup>109</sup> Youth justice census data from 2022 shows that 39 per cent of children and young people in youth detention had been living in unstable or unsuitable accommodation, 56 per cent had experienced domestic and family violence and 35 per cent had a parent who had also been in custody.

**Table 3.3.** Incidents of self-harm and attempted suicide of children and young people in custody, not requiring hospitalization (Queensland, 2021–22)

	No. of children
Aboriginal and Torres Strait Islander	52
Non-Indigenous	112
<b>Total</b>	<b>164</b>

Source: Australian Government Productivity Commission Report on Government Services 2023: Youth justice services.

In Queensland, youth justice staff assess any mental health, suicide or self-harm concerns disclosed by young people or their parents/carers. Staff are responsible for maintaining safety and risk management plans as part of the case plan implementation and review process. They collaborate with Queensland Health and community health stakeholders to ensure appropriate mental health supports are in place for young people. They identify relevant engagement strategies to implement as part of the programs and services being delivered to reduce reoffending. Multi-Agency Collaborative Panels (MACPs), involving relevant government and non-government organisations, also work together to address the underlying factors that contribute to offending by young people.<sup>110</sup>

The Forensic Child Youth Mental Health Service also provides a range of services across the state, including a Court Liaison Service and therapeutic support to children and young people in detention centres and on community-based orders. These services are offered by various teams across the state. However, there is inequity in the provision of services, with limited access to mental health assessments and services, particularly for children and young people in regional and remote areas.<sup>111</sup> The mental health system is facing pressure due to the rise in children and young people with very acute needs being held in watchhouses. In addition, staffing shortages in youth detention centres limit children and young people’s access to services.

The impact of some of these issues has been highlighted in the Queensland Children’s Court Annual Report:

*“The Forensic Child Youth Mental Health Service continues to provide significant services to children throughout the State, but they continue to be chronically understaffed. They assess children as required at the Childrens Court and they treat young people whilst in detention, when they are released on bail and when they are on other orders. They are unable to provide assessments or reports to the Childrens Court of Queensland. It remains a significant concern that there is a chronic shortage of mental health professionals that are able to assist young people in the youth justice system, both at the assessment and treatment stage. It leads to large delays in the resolution of charges and leaves children’s significant mental health issues untreated.”<sup>xxii</sup>*

xxii Childrens Court Report 2021–22. <https://documents.parliament.qld.gov.au/tp/2022/5722T2094-21DD.pdf>

The United Nations *Beijing Rules* outline that to aid young people’s reintegration into society they must be protected and supported in their educational, social, vocational, psychological, medical and physical needs, based on their age, sex and personality.<sup>112</sup> Youth detention in Queensland is not rehabilitative; it does not prevent traumatised children and young people from re-offending.<sup>113</sup> The statutory system is inflicting further harm on children and young people by subjecting them to methods of torture and inhuman treatment, as described in the previous section. Without addressing the root cause and social determinants of offending behaviour, we cannot expect children and young people to leave detention healed and with the tools necessary to live productive lives.

## Disability

In addition to protections under the UNCRC, the *United Nations Convention on the Rights of Persons with Disabilities* states that people with disability have the right to effective access to justice on an equal basis with others, including through the provision of appropriate accommodations.<sup>114</sup> In their 2019 concluding observations, the UN Committee urged that children and young people with disability must not be detained indefinitely without conviction and their detention should undergo regular judicial review.<sup>115</sup>

*“The identification and management of cognitive impairments is an area that presents a significant gap in the youth justice arena. The lack of identification of impairments can lead to significant miscarriages of justice when capacity issues arise and the poor management of impairments inhibits a young person’s ability to understand and engage with the court process.”<sup>xxiii</sup>*

In 2022, it was estimated that 12 per cent of children and young people in detention in Queensland had foetal alcohol spectrum disorders (diagnosed or suspected) and 37 per cent had a least one cognitive, intellectual, physical or sensory disability (diagnosed or suspected).<sup>116</sup> This data is captured by case managers/workers and should therefore be treated with caution. While there is a lack of comprehensive data on children and young people with disability in the youth justice system, data that is available shows that they are over-represented in the youth justice system.

In Queensland, multi-disciplinary teams operate in youth detention centres to assess and provide supports for young people with a diagnosed or suspected disability. Youth justice staff work with the Department of Education and Queensland Health to provide supports for physical disability, learning disability, developmental delay and foetal alcohol spectrum disorder while children and young people are in detention. Justice liaison officers, provided by the National Disability Insurance Agency (NDIA) are also available to assist families and other service providers with navigating the NDIS system and ensuring children and young people get service packages appropriate to their needs.<sup>117</sup> However, while in custody the youth justice system is responsible for the daily care and support needs of the child or young person, which means that while in custody children and young people may not receive funded supports from their NDIS plan.<sup>118</sup>

In 2018, speech-language pathologists were introduced in Queensland youth detention centres. They work directly with children and young people to support diagnosis and provide necessary programs. They also work with stakeholders to support case management and continuity of service as children and young people prepare to exit detention. The speech-language pathologists have developed plain language documents to support children and young people’s induction to detention, and help them understand the legal system.

xxiii Childrens Court Report 2021–22. <https://documents.parliament.qld.gov.au/tp/2022/5722T2094-21DD.pdf>

Youth Justice advised the QFCC that further work is underway to strengthen the way the system works with children and young people with disability, including:

- developing and embedding screening tools to help staff identify when a child or young person has a suspected disability
- working with partner agencies to improve assessment methods and whole-of-government services to children and young people with disability
- developing a neurodevelopmental framework for practice, outlining the knowledge, skills and attitudes required of staff working with children and young people with disability
- developing practice standards for all staff when working with children and young people with disability, outlining expectations of all youth justice workers.

### Assaults

The UNCRC states that governments must do all that they can to ensure that children and young people are protected from violence and abuse (Article 19, UNCRC). In its review of government services, the Productivity Commission reports on ‘assaults in custody’ as a measure of whether the government is providing a safe and secure environment for children and young people in detention (see Table 3.4).<sup>119</sup> This data does not speak to children and young people’s views and experiences of safety and security while in youth detention or police custody.

**Table 3.4.** Incidents of children and young people in custody with injuries as a result of an assault (excludes serious assaults) (Queensland, 2021–22)<sup>xxiv</sup>

	No. of children
Aboriginal and Torres Strait Islander	67
Non-Indigenous	30
<b>Total</b>	<b>97</b>

Source: Australian Government Productivity Commission Report on Government Services 2023: Youth justice services.

Note. Data reported for this indicator need to be interpreted with caution. The thresholds for recording an assault and the extent to which minor injuries are included may differ across jurisdictions.

### Education

The 2022 youth justice census data shows that 45 per cent of children and young people in Queensland detention had totally disengaged from education, training or employment.<sup>120</sup> The Productivity Commission’s data indicates that 100 per cent of children and young people in youth detention in Queensland are enrolled in an education or training course.<sup>121</sup>

A recent case heard in the Cairns Children’s Court reveals that out of the 94 days a young person spent in youth detention, largely in separation, there is evidence of her attending the education unit on one day only.

<sup>xxiv</sup> The types of actions that constitute assaults include intentional acts of direct infliction of force and violence (for example, fistfights) and intentional acts of indirect and nonconfrontational force or violence (for example, administering illicit drugs or poison, spiking food or drink, and setting traps). Types of injuries include bruises, cuts or lacerations, open wounds, fractured or broken bones or teeth, burns or scalds, poisoning, dislocations and sprains, and concussions.

**“ On the question of access to educational programs, the evidence is to the effect that for the entire time the child has been remanded in detention, she has attended the education unit at [Detention Centre] for one day only. It is possible, on the most favourable construction of the documents, that she may have attended the education unit on another day. But there is no dispute that that is the highest it goes. That is, while the child has been in detention, she has not been afforded adequate access, or indeed almost any access, to education. If she were released on bail there is a plan, at least, to seek her enrolment in year 11 at high school; something which is clearly in her interests, but more importantly in the interests of the community.**

Magistrate Fantin, Cairns<sup>xxv</sup>

Despite high levels of disengagement from education prior to entering youth justice, children and young people in the statutory system value education and feel that it's essential to achieving better life outcomes.<sup>122</sup>

**“ I loved school. School was amazing. There was at a point where I didn't like going to school, I actually wanted to give up and just drop out, but I stuck it through because I wanted to finish it for my family.**

Female, 18 years, Yarning for Change

The UN Committee has stated that every child or young person of compulsory school age has the right to education that is tailored to their needs and abilities and is designed to prepare them for a return to society and future employment.<sup>123</sup> Attention should be given to children and young people who disengage from education, as the data shows that this is a tangible precursor for offending behaviour.

### **Transition planning**

Limited data is available regarding children and young people's experience with transitioning out of youth detention and any supports provided. The Productivity Commission has proposed a future indicator, 'secure housing on exit', as a measure of the government's objective of assisting young people in detention to return to the community.<sup>124</sup> Evidence shows that a lack of suitable housing options contribute to an increased risk of incarceration.<sup>125</sup>

Young people told us that poor transition planning and delays in accessing services resulted in them reoffending once they were released from detention.<sup>126</sup> This is a particular concern for children and young people transitioning from detention back to residential services provided by Child Safety, where a housing placement is not always confirmed until a child or young person is given bail, leaving insufficient time for appropriate transition planning.

xxv *Director of Public Prosecutions v JG* [2023] QChC 3. <https://archive.sclqld.org.au/qjudgment/2023/QChC23-003.pdf>

“As far as I can determine Jane’s (pseudonym) offending and failure to engage with probation is directly linked to the fact that she does not have somewhere suitable to live and has limited access to helpful adults who can help her develop the life skills she needs...When Jane does not have suitable accommodation, she goes hungry and steals food. When Jane does not have suitable accommodation, she must spend time in company of adults who behave in anti-social ways that expose her to profound risks. When Jane does not have suitable accommodation, she spends time on the street associating with other bored children and, together, they formulate and carry out plans to enter businesses and homes and to steal cars.

Magistrate Mac Giolla Ri, Mt Isa<sup>xxvi</sup>

“I’ve told child safety and everyone not to leave it a week. Like, I want all my support straight away before I get distracted and go do some dumb shit. What happened, they say, ‘Oh, we can’t see you today. We have to see you next week.’ Look what happened. I had nothin’ else to do so I went on the drugs straight away.

Male, 17 years, Yarning for Change

MACPs play an important role in transition planning to ensure that a young person at high-risk of offending has appropriate wrap-around supports from government and non-government agencies upon release from detention. On 1 March 2022, the newly established 72-hour release plans commenced across Queensland. They are designed to ensure that immediate needs and supports are in place when a child or young person is released from youth detention. They provide better information sharing and more structured engagement of children and young people exiting detention. As of 30 June 2022, 293 plans had been completed for children and young people across the state.<sup>127</sup> Ensuring children, young people, families and communities are actively involved at all stages of transition planning, and their perspectives are taken seriously, is critical to their success.

The QFCC supports the establishment of MACPs in legislation.<sup>xxvii</sup> While the key agencies are predominately Youth Justice and the Queensland Police Service, MACPs provide an opportunity for other relevant agencies to be involved in the planning and implementation of the 72-hour release plans and transition more generally (for instance, Child Safety and Housing).

Through *Yarning for Change: Listen to my voice*, we heard that relationships are critical to keeping children and young people out of the youth justice system.<sup>128</sup> Cultural supports and continuity of relationships must be embedded into MACPs and their focus must continue to be on diversion. Early intervention, minimal criminal justice system intervention, activities that promote rehabilitation and proactive community engagement are critical to breaking the cycle of offending and detention.

xxvi Commissioner of Police v Jane Dean (a pseudonym) [2022] QChCM 3. <https://archive.sclqld.org.au/qjudgment/2022/QChCM22-003.pdf>

xxvii The MACP system was inserted as Part 8A of the *Youth Justice Act 1992* by the *Strengthening Community Safety Act 2023*.

## Culture and identity

Relationships and culture are critical to children and young people’s wellbeing. Sound relationships keep them strong, influence their behaviours and sustain them when incarcerated or removed from their families. They also help young people stay motivated to engage with supports and participate in diversion programs. Connection to Elders, culture, family, kinship and community is critical to keeping children and young people out of the youth justice system.<sup>129</sup>

Data is not yet available to report on children and young people’s ‘family engagement with youth justice services’. The Productivity Commission has proposed three indicators designed to measure the importance of families and the involvement of communities, particularly Aboriginal and Torres Strait Islander communities:<sup>130</sup>

- the proportion of young people participating in group conferencing whose family is engaged
- the proportion of young people subject to community-based supervision whose family is engaged
- the proportion of young people subject to detention-based supervision who have contact with their family.

Data provided by Youth Justice shows the proportion of youth justice detention centre and service centre staff who identify as Aboriginal and Torres Strait Islander, culturally and linguistically diverse, and female (Table 3.5). Research has shown that Aboriginal and Torres Strait Islander staff are important in creating a safe environment for children and young people while in detention.<sup>131</sup> These staff members can provide cultural support, bridge communication gaps and create a more culturally safe and sensitive environment for children and young people. Similarly, culturally and linguistically diverse and female staff are important in responding to the unique needs of children and young people in the youth justice system.

**Table 3.5.** Proportion of youth justice detention centre and service centre staff who identify as Aboriginal and Torres Strait Islander, culturally and linguistically diverse, and female (Queensland, 2023)

Staff	Aboriginal and Torres Strait Islander	Culturally and linguistically diverse*	Female
<b>Total</b>	7.49%	3.28%	55.41%

Source. Department of Youth Justice, Employment, Small Business and Training.

Note. Data is current at 10/02/2023 and subject to change.

\*Speaks a language other than English at home.

### Family-led decision-making

Family-led decision-making (FLDM) is a key initiative of the *Working Together Changing the Story, Youth Justice Strategy Action Plan 2019–2021*. FLDM uses a culturally safe decision-making process that involves Aboriginal and Torres Strait Islander families, community stakeholders (including community-controlled organisations) and Youth Justice officers. It empowers Aboriginal and Torres Strait Islander families to make positive decisions that affect their child’s behaviour, safety and ongoing needs.

In Queensland, FLDM has been trialled in four sites (Brisbane and Moreton Bay Region, South-east Region, Toowoomba and Cairns), led by Aboriginal and Torres Strait Islander community-controlled organisations.<sup>132</sup> On 31 March 2023, there were 61 service outlets, of which 24 were Aboriginal and Torres Strait Islander community-controlled organisations or businesses. These organisations receive approximately a third of all youth justice outsourced service delivery funding across Queensland in 2022–23.<sup>133</sup>

## On Country program

In 2021, the state government committed about \$5.6 million over four years to pilot the On Country program in three sites. The program targets Aboriginal and Torres Strait Islander children and young people who have repeatedly come into conflict with the law and have high and complex needs. The programs are designed and led by Aboriginal and Torres Strait Islander community-controlled organisations to:

- reduce rates of offending and reoffending
- strengthen children and young people's cultural and spiritual connections through the active efforts and participation of local community leaders, Elders and Traditional Owners
- strengthen family relationships, community connections and positive self-identity
- re-engage children and young people with education, training and employment
- refer children, young people and families to other support services.<sup>134</sup>

**In 2021–22, 150 children and young people participated in the On Country program led by community-controlled organisations. For example, On Country healing camps (funded through Community Partnership Innovation Grants) are being delivered by Jabalbina Yalanji Aboriginal Corporation in Far North Queensland.**

In August 2022, the government announced funding to extend the existing programs to provide intensive support to young people exiting custody, particularly in the 72 hours post release when they are most vulnerable and at the highest risk of reoffending.<sup>135</sup>

## Murri Courts

Murri Courts operate within the Magistrate Court framework but they link Aboriginal and Torres Strait Islander defendants to culture and services with a focus on rehabilitation. Elders or respected persons from the community are present in Murri Court to help the Magistrate understand the lives and culture of Aboriginal and Torres Strait Islander people.

There are currently 14 locations throughout Queensland where Murri Courts operate, but Youth Murri Court only operate in some of the Magistrates Court jurisdictions. A pilot program operates in the Childrens Court of Queensland in Cairns, however uptake is low.<sup>136</sup> The Murri Court evaluation found a strong desire to have more Youth Murri Courts operating throughout the state.<sup>137</sup> The courts have also acknowledged that more needs to be done to make the Childrens Court and Childrens Court of Queensland more relevant for Aboriginal and Torres Strait Islander people.<sup>138</sup>

## Data gaps

Collecting statistical data and other information is critical for monitoring implementation of the principles and provisions of the UNCRC. The following gaps have been identified:

- the direct voices of children and young people who are being profoundly impacted by systems
- children and young people's experience of safety and security while in detention
- children and young people's access to therapeutic mental health services and assessments across the youth justice system
- children and young people's access to disability services and assessments across the youth justice system
- evidence of the involvement of family and kin in the services provided and decisions impacting children and young people
- reliable information on the rates and circumstances of children and young people on dual orders (child protection and youth justice).

# Making children's rights real

Human rights legislation

Awareness of child rights

Complaints

Cultural rights



# A child rights approach would:

Establish a comprehensive Children’s Plan for Queensland, which should outline specific strategies and actions to promote and protect children’s rights across various sectors. Ensure that the plan is adequately resourced and developed in consultation with children and young people and relevant stakeholders.

Recognise the progress made through the *Human Rights Act 2019* and enact comprehensive child rights legislation in Queensland that fully incorporates the principles of the UNCRC and provides clear guidelines for its consistent and direct application.

Introduce regular child rights impact assessments across the Queensland Government to evaluate the potential effects of policies, legislation, and programs on children and young people.

Implement a systematic monitoring mechanism to track and analyse the allocation of budgetary resources dedicated to children’s rights and wellbeing in Queensland.<sup>xxviii</sup>

Implement Child Safe Standards across Queensland and explicitly require the consideration of children and young people’s views in decision-making processes that affect them.

Recognise and address barriers that hinder effective complaints from children and young people, including advocating for the Australian Government to ratify the 3rd Optional Protocol to the UNCRC. This would enable children and young people to directly bring complaints to the UN Committee.

Celebrate the Queensland Government’s positive commitment to First Nations people through the enactment of the *Path to Treaty Act 2023* and ensure that Aboriginal and Torres Strait Islander children, young people, and their communities have meaningful participation in the planning, implementation and evaluation of the legislation and the policies that concern them.

Develop and implement targeted awareness programs to educate children and young people about their rights. These programs should be age-appropriate, engaging and accessible, empowering children to understand and assert their rights effectively.

Ensure that data collected on children’s rights cover all areas of the UNCRC and are shared across government to inform the formulation, monitoring and evaluation of policies, programs and projects aimed at implementing the UNCRC.

xxviii Refer to General comment No. 19 (2016) on public budgeting for the realization of children’s rights (art. 4). <https://www.ohchr.org/en/documents/general-comments-and-recommendations/general-comment-no-19-2016-public-budgeting>

**Article 4 of the UNCRC says that governments need to do everything in their power to ensure the rights of children and young people are realised in practice. Governments are responsible for ensuring that children and young people know their rights and that adults understand how to respect these rights (Article 42, UNCRC).**

## Human rights legislation

The UNCRC was ratified by Australia on 17 December 1990. Under international law, Australia must comply with the provisions of the UNCRC and embed them into domestic law.

At a federal level, Australia lacks a comprehensive legal framework for safeguarding human rights. This has been noted by UN Treaty bodies, which have stated that the incorporation of treaties into Australia's legal system has been inadequate.<sup>139</sup> The Australian Parliament is currently conducting an inquiry into the country's human rights framework, which includes deliberations on the need for an Australian Human Rights Act. The Parliamentary Joint Committee on Human Rights is expected to present its findings by March 2024.<sup>140</sup>

On 1 January 2020, Queensland's *Human Rights Act 2019* commenced substantive operation, joining the Australian Capital Territory and Victoria as Australia's third human rights jurisdiction. Like its predecessors, the Queensland Act is based on a dialogue model of human rights, creating obligations on the three arms of government to consider, promote and protect human rights, namely:

- on Parliament, to ensure all new laws are scrutinised for compatibility with human rights
- on Ministers, departments and public entities, to act compatibly with human rights and give proper consideration to human rights when making decisions
- on courts and tribunals, to interpret laws compatibly with human rights.

The Queensland *Human Rights Act 2019* forms part of the administrative law obligations and oversight mechanisms that hold government to account. Its primary objectives are to safeguard and advance human rights, cultivate a public sector culture that values and advocates for human rights, and encourage discussions on the essence, interpretation and extent of human rights. It outlines protected human rights in 23 sections for everyone in the state and mandates Parliament to consider human rights when making laws.<sup>141</sup> These rights have been primarily drawn from the *International Covenant on Civil and Political Rights*, as well as two rights from the *International Covenant on Economic, Social and Cultural Rights* (right to education and right to health services) and one right from the *Universal Declaration of Human Rights* (property rights).

Almost all rights identified by the UNCRC are given express or implicit protection under the *Human Rights Act 2019*. For example, the Act protects recognition and equality before the law (section 15), the right to life (section 16), the right the protection of families as a fundamental group unit of society (section 26(1)), and the right to be free from unlawful or arbitrary interference with a person's privacy, family or home (section 25).

Additionally, section 26(2) of the Act protects the right of every child, without discrimination, to the protection that is needed by the child, and is in the child's best interests, because of being a child. Section 48(3) of the Act also confirms that rights can be interpreted with reference to international law and the judgments of domestic, foreign and international courts and tribunals.

In Queensland, there is a legislated obligation on government to a human-rights based approach to law making, policy making and decision making, including prioritising the human rights of children. It provides people with a mechanism to complain if their rights have been unjustly limited or breached. The Act protects the rights of everyone, including children and young people. However, we believe that Queensland's legal protections for children's rights could be strengthened by explicitly requiring that a child or young person's views be taken into account in all decision-making processes that affect them. Article 4 of the UNCRC advocates for fully incorporating the UNCRC into Queensland (and Australian) legislation.

The Human Rights Act clarifies that the rights protected under it are supplementary to other laws and international treaties, including the UNCRC and the *Convention on the Rights of Persons with Disabilities*. In its first review of the Act, the Queensland Attorney-General must consider the inclusion of additional human rights, including these two international conventions.

The QFCC is the state's Children's Commission under the *Family and Child Commission Act 2014*. We not only have obligations as a public entity, but we also have a commitment and responsibility to promote and protect the rights of children and young people in Queensland. The QFCC's role is to advocate for children and young people's rights and hold systems accountable when children's rights are not upheld, or the balance of rights is not in the child's best interests. This includes the consistent and accurate application of the Act across all government departments and services that interact in the lives of children, young people and their families.

In Queensland, the *Anti-Discrimination Act 1991* prohibits unlawful discriminatory behaviour, including unjust discrimination, sexual harassment, vilification and victimisation. It outlines protected characteristics and areas where discrimination is unlawful, such as

schools, workplaces and the delivery of state laws and programs. The Queensland Human Rights Commission receives complaints about any violation of the Anti-Discrimination Act. National anti-discrimination laws in Australia also exist, relating to discrimination about gender, ethnicity, disability and age.<sup>142</sup>

In May 2021, the Queensland Attorney-General requested that the Queensland Human Rights Commission conduct a review of the Anti-Discrimination Act. This was the first comprehensive review of the Act and an opportunity to ensure that the law remains relevant in our changing society. The final report *Building Belonging 2022* proposes reforms to enhance the effectiveness of the law in safeguarding people from discrimination and sexual harassment. It suggested five main reforms:<sup>143</sup>

- Create a new Act that prioritises the right to equality and endeavours to eliminate discrimination and sexual harassment.
- Refine the legal tests for discrimination to ensure they address problems effectively and are easy to understand and apply.
- Focus on prevention by promoting compliance and preventing discrimination and sexual harassment before they occur.
- Improve the complaints system to make it more accessible, flexible and efficient, and improve access to justice.
- Extend protection to all individuals who require it and broaden the law's scope to cover all contexts and settings where unfair discrimination occurs, with reasonable exceptions.

The Queensland Government has given preliminary approval to all 122 recommendations outlined in the *Building Belonging 2022* report. It has committed to creating new anti-discrimination legislation that meets the needs of a contemporary Queensland, with increased protections to combat sexual harassment and discrimination in communities and in the workplace.<sup>144</sup>

## Awareness of child rights

The UN Committee has recommended that governments strengthen their activities to raise awareness of the UNCRC, including by engaging the media and promoting the active involvement of children in public outreach activities. The UN Committee also recommended mandatory modules on human rights and the UNCRC in school curriculums and training programs for all professionals working with (or for) children. This includes all law enforcement officials, teachers, health personnel, social workers and personnel of childcare institutions, as well as state and local government officials.<sup>145</sup>

### Existing examples of awareness initiatives:

- Children’s Rights Queensland’s *the Right to Be Me* is a storybook about rights, targeted at children aged 5 to 10 years.
- *Know your Rights* cards were developed by the Queensland Aboriginal and Torres Strait Islander Child Protection Peak to inform Aboriginal and Torres Strait Islander families about their rights in the child protection system.
- Queensland Advocacy for Inclusion has developed a *suite of resources* aimed at building awareness of an individual’s rights relating to Optional Protocol Against Torture and Cruel, Inhuman and Degrading Treatment and Punishment (OPCAT) monitoring.
- The *Create Foundation* in partnership with Child Safety have developed *Kid’s Rights*, a colouring in book aimed at younger children and *My Journey in Care*, a guide to being in care in Queensland with useful tips from young people who have been in care.

Although certain agencies and organisations are making strides in promoting awareness and advocating for children’s rights in Queensland, there is a clear absence of a comprehensive strategy aimed at increasing public knowledge and understanding of children’s human rights. This gap in policy not only neglects the rights of children and young people but also fails to ensure their protection and wellbeing. It is crucial that the government takes steps to prioritise the rights of children and implement a comprehensive strategy to increase awareness and education of children’s rights in the state.

“ One of the biggest challenges adolescents face right now is the education system. Not due to it being ‘boring’, but because many of us don’t understand why we learn certain things as a mandatory program, while other more important life skills are often skimmed over or ignored completely. An example of this would be... laws for the country or even human rights, as many students don’t know these things.

Female, 17 years,  
Growing Up in Queensland

### Community perceptions of child rights

The QFCC conducts an annual survey to collect information from Queensland adults about their perceptions of the child protection and family support system.<sup>146</sup> In 2022, the survey included new measures aimed at assessing participants' understanding of the UNCRC, their perceptions of discrimination experienced by children and young people, and whether decisions were being made in children's best interests.

Out of 2506 adults surveyed, only 35 per cent claimed to have a good working understanding of the UNCRC. Females, people under 40 years of age, people with responsibility for a child under 18 years of age, and Aboriginal and Torres Strait Islander people, were more likely than average to have a good understanding of the UNCRC.

Participants were asked to what extent they agreed that various Queensland systems, such as health, education, disability services, mental health, child protection and family support, youth justice, and public housing, made decisions in the best interests

of children and young people. Most participants (73 per cent) agreed that the health system made decisions in children's best interests, while the youth justice system (40 per cent) and public housing system (35 per cent) had the lowest levels of agreement.

Regarding the perception that systems listen to and value children and young people's views, the highest level of agreement was for the health system (55 per cent), followed by disability services (49 per cent) and the education system (47 per cent). The youth justice system (37 per cent) and public housing system (31 per cent) had the lowest levels of agreement.

Participants were also asked about their perception of discrimination experienced by different cohorts of children and young people. The survey revealed that discrimination was perceived across all cohorts examined, but it was lowest for children and young people in contact with the youth justice system (see Table 4.1).

**Table 4.1.** Percentage of adults surveyed who believed children and young people experienced discrimination, by certain cohorts (Queensland, 2022)

Do you feel that children and young people from any of the following groups experience discrimination in terms of having their rights upheld?	Percentage of sometimes/often/always
Experiencing poverty	75%
With a disability	71%
Aboriginal and Torres Strait Islander	70%
Culturally and linguistically diverse backgrounds	70%
Refugees or asylum seekers	68%
LGBTQIA+	66%
Living in rural and remote areas	65%
In contact with the child protection system	62%
In contact with the youth justice system	62%

Source: Queensland Family and Child Commission, Community Survey report 2022.

### Frontline perceptions of child rights

The QFCC conducts annual surveys to collect information from child protection and family support frontline workers.<sup>147</sup> The 2022 survey of 431 frontline workers in child protection and family support found that 82 per cent of participants agreed they had a good understanding of the UNCRC. Most participants also indicated that their organisation prioritises the wellbeing of children and young people. Specifically, 87 per cent agreed that children and young people are not discriminated against and are supported to survive and develop in the best possible way. Additionally, 84 per cent agreed that decisions within their organisation are made in the best interests of children and young people, while 80 per cent agreed that the views of children and young people are heard and valued. Compared to the general population, frontline workers held higher perceptions of discrimination faced by children and young people, especially within the youth justice system (see Table 4.2).

### Youth justice and the media

The QFCC commissioned an independent media analyst to examine the media reporting on youth justice in Queensland.<sup>148</sup> Their analysis revealed that, during the period October 2019 to March 2020

(ahead of the Queensland state election on 31 October 2020), media coverage of topics related to the youth justice system increased significantly compared with the period from April to September 2019. Despite the increased media coverage, formal contact between police and children aged 10–17 years decreased in 2019 compared with 2018. The analysis also noted that nearly 50 per cent of the coverage in both six-month periods was negative towards the Queensland youth justice system. This negative coverage was often fuelled by the views of spokespeople who believed the system was failing and was ‘not tough enough’.

The findings of the media analysis suggest a need for more positive news stories and greater reliance on the latest evidence in reporting. The negative coverage generates fear and mistrust in the community, which is counterproductive to the youth justice system’s goal of shifting towards prevention, rights and wellbeing, which have been proven to make a difference. The QFCC coordinates regular media analyses as part of our data collection processes and monitoring function. One preliminary media analysis found limited mention of child rights in the media, highlighting a potential gap in coverage that may contribute to the negative portrayal of the youth justice system.

**Table 4.2.** Percentage of child protection and family support frontline workers surveyed who believed children and young people experienced discrimination, by certain cohorts (Queensland, 2022)

Do you feel that children and young people from any of the following groups experience discrimination in terms of having their rights upheld?	Percentage of sometimes/often/always
In contact with the youth justice system	89%
In contact with the child protection system	88%
Culturally and linguistically diverse backgrounds	88%
LGBTQIA+	86%
Experiencing poverty	86%
Refugees or asylum seekers	86%
Aboriginal and Torres Strait Islander	85%
Living in rural and remote areas	85%
With a disability	83%

Source: Queensland Family and Child Commission, Workforce Survey report 2022.

## Complaints

Children and young people are significant users of government services. They attend school, require healthcare, may encounter police and may interact with the child protection or youth justice systems. They may also have a First Nations background, live with disability or experience disadvantage. Navigating the complex service environment can be difficult. Given their age and lack of experience, children and young people often require support and guidance to ensure their rights and best interests are protected.

The QFCC is acutely aware and concerned about those children and young people who are not afforded equitable access to supports and services they are entitled to. It can have a profound impact on their wellbeing and development and, ultimately, full enjoyment of their rights.

It is crucial that government and non-government agencies take steps to ensure that children and young people's voices are heard and their needs are met. Children should be provided with clear information about their rights and the services available to them. They should also be empowered to speak up when they have a problem, concern or complaint, and they should have access to a range of supportive adults who can help them navigate these situations.

The *Royal Commission into Institutional Responses to Child Sexual Abuse*<sup>149</sup> explored the practice of complaint management involving children in institutions. The 2017 final report recommended the implementation of child safe standards to ensure:

- all children have access to information, support and complaints processes
- institutions have a child-focused complaint handling system that is understood by children, staff, volunteers and families
- institutions analyse complaints to identify causes and systemic failures to inform continuous improvement.<sup>150</sup>

The National Principles for Child Safe Organisations 2019 stipulate that information should be clear, accessible and easily understood by children and their support networks. Children should know who to talk to and what will happen when they speak up, and they should receive timely feedback when raising a complaint or concern.<sup>151</sup>

Queensland has a three-tiered approach to managing complaints:

1. Internal complaints mechanisms of each agency responsible for delivering services.
2. External oversight by an independent agency, for example the Queensland Human Rights Commission, Queensland Ombudsman, or the Office of the Public Guardian (Community Visitor Program and Child Advocates).
3. Judicial oversight mechanisms, for example the Queensland Civil and Administrative Tribunal and the Children's Court.

The QFCC has previously identified that very few complaints are made by (or on behalf of) children and young people.<sup>152</sup> The lack of such complaints does not mean children do not have concerns. Rather, children and young people experience significant barriers to making complaints, including fear of not being listened to, taken seriously or believed, and feeling like the complaints system is not child-friendly, overwhelming or unresponsive. There is no central agency responsible for receiving complaints from children and young people. Each agency has its own complaints process which must be exhausted before other oversight agencies can step in.<sup>153</sup>

## Complaints mechanisms and bodies

### Queensland Human Rights Commission

The Queensland Human Rights Commission handles complaints under the *Anti-Discrimination Act 1991*<sup>xxix</sup> and the *Human Rights Act 2019*.<sup>xxx</sup> Complaints made under the *Anti-Discrimination Act 1991* against public entities may also ‘piggy back’ allegations of breaches of the *Human Rights Act 2019*.

The Queensland Human Rights Commission only receives a small number of complaints from or on behalf of children and young people each year.<sup>xxxi</sup> In 2021–22, seven complaints from, or on behalf of, children or young people were accepted and finalised. Six of the seven complaints were against public entities and alleged breaches of the *Human Rights Act 2019*. In relation to complaints that raised human rights specific to children (whether or not made by children), the Queensland Human Rights Commission accepted and finalised 26 complaints regarding the protection of families and children and 18 complaints about the right to education. In relation to complaints about sectors most likely to be working with children and young people, the Queensland Human Rights Commission accepted and finalised eight complaints concerning child safety, and 13 complaints concerning public education.<sup>154</sup>

### Queensland Ombudsman

Under the *Ombudsman Act 2001*, the Queensland Ombudsman investigates complaints about the actions and decisions of Queensland state government departments, local councils, public universities and government authorities. The Ombudsman does not record ages of complainants; however their annual report does list the number of complaints received by government departments most likely to be working with children and young people. For example, in 2021–22 the Ombudsman received 519 complaints about the Department of Children, Youth Justice and Multicultural Affairs (former) and 410 complaints about the Department of Education.<sup>155</sup>

### Office of the Public Guardian

The Office of the Public Guardian gives an independent voice to children and young people. Community visitors are appointed under the *Public Guardian Act 2014*, providing them with a level of independence from government when performing specific visiting functions under the Act. Community visitors inspect and report on the appropriateness of accommodation in visitable homes (such as kinship and foster care homes) and visitable sites (such as residential care facilities, youth detention centres, authorised mental health services and disability services). They advocate for issues or complaints affecting the rights of children and young people. Community visitors monitor these matters to ensure they are resolved in a timely manner.

In 2021–22, 10,622 children and young people were visited by community visitors who raised 15,159 issues on their behalf. Over this period, community visitors raised 30 individual complaints on behalf of children and young people who experienced prolonged stays in watchhouses. Community visitors also identified 256 instances over a six-month period of children and young people experiencing prolonged stays in watchhouses. This included instances where young people were detained in watchhouses for up to two weeks.<sup>156</sup> In response, the QFCC has initiated a rapid review of the drivers that cause children to enter and remain in Queensland watchhouses. This work is currently underway.

Under the *Public Guardian Act 2014*, child advocates provide independent advocacy to support individual children and young people’s participation in decision-making that affects them. Child advocates often advocate in court and tribunal proceedings. In 2021–22, 266 children and young people (39 per cent Aboriginal and Torres Strait Islander) were supported by child advocates.<sup>157</sup>

xxix Complaints under the *Anti-Discrimination Act 1991* relate to unlawful discrimination, sexual harassment, vilification, or another contravention of the Act.

xxx Complaints under the *Human Rights Act 2019* relate to rights that have been unjustifiably limited or not properly considered by a Queensland public entity.

xxxi Information about the Queensland Human Rights Commission’s complaints process can be found here, <https://www.qhrc.qld.gov.au/complaints>.

## Cultural rights

Article 30 of the UNCRC makes it clear that First Nations children and young people have the right to speak their own language and follow their family's way of life. This article exists to make clear that children and young people from minority groups must not be overlooked by decision makers and must be protected from practices that are likely to cause them harm.

The *United Nations Declaration on the Rights of Indigenous Peoples* (UNDRIP) is an international human rights instrument that outlines the rights of Indigenous peoples worldwide. It was adopted by the United Nations General Assembly in 2007 and later endorsed by Australia in 2009. The UNDRIP recognises the inherent rights of First Nations peoples to self-determination, culture, language, education, health and land. It also prohibits discrimination against First Nations peoples and requires states to obtain their informed consent before undertaking any activities that may affect their lands or resources.<sup>158</sup>

The UNDRIP and UNCRC share common principles and objectives and they work together to promote the rights and wellbeing of Aboriginal and Torres Strait Islander children and young people.

The cultural rights of Aboriginal peoples and Torres Strait Islander peoples are given specific acknowledgement and protection by the preamble and section 28 of the *Human Rights Act 2019*. The right is drawn from specific articles of UNDRIP as well as Article 27 of the *International Covenant on Civil and Political Rights*.

### Traditional adoption

The *Meriba Omasker Kaziw Kazipa (Torres Strait Islander Traditional Child Rearing Practice) Act 2020* is an important piece of legislation in Queensland that protects cultural practices and the rights of Torres Strait Islander people.<sup>159</sup> The Act acknowledges the importance of Torres Strait Islander traditional child rearing practices and recognises them as a fundamental aspect of Torres Strait Islander

culture. Ailan Kastom is an important part of Torres Strait Islander customary law that gives a sense of stability and societal order. This practice involves the permanent transfer of parentage from the biological (birth) parents to another couple (the cultural parents) within their extended family. Recognition of this practice ensures that the legal identity of a child raised in accordance with the practice will reflect their cultural identity.

The Act also provides a framework for government agencies and other organisations to work collaboratively with Torres Strait Islander communities to support the continuation of traditional child-rearing practices. It requires government agencies to consult with Torres Strait Islander communities and ensure that policies and programs respect and support the cultural practices of Torres Strait Islander people.<sup>160</sup>

### Aboriginal and Torres Strait Islander languages

Aboriginal and Torres Strait Islander languages are integral to First Nation peoples' cultural heritage, identities, knowledge systems and traditions. The preservation and revitalisation of these languages are crucial for recognising and exercising First Nation peoples' rights. Language is also a human right recognised in international law, including within Article 30 of the UNCRC and UNDRIP. Its loss can result in significant barriers to accessing essential services. Language revitalisation can also help to address historical injustices and promote reconciliation between First Nations and non-Indigenous peoples.<sup>161</sup>

The *National Agreement on Closing the Gap* aims to strengthen and increase the number of Aboriginal and Torres Strait Islander languages being spoken by 2031.<sup>162</sup> Currently, there are five Commonwealth-funded Indigenous Language Centres in Queensland (all Aboriginal and Torres Strait Islander community-controlled). In 2021–22, Indigenous Languages Centres in Queensland were accessed 6406 times, a significant increase from 3910 in 2020–21.<sup>163</sup>

In Queensland, eight per cent of Aboriginal and Torres Strait Islander people spoke an Indigenous language in 2021, an increase from seven per cent in 2016.<sup>xxxii</sup> Yumplatok (Torres Strait Creole) was the most commonly spoken Aboriginal and Torres Strait Islander language in 2021, with 7596 speakers. The languages with the highest proportion of children aged 0–14 years using language were Yumplatok (32.8 per cent) and Cape York Peninsula languages (31.4 per cent). Family members were the primary source of Aboriginal and Torres Strait Islander language learning.<sup>164</sup>

### *The environment and climate change*

There is growing recognition of child rights within the context of environmental issues and climate change. Beyond being a matter of ecological importance, climate change has increasingly been recognised as a human rights issue, which is intimately linked to our collective wellbeing and the rights of present and future generations. The space within which these challenges unfold is dynamic, presenting both unprecedented threats and valuable opportunities. While it is impossible to cover all of this complex landscape in this report, it is crucial to highlight the inspiring and impactful youth-led movements, which have sparked positive developments and galvanized global attention towards environmental sustainability. Efforts are being made by First Nations communities to ensure that children are not only protected from the impacts of environmental degradation and climate change but also actively engaged in shaping a sustainable and equitable future.

Article 24 of the UNCRC recognises the right of children to the enjoyment of the highest attainable standard of health, including protection from environmental pollution.

**“ Being worried that there won’t be a future for us due to climate change and the over exhaustion of the planet’s resources.**

Gender diverse, 18 years,  
Growing Up in Queensland

**“ Being a young person today means you have no choice but to be very aware and conscious of what we consume, how we consume and how we act as a collective.**

Female, 17 years,  
Growing Up in Queensland

**“ Our planet’s climate, although it’s not all ours to do, the older generations helped create the problem, let’s all help fix it.**

Male, 18 years,  
Growing Up in Queensland

**“ Many animals died and bush fire burned so many trees. I felt sad when I heard about bush fires. We have to prevent bush fires and raise money.**

Female, 6 years,  
Growing Up in Queensland

The UN Committee’s General Comment No. 26 highlights the importance of safeguarding children’s rights in relation to environmental issues, specifically climate change. The General Comment was adopted by the UN Committee in May 2023. It acknowledges that climate change significantly affects the rights of children, such as their right to health, education, and a clean and sustainable safe environment. It stresses the need for governments to take action to mitigate the impact of climate change on children and include them in decision-making.

<sup>xxxii</sup> Across Australia, there were over 150 Aboriginal or Torres Strait Islander languages in the Australian Standard Classification of Languages that were actively spoken (i.e. had one or more users) in 2021, and 50 languages with no reported users. There were 78 Aboriginal and Torres Strait Islander languages not spoken by children aged 0–14 years.

The latest UN General Comment also acknowledges the importance of traditional practices in promoting environmental sustainability and protecting the rights of children. It emphasises the need for governments to recognise and respect the rights of First Nations and local communities, including their right to maintain and transmit traditional knowledge and practices, and participate in decision-making processes that affect their lands and resources.<sup>165</sup>

Aboriginal and Torres Strait Islander people have a unique and significant connection to the environment, as it is central to their culture and identity. Their traditional knowledge and practices can also be valuable in addressing environmental issues and the impacts of climate change.

First Nations youth-led networks such as *Seed* play an important role in climate activism by bringing attention to the intersectionality of First Nations rights and climate justice. *Seed* is a network of Aboriginal and Torres Strait Islander youth in Australia that focuses on climate activism and aims to empower young people to take action on climate change. Their campaigns involve educating communities on the impacts of climate change on Aboriginal and Torres Strait Islander people and advocating for climate justice.<sup>166</sup>

Campaigns such as *Our Island Our Home* led by Torres Strait Islander peoples have highlighted the importance of community-led solutions and centring the voices and perspectives of those most impacted by climate change. The campaign involves raising awareness of the issue and advocating for government action to address rising sea levels and other effects of climate change on Torres Strait Islands.

On 23 September 2022, eight Torres Strait Islanders achieved a significant legal milestone by winning a verdict from the United Nations Human Rights

Committee that the Australian Government was in breach of its human rights responsibilities to the Torres Strait Islanders by neglecting to address climate change. This landmark ruling mandates that the government must take any necessary actions to guarantee the safety and survival of the Torres Strait Islands. It also sets an example for First Nations communities across the globe.<sup>167</sup>

The Queensland legal case of *Waratah Coal Pty Ltd v Youth Verdict Ltd 2022* also emphasises the importance of youth-led activism and the need for companies to be accountable for the environmental impact of their actions. The case involved a challenge by a group of young people against a coal mining project that they argued would have significant negative impacts on the environment and contribute to climate change. The Land Court of Queensland recommended against granting a mining lease and environmental authority for a coal mine located in the Galilee Basin of Queensland. The court's findings included the failure to demonstrate a justifiable limitation on human rights resulting from climate change.

Although the government is not legally obligated to follow the court's recommendation, the decision holds significant importance regarding the application of the Human Rights Act to climate change and resource projects.<sup>168</sup> The case raised important questions about the role of young people in environmental decision-making and the legal responsibilities of companies to protect the environment.<sup>169</sup> The case also has significant implications for Aboriginal and Torres Strait Islander people, as it reinforced their rights to participate in environmental decision-making processes and have their voices heard. It highlighted the importance of On Country testimony and First Nation people's knowledge about the land and its ecosystems.



# Civil rights and freedoms

Birth registration

Digital rights

Access to information for children and young people in care

Freedom of expression in religious schools

# A child rights approach would:

.....

Continue commitment through the *Closing the Registration Gap Strategy Plan 2021–2024* to ensure that Aboriginal and Torres Strait Islander children are registered at birth and receive free birth certificates.

.....

Praise the Queensland Government for passing the *Births, Deaths and Marriages Act 2023* to ensure that a person’s legal identity aligns with their lived identity.

.....

Involve children and young people in decision-making processes regarding digital rights to stay up to date with evolving technologies and consider digital rights as a child protection issue.

.....

Implement measures to ensure that children and young people in out-of-home care are aware of their right to access their personal information. Provide appropriate and supportive means for them to exercise this right, ensuring they can access and understand their information, empowering them to participate in decisions about their own lives.

.....

Establish a comprehensive framework for non-state schools that adheres to anti-discrimination principles.

.....

Provide children and young people with child- and youth-friendly, accessible and balanced information from a variety of channels including social media and traditional media. Ensure information is readily available to children and young people living in rural or remote areas, with disability and who speak a language other than English.

.....

**Under the UNCRC, children and young people have the right to a name and nationality, which they should be granted at birth (Article 7, UNCRC). They also have a right to an identity, including name, nationality, race, culture, religion, language, appearance, abilities, gender identity and sexual orientation (Article 8, UNCRC).**

Children and young people have the right to freedom of expression and freedom to find out information about themselves (Article 13, UNCRC). Not only does the UNCRC ensure that children and young people have the right to choose their own religion, but they also have the right to freedom of thought and conscience (Article 14, UNCRC). Children and young people have the right to reliable information, including from the media, and should be protected from media that could harm them (Article 17, UNCRC). Media should also be available in formats that are accessible to children and young people with disability.

These articles apply to all children and young people, including those in youth detention, out-of-home care or who speak a language other than English.

## Birth registration

Article 7 of the UNCRC grants children and young people the right to immediate birth registration, name, and nationality and, ideally, to be cared for by their parents. Birth registration is critical for obtaining a birth certificate and establishing a child's legal identity. Without it, children are invisible, missing out on their rights and essential services. Birth registration is crucial to safeguarding children's rights and ensuring legal recognition and protection of their identity.

### *Closing the registration gap*

In Queensland, a child's birth must be registered within 60 days of birth. The requirements for birth registration are set out in the *Births, Deaths and Marriages Registration Act 2023*. It is free to register a child's birth however a fee applies to obtain a birth certificate. In 2019, 89.7 per cent of non-Indigenous births were registered within 60 days of birth, whereas only 62.1 per cent of Aboriginal and Torres Strait Islander children were registered within the same timeframe.

***Closing the Registration Gap Strategy Plan 2021–2024 is Queensland's cross-agency strategy to increase the birth registration rate for Aboriginal and Torres Strait Islander people. By 2024, the strategy aims to increase Aboriginal and Torres Strait Islander birth registrations to 80 per cent within 60 days of birth and 90 per cent within one year of birth.***

Efforts have been made to close the gap in birth registrations for Aboriginal and Torres Strait Islander children. In 2021, the Queensland government released the *Closing the Registration Gap Strategy 2021–2024* to increase the birth registration rate of Aboriginal and Torres Strait Islander people.<sup>170</sup> The strategy addresses barriers outlined by the Queensland Ombudsman. These include lack of access to online and paper registration services in remote communities, financial difficulties caused by fees and penalties, confusion between registration and certification processes, language barriers and a shortage of culturally sensitive services, limited understanding of the significance of registration for children, and inconsistent information regarding the registration process.<sup>171</sup>

***The Registry of Births, Deaths and Marriages' Our Kids Count campaign is part of the Closing the Registration Gap Strategy. The Deadly Choices Birth Certificate initiative is another effort that promotes 'deadly choices' commemorative birth certificates and reminds new parents to register their child.***

Despite these efforts, the gap in birth registrations between Aboriginal and Torres Strait Islander and non-Indigenous children in Queensland persists and requires ongoing attention. The QFCC awaits updated reporting and an evaluation of the *Closing the Registration Gap Strategy*.

## **Births, Deaths and Marriages Registration Act**

On 14 June 2023, the Queensland Parliament passed the *Births, Deaths and Marriages Registration Act 2023* which ensures that a person's legal identity aligns with their lived identity, bringing Queensland in line with most other jurisdictions. It removes the requirement for transgender and gender diverse people to undergo gender affirming surgery to legally change their gender. For children under 16 years, there are two pathways to alter the record of sex: parents or guardians can apply directly to the registrar if certain criteria are met, or the Children's Court can be used. Additionally, the new legislation allows both parents to be registered as either 'mother', 'father' or 'parent', which was not previously permitted.<sup>172</sup>

In December 2022, QFCC Youth Advocates held a roundtable discussion where non-binary and transgender young people shared their experience of discrimination and associated mental health impacts. A 19-year-old Youth Advocate shared:<sup>173</sup>

**“ I identify as non-binary, but while that isn't in of itself a mental disorder, the anxiety, resulting from years of not having my gender affirmed by my peers, is a mental disorder.**

**“ There was a lot of struggles with wanting to identify as non-binary, like that I still felt too connected to my gender assigned at birth, or that identifying as non-binary was just attention seeking or was 'just a phase'.**

Youth surveys indicate that gender diverse children and young people experience poorer mental health and increased levels of discrimination. Almost 6000 young people from across Queensland responded to the QFCC's *Growing Up in Queensland 2020* survey, with 2 per cent (almost 120 young people) identifying as gender diverse. This survey revealed that 77 per cent of gender diverse young people had been treated unfairly because of their gender identity, compared with 27 per cent of female participants and 10 per cent of male participants. Only 32 per cent of gender diverse young people felt their community is a place they feel they belong to, compared with 57 per cent of female participants and 65 per cent of male participants.<sup>174</sup>

**“ In my earlier school years, I was surrounded by people who thought they knew my gender identity better than me. I was bullied for not having a very feminine appearance, called by male pronouns at least half of the time and told that I should just shave my body hair to fit in with the other girls. It may not seem like the bullying was 'that bad', but it made me feel like it was my fault I was being misgendered when really, I was just following what felt comfortable to me. It was a big factor that contributed to my social anxiety, and it made me feel very unseen for who I really was. I felt like a ghost.**

In Mission Australia's 2022 youth survey of 5680 young Queenslanders, 4.3 per cent identified as gender diverse (over 240 young people). Almost 66 per cent of gender diverse young people were very or extremely concerned about their mental health, compared with almost 42 per cent of female participants and 20 per cent of male participants. Almost 43 per cent of gender diverse young people were very or extremely concerned about suicide, compared with 16 per cent of female participants and 8.7 per cent of male participants.<sup>175</sup>

**“ I had to leave home because it was not safe for me there. I am getting good support from services, but I need to get emancipated from my parents so that I can progress my medical transition. It won't be good for my mental health if I have to wait until I turn 18.**

Young person, 16 years,  
Youth Law Australia client

Young people told the QFCC that the legislative changes proposed in the Births, Deaths and Marriages Bill will deliver significant benefit to the mental wellbeing of transgender and gender diverse people. Having a birth certificate that does not align with a person's gender means young people are at risk of violence and discrimination and may be forced to 'out themselves' when performing normal every-day tasks.

The QFCC welcomes the enacted changes as they will ensure transgender and gender diverse people and families have privacy, freedom of expression and equality.

## Digital rights

The digital environment has become an integral part of children and young people's lives, playing a significant role in their entertainment, socialisation and learning experiences. The UN General Comment No. 25 (2021) highlights the importance of protecting children's rights in the digital environment. This includes their right to privacy, freedom of expression, access to information and protection from harm. It also recognises the potential benefits of digital technologies for the development and participation of children and young people.<sup>176</sup>

Children and young people are vulnerable to various online harms, including:<sup>177</sup>

- grooming and sexual exploitation (Article 34 of the UNCRC covers children and young people's protection from sexual exploitation)
- non-consensual sharing of intimate imagery or videos (Article 19 of the UNCRC covers children and young people's protection from violence and harm)
- gender violence (Article 19, UNCRC)
- online bullying and harassment (Article 19, UNCRC)
- mental health impacts and unrealistic body image standards (Article 19, UNCRC)
- surveillance and privacy (Article 16 of the UNCRC covers children and young people's right to privacy)
- collection and retention of personal data, including complex and lengthy terms and conditions (Article 16, UNCRC).

Despite the potential risks, the digital environment can be incredibly positive and valuable for children and young people. Online platforms enable children and young people to access a diverse range of national and international information sources, promoting their wellbeing, health and identity as global citizens (Article 17, UNCRC). Digital technologies facilitate learning and provide educational resources that can enhance children's knowledge and skills (Article 28, UNCRC). Social media and online forums offer avenues for children and young people to connect, communicate, and engage with their peers, promoting social interaction and support networks (Article 31, UNCRC). Digital tools and platforms empower children and young people to express their creativity, share their ideas and engage in various forms of digital content creation (Article 13, UNCRC).

“ To stay safe around the Internet, as well as to be careful with whom they talk to in terms of fake friends or strangers. It’s really crucial for our generation to utilise social media as a way to ensure a healthy and happy future and wellbeing.

Male, 16 years,  
Growing Up in Queensland

“ Dealing with the fact that society is changing a lot as we grow up, and in the past 10 years technology has changed quite a bit.

Female, 15 years,  
Growing Up in Queensland

One of the key laws in Australia that protects children’s rights online is the *eSafety Act 2015*. It established the Office of the eSafety Commissioner, responsible for promoting online safety, particularly of children, with the power to investigate and take action against harmful online content, cyberbullying and other online safety issues.<sup>178</sup> Kids Helpline and schools also play an important role in promoting online safety and providing support to young people who experience online harm.<sup>179</sup>

In Queensland, efforts have been made to address online safety through awareness campaigns and education materials:

- The Queensland Government provides information and tools to children, parents and educators through various initiatives and resources to navigate the digital environment safely and manage online bullying.
- The Department of Education provides guidance through Online Safety in Queensland State Schools to schools, students, parents and the community for keeping young people safe online.
- The Queensland Police Service is a partner agency of the Australian Federal Police’s ThinkUKnow Program, which delivers interactive training to parents, carers, teachers and children through schools and organisations.
- The QFCC has also played a role in raising awareness about online dangers and protecting children online, including through the #doiknowu campaign.

In 2022, QFCC Youth Advocates co-hosted the *Amplify Forum: Solutions for Online Safety* to help young people learn about their rights in the digital environment and co-develop practical solutions to help them stay safe online. Children and young people are increasingly aware of their digital rights and opportunities as well as the potential risks and harms associated with the digital environment. They are vocal about their concerns and are calling for more action to protect their digital rights and ensure their safety online. This includes through better education and data security, more transparency from regulators and big technology companies, and less fear mongering.<sup>180</sup>

While Queensland and Australia have taken steps to protect children’s digital rights, there are areas for improvement, including:

- recognising children and young people as active participants and involving them in decision-making processes that impact their digital rights (Article 12, UNCRC)
  - Children and young people should have a voice in shaping, designing and delivering online safety education programs and policies, which take their perspectives and experiences into account.<sup>181</sup>
- ensuring resources for children, young people, parents, caregivers and educators are kept up-to-date as the digital environment is dynamic (Article 18, UNCRC)
- strengthening laws and regulations to address online harm, including ensuring that online providers take responsibility for mitigating harm on their platforms (Article 19, UNCRC)
- recognising and addressing online protection threats and harm within the context of regular child protection systems (Article 19, UNCRC).
  - It is vital to educate courts, police and frontline workers about the risks and consequences of online child exploitation and abuse.
  - Training should be provided to enhance their understanding of digital threats and enable them to identify, investigate and prosecute cases.
  - Clear pathways should be established to refer child victims to appropriate support and assistance.

## Access to information for children and young people in care

Children and young people in the child protection system have the right to access their own records as stated in the *Child Protection Act 1999*. In Queensland, Child Safety is responsible for ensuring that children in care have access to information about their situation and they are supported to understand this information. This includes information about their rights, entitlements and available services in written material and face-to-face meetings with support workers. The Office of the Public Guardian and Legal Aid Queensland offer external advocacy and support to children and young people.<sup>182</sup>

Having a sense of identity allows children and young people to feel respected as individuals.<sup>183</sup> Young people with previous experience in Queensland’s child protection system told us that knowing who they are and where they are from is important for creating a positive self-identity. It is important they have early access to their birth certificate and other identifying information and full access to child protection files. This information can help children and young people understand why they were involved with the child protection system and support them to understand their culture.

In 2021–22, 108 time in care applications were processed under the Time in Care Information Access Service through Child Safety. Children and young people are also able to access their information through the Right to Information scheme.<sup>184</sup> Government needs to ensure children and young people are aware of their right to access their information, in an appropriate and supportive manner.

**“ In school, you’re the foster kid.  
At home, you’re the foster kid.  
Although I’m in the system,  
I am an individual and I have  
the right to my individuality.**

Youth Researcher, Rights, Voices, Stories

## Freedom of expression in religious schools

In Queensland, the right to freedom of thought, belief and religion is protected under the Human Rights Act. The Queensland *Anti-Discrimination Act 1991* makes it illegal to discriminate based on specific attributes or characteristics. There are exemptions that allow religious schools to discriminate to a limited extent. For example, schools are permitted to limit enrolment to students of a particular religion or sex. The Anti-Discrimination Act does not include an exemption that allows religious schools or other educational institutions to discriminate on the basis of other characteristics like sexuality, race or gender identity.<sup>185</sup>

In March 2023, the government announced a review of the framework for non-state schools in Queensland. It was prompted by concerns about controversial sexuality contracts that some schools were requiring students and staff to sign, which were seen as discriminatory against LGBTQIA+ individuals.

The review will look at various aspects of non-state schools, including their governance and regulation, and is aimed at ensuring that they meet their obligations to provide a safe and inclusive learning environment for all students.<sup>186</sup>

All children and young people should have access to a high-quality education (Article 28, UNCRC) which supports them to develop respect for human rights and fundamental freedoms and prepares them for life in a free society, in the spirit of understanding, peace, tolerance, equality of sexes, and friendship among all peoples (Article 29, UNCRC). This should be true, regardless of whether they are enrolled in the state or non-state school systems. A rights-based approach should shape the development of a contemporary framework for non-state schools, that offers Queensland children and families with choice.

# Violence against children



Child abuse and neglect

Domestic and family violence

Respectful relationships education

Bullying



# A child rights approach would:

Enhance data collection methods to obtain a comprehensive understanding of violence against children, encompassing physical, emotional/psychological, sexual, neglect, bullying, exploitation, online and witnessing violence. By improving data collection, we can truly comprehend the impacts of violence on different groups of children and young people, perpetrated by various individuals.

Continue to take action based on the recommendations provided by the Queensland Women's Safety and Justice Taskforce, which seeks to address gender-based violence and enhance support for victims. It is crucial to incorporate the perspectives and experiences of children and young people who are victims themselves, ensuring their voices are heard and their specific needs are met.

Implement the recommendations outlined in the *Wiyi Yani U Thangani (Women's Voices): Securing Our Rights, Securing Our Future Report*. This involves prioritising the rights and wellbeing of Aboriginal and Torres Strait Islander women and girls, addressing systemic issues, and ensuring their voices and perspectives are respected and valued.

Implement and fully integrate child safe standards across all relevant sectors and organisations, along with introducing a Reportable Conduct Scheme. These measures will establish robust oversight mechanisms to monitor compliance and ensure the safety and wellbeing of children. Regular assessments, audits, and reporting should be conducted to uphold the rights of children.

Take active measures to support child victims in their recovery and reintegration from any form of neglect, exploitation or abuse they have experienced, including those in out-of-home care.

Continue efforts to prevent and address bullying in schools, including online bullying, through the collaboration of the Queensland education systems and the eSafety Commissioner, including supporting child victims, especially LGBTQIA+ children and young people.

Build on the positive strides that have been made to strengthen the school-based Respectful Relationships initiative, which promotes gender equality and respect by continuing to involve children and young people in the content and delivery of this program.

## This chapter focuses on children and young people’s experience of violence, including sexual violence, in the home, community, schools, online and institutions.

The UNCRC has an ambitious agenda to end all forms of violence, abuse, neglect and exploitation against children.<sup>187</sup> Governments must ensure that children and young people are protected from violence, abuse, neglect and exploitation (Articles 19 and 34, UNCRC). Young victims of violence should be able to recover and restore their dignity, health and self-respect (Article 39, UNCRC). Governments should take appropriate measures towards abolishing traditional practices that are harmful to the health of children (Article 24(3), UNCRC).

This chapter provides an overview of the experiences of some children and young people in Queensland, but it only scratches the surface. These are complex and real issues for children and young people as victim-survivors, that can have long-lasting effects on their development, behaviour and wellbeing.

**In Mission Australia’s 2022 survey of 5680 children and young people from across Queensland, personal safety was a key issue raised (10.7 per cent of participants and 23.3 per cent of gender diverse participants).<sup>188</sup>**

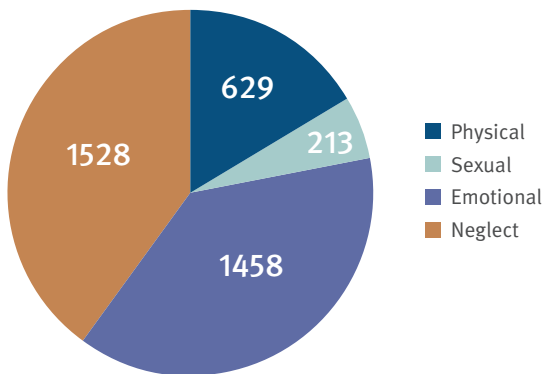
In April 2023, findings from the Australian Maltreatment Study showed that nearly two-thirds (62.2 per cent) of young Australians have been abused, neglected or exposed to domestic violence before the age of 18. Exposure to domestic violence was the most common form of maltreatment (39.6 per cent of participants). Of the 3500 young Australian’s aged 16–25 years surveyed, 25.7 per cent had experienced child sexual abuse. Young females were 2.4 times more likely than males to have experienced abuse. The study found a strong link between child maltreatment (particularly multiple forms of maltreatment) and health consequences, including alcohol and cannabis use, mental illness, suicide and self-harm, smoking and obesity.<sup>189</sup>

**The *National Plan to End Violence Against Women and Children 2022–32* acknowledges gender inequality and gender-based violence in Australia as a critical human rights issue. It details four domains (prevention, early intervention, response, and recovery and healing) and specific actions and investment needed by the Queensland Government. The plan calls for improvements to frontline domestic, family and sexual violence services, housing services, the justice system, legal representation and police responses to gender-based violence. It also calls for community awareness, perpetrator interventions and engaging young people, including boys, in respectful behaviours and relationship education. In line with *Closing the Gap*, the plan aims to reduce all forms of violence against Aboriginal and Torres Strait Islander women and girls by 50 per cent by 2031. It also seeks to highlight children and young people as victim-survivors in their own right and meet their safety and recovery needs. The QFCC welcomes this plan and the work that the Queensland Government has already undertaken to end violence against women and children.**

## Child abuse and neglect

In 2021–22, Child Safety received 32,005 notifications involving 28,587 children and young people across Queensland. For 3828 children and young people (1649 Aboriginal and Torres Strait Islander), it was assessed that they had suffered (or are at unacceptable risk of suffering) significant harm and were in need of protection. Figure 6.1 shows the most serious abuse type that children and young people were assessed as having experienced (noting they likely experienced multiple forms of abuse).<sup>190</sup>

**Figure 6.1. Number of children and young people with substantiated abuse by most serious abuse type (Queensland, 2021–22)**



Source: Department of Child Safety, Seniors and Disability Services. (2023). *Our Performance*.

This data reflects abuse captured by the child protection system. There is no way of knowing the full scale of child abuse and neglect more broadly across families, communities and institutions. Improved data collection is needed to better understand the impacts of child abuse and neglect on particular groups of children and young people, such as those who are Aboriginal and Torres Strait Islander, culturally and linguistically diverse, living with disability, identify as LGBTQIA+ or from rural and remote areas.

In 2021–22, Kids Helpline counsellors provided support for child abuse for 11 per cent of the counselling contacts with children and young people from Queensland, aged 5–18 years. Child abuse-related concerns were expressed in 12 per cent of the contacts with children and young people from culturally and linguistically diverse backgrounds and in 13 per cent of contacts with Aboriginal and Torres Strait Islander children and young people.<sup>191</sup>

### Sexual assaults

According to the Queensland Crime report in 2021–22, girls and young women aged 10–19 years made up 41.8 per cent of all victims of sexual assaults in Queensland. Girls and young women aged 10–19 years are nine times more likely to be victims of sexual offences than males the same age. Despite limited published data, the Queensland Crime report shows that both male and female Aboriginal and Torres Strait Islander people were more likely to be victims of sexual offences than non-Indigenous people.<sup>192</sup> According to the *The Wiyi Yani U Thangani (Women's Voices): Securing Our Rights, Securing Our Future Report*, three in five Aboriginal and Torres Strait Islander women have experienced physical or sexual violence.<sup>193</sup> Sexual assaults in Queensland are most likely to occur in homes.

Case studies provided by Youth Law Australia<sup>xxxiii</sup> depict vivid stories of young people's experiences of sexual assault.<sup>194</sup>

xxxiii Youth Law Australia is a community legal service providing specialist legal advice to people under 25 years of age and their advocates.

**“ I got drunk at a party and fell asleep. I woke up to this boy I knew trying to get his hands down my pants and grabbing my breasts. I want to tell the police but am worried that I will get into trouble for drinking underage.**

Young person, 16 years,  
Youth Law Australia client

**“ My son is going to be interviewed by the police this week about digital penetration of his stepsister. The police have said this is rape and a serious offence. I know this is serious, but I am worried that the police won't understand his disabilities.**

Parent of 15-year-old,  
Youth Law Australia client

### ***Royal Commission into Institutional Responses to Child Sexual Abuse***

Following the Royal Commission into Institutional Responses to Child Sexual Abuse in 2017, the Queensland Government accepted the Royal Commission's child safe standards to inform best practice for Queensland Government departments.<sup>195</sup> Since then, all Queensland Government departments providing services to, or working with, children have been working to incorporate child safe standards within existing policies, guidelines and operational practices. It has referred to these standards and the national principles endorsed by the Council of Australian Governments in 2019 to grow Child Safe Organisations. The Queensland Government reports on this work in its Royal Commission annual reports.<sup>196</sup>

Child Safety has developed a roadmap for embedding the National Principles for Child Safe Organisations, including actions to support full implementation, continuous review and improvement. Action areas include policy and practice frameworks, reporting harm and complaints processes, and staff recruitment, training and code of conduct. Child Safety is developing options for potential regulation and oversight of child safe standards.<sup>197</sup>

The Queensland and Australian Governments have undertaken positive initiatives to address child abuse, including addressing sexual violence. The two national strategies *Safe and Supported: National Framework for Protecting Australia's Children (2021–2031)* and the *National Strategy to Prevent and Respond to Child Sexual Abuse (2021–2030)* have been adopted by the Queensland Government.

### National Redress Scheme

Article 39 of the UNCRC highlights government's obligation to ensure children and young people can recover from harm and have steps taken to restore their dignity, wellbeing, health and self-respect. This may involve access to medical care, counselling services, legal assistance and other forms of support to aid their recovery and reintegration. The Queensland Government is participating in the **National Redress Scheme**, which is available to victims who experienced abuse before 1 July 2018. The scheme provides access to a redress payment, counselling and psychological care, and the option to receive a direct personal response from the responsible institution. As at the end of 2021, 2333 applications had been received that identify a Queensland Government agency or entity as potentially responsible for the sexual abuse.<sup>198</sup>

While children and young people who will turn 18 before 30 June 2028 can apply, they must wait until they have turned 18 for the application to be assessed by the National Redress Scheme. The Royal Commission did not expect that there would be many applications for redress while the victim was still a child, as they are likely to receive larger payments through civil litigation or settlement. However, it was acknowledged that there are barriers to children using civil litigation. This is an outstanding gap in the National Redress Scheme.<sup>199</sup>

### Domestic and family violence

Domestic and family violence is an enduring issue for many children and young people in Queensland. Of the 5680 children and young people surveyed by Mission Australia in 2022, 7.5 per cent identified domestic and family violence as an issue of personal concern for them (8.5 per cent of female participants, 4.3 per cent of male participants and 18.6 per cent of gender diverse participants).<sup>200</sup>

**Data provided by Queensland Courts shows that in 2021–22, approximately 19,655 Domestic and Family Violence Orders, where a child was named as a protected person, were made by the courts.<sup>201</sup>**

Family relationship issues were one of the top concerns for children and young people (5–18 years) who contacted Kids Helpline last year (2021–22), with almost 1 in 5 (19 per cent) seeking counselling support for family relationship issues. Contacts with Kids Helpline due to family relationship issues were higher for children and young people from culturally and linguistically diverse backgrounds (21 per cent).<sup>202</sup> Data from Youth Law Australia also shows that domestic and family violence matters were the top criminal law matters young Queenslanders sought support for in 2021–22 (29 per cent).<sup>203</sup>

**“ I would like to leave home. I am constantly yelled at, called an idiot and threatened. Mostly this is by my step-parent and sometimes they will get physical with me. They have also stopped me seeing relatives who were supporting me, always check my phone and won't let me continue counselling. This has gone on for years.**

Young person, 15 years,  
Youth Law Australia client

**“ I don’t feel safe at home. I have had to call police before when dad assaulted my mum. He was choking her, and she had blood on her face. My whole family is being manipulated by him and he tries to make everyone feel sorry for him. I have an aunty in South Australia who has offered to help but I know that my parents will not let me leave.**

Young person, 14 years,  
Youth Law Australia client

**“ I am experiencing lots of transphobia at home. My parents are really religious and won’t accept my gender identity. They always deadname me and take away anything that affirms my gender. There is constant emotional abuse and threats to kick me out.**

Young person, 15 years,  
Youth Law Australia client

Children’s exposure to domestic and family violence has significant short- and long-term negative effects on their development, health and wellbeing. A review of child death cases by the Queensland Child Death Review Board revealed that domestic violence was present in many instances, although not directly related to the child’s death. The review identified areas where system responses could be improved, particularly in recognising and assessing risks, involving children’s perspectives and promoting cross-agency collaboration. There were missed opportunities to hold offending parents accountable and there was low uptake of domestic and family violence support services. Culturally and trauma-informed approaches are needed, along with addressing intergenerational experiences of violence and trauma. Staff capacity and training are crucial for identifying and responding to domestic and family violence effectively, but turnover poses challenges in retaining specialised knowledge.<sup>204</sup>

The Queensland Government has undertaken significant work to address domestic and family violence, specifically through the *Queensland Domestic and Family Violence Prevention Strategy 2016–26* and the work of the Queensland Women’s Safety and Justice Taskforce. In December 2021, the taskforce released its first report, *Hear her voice: Addressing coercive control and domestic and family violence in Queensland*.<sup>205</sup> The report makes 89 recommendations to reform the justice system and domestic and family violence specialist service system to keep victims safe and hold perpetrators accountable. In May 2022, the Queensland Government released its response to the report, supporting all recommendations with a \$363 million funding commitment over four years, including \$106 million to improve safety for victims attending court.<sup>206</sup> The government’s response includes reforms across Queensland’s criminal justice system, including improved domestic, family and sexual violence service system responses, such as integrated service responses, high-risk teams and perpetrator intervention.

In undertaking its work, the taskforce<sup>207</sup> acknowledged lived experiences and heard directly from diverse populations across Queensland. The taskforce specifically noted the prevalence of domestic and family violence between young people in intimate-partner relationships and domestic and family violence experienced by LGBTQIA+ people. It also underlined the impacts of colonisation for Aboriginal and Torres Strait Islander people and the importance of culturally embedded, community-led approaches to addressing intergenerational trauma.

Youth Advocates from the QFCC Youth Advisory Council shared insights on the lack of adequate support for young victims and perpetrators of domestic violence. The taskforce described the challenges many victims face in accessing tailored services. This includes young men, people living outside urban areas, Aboriginal and Torres Strait Islander people, people with disability, and people from culturally and linguistically diverse backgrounds. The stories shared by the taskforce are powerful and informative. They highlight the need to improve the capacity of service systems to collect, report and incorporate the experiences and outcomes of these diverse populations.

### *Fatal assaults and neglect*

The QFCC is responsible for maintaining a register of all child deaths in Queensland and researching risk factors to prevent future deaths. We identified six deaths of children and young people resulting from fatal assault and neglect during 2021–22. Over five years, from 2017–22, 31 children and young people died from fatal assault and neglect (23 were allegedly killed by a parent, other family member or person acting in a parental role). Infants under one year of age were most at risk of death from fatal assault and neglect.<sup>208</sup> Our research found that previous child abuse and exposure to domestic and family violence made children more vulnerable to intra-familial assault or neglect resulting in death.<sup>209</sup>

## Case study

SF v Department of Education [2021] QCAT 10 – Queensland Civil and Administrative Tribunal Caselaw  
(The following case study was sourced from the Queensland Human Rights Commission.)

QCAT heard the case relating to the human rights of a family escaping domestic violence. It concerned an application to home-school a child. The child, their siblings and their mother had recently fled a violent relationship and had relocated, keeping their address secret for safety from the children's father, who had managed to find them on previous occasions. In her application to home-school one of her children with learning disabilities, she had included a town name, postal address and phone number, but not a street address. The Department of Education refused to register the child for home schooling on the basis they needed a physical address, despite all other conditions for home schooling being met. QCAT decided in favour of the applicant's argument that providing their address posed a risk to her family's safety and that it was an unreasonable limitation of their right to privacy.

## Respectful relationships education

In 2015, the Special Taskforce on Domestic and Family Violence in Queensland provided the government with their *Not now, not ever: Putting an end to domestic and family violence in Queensland* report.<sup>210</sup> In response, the Department of Education has worked to strengthen Respectful Relationships Education (RRE) in Queensland state schools since 2016. The UN Committee also recommended that school-based respectful relationships education be strengthened to promote gender equality and respect.<sup>211</sup>

In 2021, the Women's Safety and Justice Taskforce highlighted the fragmented and inconsistent way that RRE was being delivered across Queensland schools. The taskforce report noted that its quality and quantity depend on the views or educational setting of an individual school. Children and young people who are disengaged from schooling (the ones particularly vulnerable to abuse) often miss out.<sup>212</sup> The taskforce recommended mandating that all state and non-state schools in Queensland, including independent schools, special schools, schools in youth detention centres and flexi-schools provide consistent, high-quality RRE, delivered with a whole-of-school approach.

The number of Queensland state schools offering the department's RRE program has steadily increased from 29.6 per cent in 2018 to 35.6 per cent in 2021.<sup>213</sup> In 2021, the Department of Education undertook an extensive review of RRE. The review incorporated learnings taken from a pilot evaluating implementation of a whole-school approach to RRE, incorporating consent education, help-seeking, reporting of sexual assault and harm, and strengthening the focus on gendered based violence and gender stereotypes. The revised program is called *Respect*. It is supported by an online **Respectful Relationships Education Hub**, which provides information for families, high school students and school staff on respectful relationships.

While use of the *Respect* program is not mandated, it is recommended as a quality resource supporting the delivery of the Australian Curriculum and a whole school approach to RRE in Queensland schools. This flexibility enables teachers and schools to contextualise the *Respect* program materials and RRE delivery to suit their students' needs and community expectations. *Respect* was launched in October 2022, and for the first time resourced with a \$15.5 million investment over three years (2022–25) for implementation.

Eight Principal Advisors: RRE commenced in early 2022, to support state schools in each region by providing tailored professional development promoting the *Respect* program and partnering with schools to implement a whole-school approach to RRE that meets the needs of students and the school community. Initiatives to build RRE teacher capability, strengthen RRE program delivery and increase take-up of the *Respect* program will be evaluated during 2023–24.

## Bullying

Bullying is one of the most common forms of violence experienced by children and young people. It can have devastating impacts on their mental and physical health. The QFCC's *Voices of Hope: Growing Up in Queensland 2020* report found that bullying (either in-person or online) was the most important issue for children aged 8–12 years.<sup>214</sup>

“ I believe the most important issue for kids my age is bullying. I believe this because I see it at my own school. Both me and my friends have experienced bullying.

Male, 11 years  
(Growing Up in Queensland)

“ My child has been harassed and stalked by another student for more than 12 months. We have regularly raised this with the school and made complaints, but nothing has changed. We want help to get a restraining order to stop the abuse.

Parent of 10-year-old,  
Youth Law Australia client

Young people who identified as LGBTQIA+, gender diverse or living with a long-term physical condition or disability were more likely to have experienced verbal bullying, physical bullying, social bullying and cyberbullying. Aboriginal, Torres Strait Islander and South Sea Islander children and young people were also more likely to have experienced bullying. For example, 31 per cent of Aboriginal, Torres Strait Islander and South Sea Islander children reported being physically bullied, compared to 21 per cent of non-Indigenous participants.

The Queensland Government has taken significant steps to address bullying and cyberbullying following the Queensland Anti-Cyberbullying Taskforce in 2018,<sup>215</sup> implementing all 29 recommendations.<sup>216</sup> However, there is no current plan to address bullying or cyberbullying among children and young people in Queensland. The Department of Education is responsible for ensuring all state schools have the resources necessary to prevent and respond appropriately to bullying. As discussed in [Chapter 5: Digital rights](#), resources are available to educate students, parents and educators about [Online Safety in Queensland State Schools](#) and the department is also a partner of the [Bullying. No Way](#) initiative and the National Day of Action against Bullying and Violence.

There are no specific priorities to address bullying through the [Equity and Excellence](#) plan or the [Student Learning and Wellbeing Framework](#) and no public reporting on students experience of bullying in schools.

Recent findings from the 2022 School Opinion Survey provide insights into students' experiences of safety and belonging at school:<sup>217</sup>

- 16.7 per cent of students disagree that they feel safe at school.
- 26.6 per cent of students disagree that they can talk to teachers about their concerns.
- 25.5 per cent of students disagree that they feel accepted by other students at their school.



# Alternative care

Children and young people  
in the child protection system

Permanency

Transition to adulthood

Child and young participation in child protection

# A child rights approach would:

Ensure the effective implementation of child and youth participation principles enshrined in the *Child Protection Reform and Other Legislation Amendment Act 2022*. Actively involving children, young people, families and carers in decision-making processes within the child protection system is essential for improving outcomes. It is crucial to safeguard the intent of these principles and translate them into normative practice. This requires specialised skills that need to be supported as part of the practice framework.

Support the strengthening of the Aboriginal and Torres Strait Islander community-controlled sector, ensuring equitable resources to design and lead child protection responses for children, young people and families.

Prioritise culturally appropriate models that enhance family-led decision-making at the community level.

Expand delegated authority across other sites in Queensland.

Establish an independent oversight mechanism to monitor and review permanency decisions specifically related to Aboriginal and Torres Strait Islander children and young people. This oversight mechanism should ensure the highest standard of implementing the Aboriginal and Torres Strait Islander Child Placement Principle (ATSICPP), promoting the best interests of these children and young people and respecting their cultural connections.

Adhere to the safeguards outlined in the *Child Protection Act 1999*, particularly with regards to regular reviews of placements in accordance with Article 25 of the UNCRC. As a minimum children and young people should be involved in such significant decisions about their lives. This is an opportunity to further embed into practice the child and youth participation principles enshrined in the *Child Protection Reform and Other Legislation Amendment Act 2022*.

Monitor and evaluate the extended support program for young people leaving care up to 21 years old, ensuring equitable access to this support for different groups of young people.

Ensure that children in alternative care have access to the mental health and therapeutic services necessary for their healing and rehabilitation.

Governments have a fundamental duty to uphold the rights and responsibilities of families to facilitate the development of children and young people, empowering them to exercise their own rights while ensuring their protection (Article 5, UNCRC).

It is crucial to prevent the separation of children and young people from their parents, except in cases where it is necessary for safety. Governments should recognise and respect a child’s right to maintain contact with both parents and reunite with them, unless it’s deemed contrary to the child’s best interests (Article 9, UNCRC). Recognising that both parents bear responsibility for raising their children, governments must provide support services to help parents make decisions in their children’s best interests (Article 18, UNCRC).

For children and young people who cannot be cared for by their own families, it is imperative that they are placed under the care of individuals who respect their religious, cultural and linguistic backgrounds (Article 20, UNCRC). It is essential to periodically review the circumstances of these children and young people to ensure their wellbeing and proper care (Article 25, UNCRC). When considering adoption of children and young people, their best interests should always be the primary consideration (Article 21, UNCRC).

## Children and young people in the child protection system

Despite three inquiries into Queensland’s child protection system in the last 25 years, with unanimous recommendations to invest in early intervention and family supports,<sup>xxxiv</sup> the pressures facing the system continue to mount. We fail to see meaningful outcomes for children, young people and their families.<sup>218</sup>

### *Queensland Child Protection Act 1999:*

**The Act upholds the principle that the safety, wellbeing and best interests of a child, both in childhood and for the rest of the child’s life, are paramount. Enshrined in the Act is the Charter of rights for children in care, based on rights articulated in the UNCRC.**

While there has been a decline in children entering out-of-home care in 2021–22 compared to the previous year, data shows a steady increase in entries over the last five years. This is despite significant activity and investment through Queensland’s child protection reform program, *Supporting Families Changing Futures* (see Table 7.1). Child Safety, the lead agency for child protection in Queensland, is responsible for *Supporting Families Changing Futures*.<sup>219</sup>

**Table 7.1.** Number (and rate per 1000 of the total population) of individual children and young people subject to Child Safety interventions by First Nations status (Queensland, 2021–2022)

	Aboriginal and Torres Strait Islander	Non-Indigenous	Unknown Indigenous status	Total
<b>Notifications</b>	9132 (91.7)	15,752 (14.2)	3692	28,576 (23.7)
<b>Substantiations</b>	2274 (22.8)	3708 (3.4)	267	6249 (5.2)
<b>In out-of-home care</b>	5562 (55.9)	6476 (5.9)	8	12,046 (10.0)

Source: Australian Government Productivity Commission Report on Government Services 2023: Child protection services.

Note. Data may vary slightly from other publications.

xxxiv The Commission of Inquiry into Abuse of Children in Queensland Institutions (the Forde Inquiry) (1998–99), the Crime and Misconduct Commission Inquiry (2003–04) and the Child Protection Commission of Inquiry (2012–13).

### Over-representation in child protection

Aboriginal and Torres Strait Islander children and young people are over-represented at every point in the Queensland child protection system. This deep-rooted trend reveals the pervasive inequity across social and economic policy for First Nations people. *Our Way generational strategy (2017–37)* was launched in 2017 to address this over-representation.<sup>220</sup>

**In 2021–22, Aboriginal and Torres Strait Islander children and young people in Queensland were over 5.5 times more likely to be in out-of-home care than non-Indigenous children and young people.**<sup>221</sup>

In 2021–22, 15 per cent of all Aboriginal and Torres Strait Islander children and young people in Queensland had a child concern recorded. However, 62 per cent of all finalised investigations and assessments about Aboriginal and Torres Strait Islander children across Queensland were unsubstantiated.<sup>222</sup>

In August 2021, the QFCC launched its Principle Focus program to monitor over-representation across Queensland's child protection system. It states that reducing over-representation will require the following:<sup>223</sup>

- The number of exits from care must exceed entries.
- The duration of time children spend in care must be reduced.
- There must be a focus on reunification to reduce duration and increase exits from out-of-home care.

As part of the Fourth Action Plan of the *National Framework for Protecting Australia's Children*, all Australian jurisdictions have committed to upholding the five elements of the Aboriginal and Torres Strait Islander Child Placement Principle (ATSICPP): prevention, partnership, placement, participation and connection.<sup>224</sup> The ATSICPP plays a fundamental role in Australian law and policy regarding the treatment of children who come into contact with the statutory child protection system. Its primary objective is to safeguard the human rights of Aboriginal and Torres Strait Islander children. The ATSICPP recognises and upholds the right of Aboriginal and Torres Strait Islander children to be raised in their own culture, while acknowledging the significance and value of their family, extended family, kinship networks, culture and community.<sup>225</sup>

**In 2022, Child Safety ceased using Family Risk Evaluation, Family Risk Re-Evaluation and Family Reunification Assessment (from the Structured Decision-Making tool). These were introduced in 2006 to improve the consistency of assessment. However, research showed that they had high rates of false positive, which exacerbated over-representation. Their use was stopped to reduce inappropriate cultural bias when making risk assessments.**

## Permanency

The Child Protection Act defines permanency as legal, relational and physical stability. It is created by ensuring a child enjoys a stable legal status, ongoing and trusting relationships with people (including extended family and community members) and stable living arrangements. According to the Act, permanency must be considered when providing for the legal, relational and physical needs of children and young people. In May 2023, the *Child Protection Reform and Other Legislation Amendment Act 2022* introduced a preferred placement hierarchy to achieve permanency:

1. the child cared for by their family
2. the child cared for by a family member other than their parent, or another suitable person
3. for non-Indigenous children, adoption under the *Adoption Act 2009*
4. the child cared for under the guardianship of the Chief Executive (Child Safety)
5. for Aboriginal and Torres Strait Islander children, adoption under the *Adoption Act 2009*.

The QFCC's Principle Focus snapshots found that in 2021–22, 1290 Aboriginal and Torres Strait Islander children and young people entered out-of-home care in Queensland. The number of kinship placements increased during this time, which may be attributed to the establishment of dedicated kinship care teams in most regions across the state. Residential care placements continue to increase, with most regions identifying a lack of kinship and foster carers.<sup>226</sup>

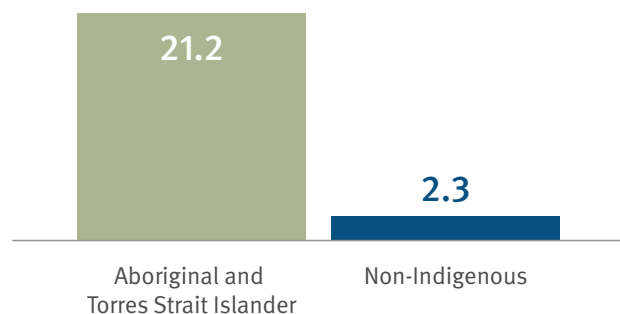
“ Like once you're taken away from your family you just lose all that respect for everyone I guess. And so, I don't know, you just don't listen to anybody anymore.

Female, 18 years, Yarning for Change

In line with the national agenda to reduce over-representation and Queensland's legislation changes, the QFCC expects to see a focus on the reunification of Aboriginal and Torres Strait Islander children and young people with their families. Eventually, the number of children exiting the statutory child protection system should exceed the number of entries. In 2021–22, 944 Aboriginal and Torres Strait Islander children and young people exited out-of-home care, an entry to exit ratio of 1.4:1. The number of children reunified with their parents continues to remain small compared with the number of children in out-of-home care (193 successful reunifications in 2021–22 compared with more than 5500 in out-of-home care). The QFCC is also concerned about approximately 500 Aboriginal and Torres Strait Islander children under the age of 18 who exited care in 2021–22 but were not reunified with family. We will further monitor this group of children and young people missing from the system, who are at risk of additional harm and injustice.

Aboriginal and Torres Strait Islander children and young people are spending longer in out-of-home care, compared with non-Indigenous children and young people (see Figure 7.2).

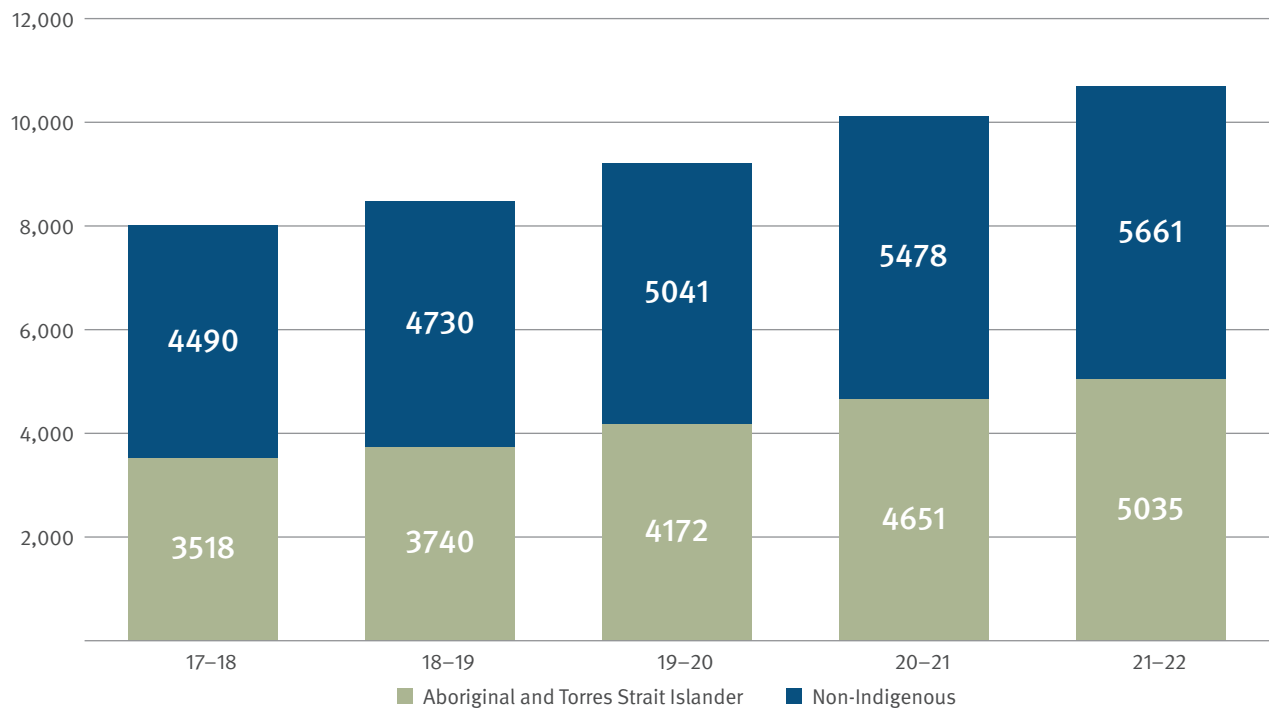
**Figure 7.2.** Rate per 1000 children and young people in out-of-home care for five or more years (Queensland, 2021–22)



Source: Department of Child Safety, Seniors and Disability Services. (2023). *Our Performance*.

Data shows that the majority of Aboriginal and Torres Strait Islander children and young people on a child protection order are on a long-term guardianship order and that this trend is rising (Figure 7.3). At 30 June 2022, 85 per cent (5035 out of 5902) of Aboriginal and Torres Strait Islander children and young people on a child protection order were in the guardianship or custody of the Chief Executive (Director-General of Child Safety). This trend is alarming.

**Figure 7.3.** Number of Aboriginal and Torres Strait Islander children and young people on a short-term or long-term guardianship order over five years (Queensland, 2018–22)<sup>xxxv</sup>



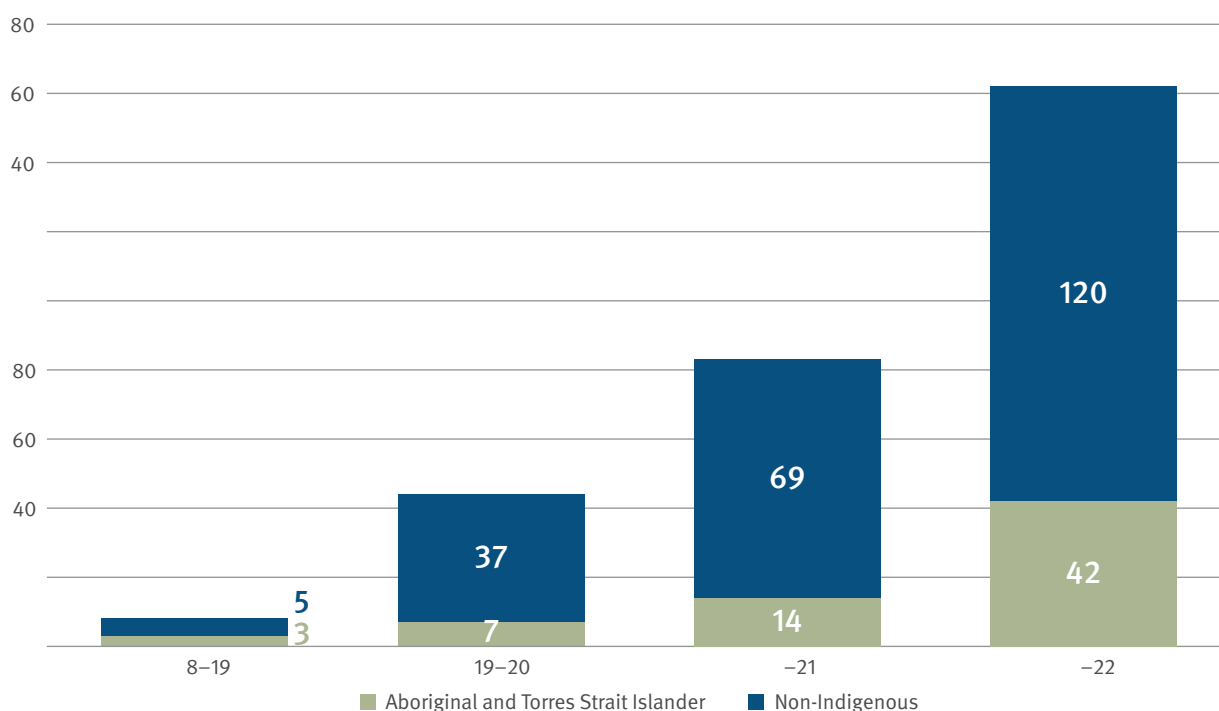
Source: Department of Child Safety, Seniors and Disability Services. (2023). *Our Performance*.

xxxv Long-term – Guardianship to the Chief Executive: An order made under the *Child Protection Act 1999* that grants long-term guardianship of the child to the Chief Executive until the child’s 18th birthday. Short-term – Guardianship: An order made under the *Child Protection Act 1999* granting guardianship rights and responsibilities to the Chief Executive in relation to the child (for a period of up to two years), including matters associated with the child’s daily care.

Data also shows a significant rise in the use of permanent care orders, including for Aboriginal and Torres Strait Islander children and young people (Figure 7.4).<sup>xxxvi</sup>

Permanency planning must be in accordance with the ATSICPP, to ensure that children remain connected to kin, country and culture. The QFCC acknowledges the Queensland Government’s positive efforts in legislating all five elements of the ATSICPP.<sup>227</sup> However, we remain deeply concerned about implementation and the need for ‘active efforts’<sup>xxxvii</sup> at all significant decision points in a child’s life.<sup>228</sup>

**Figure 7.4.** Number of Aboriginal and Torres Strait Islander and non-Indigenous children and young people on a permanent care order over four years (Queensland)



Source: Department of Child Safety, Seniors and Disability Services. (2023). *Our Performance*.

xxxvi A permanent care order is a form of legal permanency whereby an order is made by the Childrens Court to grant guardianship of a child to a suitable person (other than a parent or the Chief Executive), nominated by the Chief Executive.

xxxvii Active efforts are purposeful, thorough, and timely efforts that are supported by legislation and policy and enable the safety and wellbeing of Aboriginal and Torres Strait Islander children. SNAICC. (2019). *The Aboriginal and Torres Strait Islander Child Placement Principle: A guide to support implementation*. [www.snaicc.org.au/product/the-aboriginal-and-torres-strait-islander-child-placement-principle-a-guide-to-support-implementation/](http://www.snaicc.org.au/product/the-aboriginal-and-torres-strait-islander-child-placement-principle-a-guide-to-support-implementation/)

## Self-determination

The purpose of the ATSI CPP is to preserve and enhance Aboriginal and Torres Strait Islander human rights, including the right to self-determination. It recognises the importance of family, extended family, kinship networks, culture and community in raising children and young people. In 2018, the Child Protection Act was amended to allow the Chief Executive of Child Safety to delegate one or more powers to an Aboriginal and Torres Strait Islander community-controlled organisation. In 2022, pilots began for the delegation of legislative authority with two community-controlled organisations.<sup>229</sup>

Despite these positive steps, consistent state-wide implementation of self-determination and cultural authority in child protection decision-making and oversight is still needed. The Child Protection Reform and Other Legislation Amendment Act requires that Child Safety makes active efforts to apply the ATSI CPP when making a significant decision about an Aboriginal or Torres Strait Islander child. It also amends the partnership element of the ATSI CPP in the Child Protection Act to improve partnerships with Aboriginal and Torres Strait Islander peoples, community representatives and organisations in policy development, service design and practice.<sup>230</sup>

## Case study

(The following information is an extract of a recent case heard in the Mt Isa Magistrates Court on 2 December 2022. The full decision can be found online in the [Childrens Court of Queensland library](#).)

In this decision, the court refused an application by Child Safety to remove a 16-month-old First Nations child, referred to as Emily (pseudonym), from her mother's care. The court determined that placing Emily in foster care temporarily (for one to two weeks) would likely expose her to the trauma of being with strangers, which could cause harm to the child. The court acknowledged that the mother had exhibited neglectful and irrational behaviours but noted that the harm caused by a short-term placement in foster care would be almost certain and potentially substantial. The court emphasised that the decision does not imply that foster care is inappropriate in cases of abuse or neglect. It concluded that the harm in this specific situation outweighed the benefits of removing Emily from her mother's care, even for a short period.

The application of a Temporary Custody Order is in direct contrast to the standard of active efforts required by the ATSI CPP.

## Adoption

The recent *Child Protection Reform and Other Legislation Amendment Act 2022* includes the option of adoption for achieving permanency for a child in out-of-home care. If legal permanency becomes the predominant consideration, decisions are more likely to be influenced by the needs and priorities of the system, adoptive parents and existing carers than those of children and young people. Adoption needs to be viewed with a wider understanding of children's experiences and sense of stability. Its place in legislation must be considered in the context of meeting all three dimensions of stability for a child (legal, physical and relational).

The QFCC welcomes the amendment that places adoption as the last preference for Aboriginal and Torres Strait Islander children and young people. Adoption, and similarly permanent care orders, must only be considered for Aboriginal and Torres Strait Islander children and young people in accordance with the ATSI CPP. Adoption decisions for Aboriginal and Torres Strait Islander children and young people must be made with the participation of Aboriginal and Torres Strait Islander communities, under the principle of self-determination.

In practice, adoption outside a child or young person's kinship structure cannot guarantee their connection to family, community and culture. Further, the court process for adoption does not provide for the participation of Aboriginal and Torres Strait Islander communities in decisions. Independent expert and cultural advice must be sought in such cases to ensure all decisions reflect the five elements of the ATSI CPP to an 'active efforts' standard.

The new provisions also raise complex issues for non-Indigenous children and young people. The preference list oversimplifies the complex issues involved when a parent chooses adoption for their child. Making it necessary for the child protection system to consider adoption as a preferred option to achieve permanency may remove the discretion of the parent to make this decision when they are ready and when it is in a child's best interests.

Above all, the voice of the child or young person must be included in every decision surrounding adoption. Separate independent support should be required to make sure the child or young person's best interests are considered at the start of the adoption conversation. This is critical as adoption ultimately results in the cutting of all legal ties between the child and their birth family.

In 2021–22, there were 23 adoptions finalised in Queensland under the Adoption Act. None of these adoptions involved Aboriginal and Torres Strait Islander children and young people. Seven of those adoptions were intercountry.<sup>231</sup> There is insufficient public information about the quality of the adoption process to assess whether adoptions have been made in the best interests of the child or whether children and young people have had an opportunity to participate.

## Transition to adulthood

Every year, approximately 400 young people in Queensland exit out-of-home care after turning 18 years of age.<sup>232</sup> While many young people leaving care transition smoothly into adulthood, some will experience poor outcomes due to lack of support from family, carers and service providers, and poor transition planning.<sup>233</sup> Young people in these circumstances are at an increased risk of homelessness, substance misuse and contact with the criminal justice system.<sup>234</sup> A planned, gradual and flexible process for transitioning young people to adulthood is crucial, as is the continuation of support after they have left care. In the last 12 months, only 66 per cent of young people aged over 15 years had a transition to adulthood plan.<sup>235</sup>

We welcome the Queensland Government's announcement to extend support for young people in care up to 21 years of age. This will enable young people to remain in, or return to, care as they need. Extending support will help prevent abrupt transitions and give young people more time to find stable housing and explore further education and training opportunities.

## Case study

(The following case study was provided by Queensland Advocacy for Inclusion (QAI).)

17-year-old Michael (pseudonym), who had been living in a group home, grew frustrated with the restrictions imposed on him by Child Safety. He believed he should have the freedom to make his own choices regarding his living arrangements, finances and how he spent his time. He wanted more time with his mother and siblings. Despite seeking transitional planning from Child Safety as he approached adulthood, no assistance was provided. Instead, Child Safety applied to appoint a guardian and administrator to manage Michael's affairs after he turned 18, without consulting or communicating with him.

Michael sought help from QAI and filed opposing documents with QCAT to challenge Child Safety's applications. In preparation for the hearing, Michael completed a budgeting course and impressed his psychologist with his maturity and ability to handle responsibilities such as budgeting, managing his finances and using public transport. With the support of his QAI advocate, Michael articulated his future plans, including reuniting with his mother and siblings.

During the hearing, Michael presented his case with composure and pleaded for more control over his life. After hearing Michael's testimony, the QCAT Member presiding dismissed Child Safety's application for guardianship and administration. Michael was free to make his own decisions and moved back home with his mother. His desire to reunite with his siblings remains unresolved.

## Child and youth participation in child protection

The *Our Rights Matter* framework was developed by young people to capture the things that matters to children and young people in the child protection system. They system told us that what matters most to them are identity, stability, health and wellbeing, feeling safe and loved, and being treated with equity and fairness.<sup>236</sup>

**“ How am I meant to cope with what's going on around me and grow up to be a successful adult myself if I've never had stability?**

Youth Researcher, Rights, Voices, Stories

Being able to participate in decision-making allows children and young people to have agency in their lives and exercise their rights. To ensure meaningful participation, children and young people must feel safe to express themselves freely.

**“ We want a future where there isn't such a vast difference in outcomes between kids in care and kids living at home with their parents. Where kids in care have the same opportunities as every other child in Queensland, and more kids have a positive experience in care. We want a future where kids in care are heard when they speak up. Where they are believed, understood, and helped to solve problems and make their circumstances better.**

Youth Researcher, Rights, Voices, Stories

We also found that the child protection data collected fails to measure outcomes, such as whether children and young people were kept safe and had their basic needs met, whether their health, wellbeing and education has been affected and whether they were reunited with their families. The voices of children, young people and families in the system are also missing.<sup>237</sup>

The recent amendments to the Child Protection Act reinforce children's rights and strengthen the voices of children and young people in the child protection system. They establish the right of children and young people to be consulted on, and take part in, decisions that affect their lives. Children and young people have the right to have a say about their health, education, living arrangements and contact with family.<sup>238</sup> We welcome these amendments and the significant opportunity they enable to improve outcomes for children, young people and their families.

In practice, a balance must be struck between the safety of a child and their right to meaningful participation. This critical challenge for the child protection system can be met by adopting a child rights approach. It is important that children and young people have access to safe spaces where they can speak and be heard by people they trust.<sup>239</sup>

Under Article 25 of the UNCRC, children in care have the right to regular review of their placement, the way they are cared for and their wider circumstances. It is a monitoring mechanism that exists to protect children and young people when they are away from home and ensures their best interests are being met. There are some existing safeguards in the Child Protection Act whereby children and young people under long-term guardianship of the Chief Executive of Child Safety have the right to have their care arrangements regularly reviewed.<sup>240</sup> However, there is insufficient evidence that this is routinely enacted. Monitoring mechanisms need further exploration in Queensland, especially data collection and reporting, to ensure strict adherence to the legislation's requirements to review placements regularly and report publicly on the system's performance.

Child Safety is undertaking a four-year program to replace its existing integrated client management system (ICMS). The new system, Unify, is designed to improve information sharing and collaboration across the government, social services and justice sectors. It is intended to be client centric by supporting targeted, needs-based responses to children, young people, parents, carers, families and communities, while delivering earlier and more effective interventions. It aims to improve how data is managed to enable effective monitoring of outcomes and direct future investment to what works.<sup>241</sup> There is a timely opportunity to embed within this system the ability to record evidence of placement reviews and the voices of children, young people, carers and families in decision-making.

## Case study

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(The following case study was provided by Micah Projects.)

Tegan (pseudonym), a 17-year-old girl who was nine weeks pregnant, was referred to Micah Project's Young Mothers for Young Women (YMYW) program. Tegan reported a history of multiple and complex trauma, including drug-dependent parents, mental health issues, domestic violence and various forms of harm. Tegan had been involved with child protection services for most of her life and she had been placed in foster care twice. She was homeless at the time of the referral, having left a place where she was couch surfing due to a domestic violence incident that led to her partner's imprisonment. Tegan said she had no healthy relationships in her support network and had been using the drug ice daily for over two years before discovering her pregnancy.

While Tegan herself was a child in need of protection and support, her pregnancy brought her to the attention of child protection services once again. Her drug use, mental health issues, history of domestic violence, unstable housing, young age and previous involvement with child protection were considered risks to the safety and wellbeing of her baby.

Although Tegan had goals and aspirations for the type of mother she wanted to be, she needed assistance to achieve them. Since joining the YMYW program, Tegan has received resources to obtain photo identification and a learner's license, support in accessing Youth Allowance benefits, and assistance in securing safe and long-term housing. She is now actively engaged in perinatal health, mental health and addiction support services. Tegan has developed a safety plan and has received legal support. Both Tegan and her baby are connected to comprehensive support services for antenatal care with home visits from child health professionals. Tegan is also participating in the Parents as Teachers program to learn about her baby's development and family wellbeing. With the support she has received to pursue her goals, Tegan is now on a path towards a brighter future for herself and her baby.

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# Disability, health and welfare

Disability

Mental health

Smoking and vaping

Physical health

Housing and homelessness

# A child rights approach would:

Recognise how *Making Tracks Together – Queensland’s Aboriginal and Torres Strait Islander Health Equity Framework* demonstrates a strong commitment to addressing health disparities among Aboriginal and Torres Strait Islander children and young people by continuing to prioritise efforts to close the life expectancy gap and improve health outcomes for this population.

Enhance service provision under the National Disability Insurance Scheme (NDIS) for children and address barriers faced by Aboriginal and Torres Strait Islander children and young people, as well as those with cognitive disabilities in rural and remote areas. It is essential to ensure continuity of support regardless of whether they are in custody or care, without compromising their access to services due to placement in the statutory system.

Celebrate *Towards Ending Homelessness for Young Queenslanders 2022–2027* as it demonstrates positive action in addressing the high rate of homelessness among young people. Continue to implement measures to address housing challenges and ensure safe, stable and affordable housing options for all children and young people in Queensland, taking into account their unique needs and seeking their input.

Recognise *Through the Better Care Together: a plan for Queensland’s state-funded mental health, alcohol and other drug services to 2027*, and its sub-plans, including the significant investments that are being made to address the underlying causes of suicide and poor mental health among children. Ensure accessible and comprehensive mental health services for all children and young people, with a specific focus on high-risk groups. Continue to act on recommendations from the *Inquiry into the opportunities to improve mental health outcomes for Queenslanders* and involve individuals with lived experience in prevention strategies.

Acknowledge the positive action being taken through *Making Healthy Happen 2023–2032* to address the increasing rate of child obesity.

Continue the significant progress to provide children and young people with education on sexual and reproductive health as part of the mandatory school curriculum, including the promotion of Respectful Relationships. Ensure that the information provided is inclusive for all children and young people, and that the content is tailored based on the voices and experiences of children and young people themselves.

Improve data collection and monitoring systems to accurately determine the prevalence of female genital mutilation/cutting in Queensland. Increase efforts to raise awareness about this issue, encourage reporting, and provide appropriate healthcare and support services to survivors.

Every child has the right to life and development (Article 6, UNCRC). Children and young people with disability have the right to a full and decent life (Article 23, UNCRC). Good quality health care, clean water, nutritious food and a clean environment should be available to all children and young people (Article 24, UNCRC) and if families cannot afford this, they should be offered support (Article 26, UNCRC). The UNCRC protects the right of every child to a standard of living that meets their physical and mental needs (Article 27, UNCRC). All appropriate measures, including legislative, administrative, social and educational, should be taken to protect children and young people from dangerous drugs (Article 33, UNCRC).

## Disability

***Queensland's Disability Plan 2022–27: Together, a better Queensland, is Queensland's plan to build an inclusive society and affirm the state's commitment to Australia's Disability Strategy 2021–2031. The Queensland Government has committed to delivering actions under the plan, targeting employment, community attitudes, early childhood, safety and emergency management.***

Children and young people with disability continue to experience barriers to the full realisation of their rights. They are far less likely to go to preschool, are more likely to be inappropriately and repeatedly excluded from schools (see [Chapter 9: Education and play](#)), and experience higher rates of abuse. These trends are driven by systemic and structural inequalities.<sup>242,243</sup>

The QFCC's 2020 survey of 5924 young people, *Growing Up in Queensland*, included six per cent who reported living with a disability. Young people with disability were less likely to feel positive about their future (40 per cent, compared to 57 per cent of young people without a reported disability) and less likely to plan to finish year 12 (62 per cent compared to 78 per cent of young people without a reported disability). Young people with disability were also less likely to agree that there were safe places in their community to spend time with their friends (44 per cent compared to 56 per cent of young people without a reported disability).<sup>244</sup>

### ***National Disability Insurance Scheme***

The National Disability Insurance Scheme (NDIS) offers two streams of support for children and young people depending on their age. Children under the age of seven are supported through the early childhood approach (at the end of 2022, 4259 children under seven in Queensland were being supported with 38 children waiting for early connections).<sup>245</sup> For children aged over seven, support is provided through the general stream. We heard from stakeholders that the dual stream approach can create gaps in service provision for children aged six due to the limited capacity of early childhood early intervention partners.

In 2021–22, there were 48,188 children and young people aged 0–14 years accessing the NDIS in Queensland, a 23 per cent increase from the previous year (14,977 females, 32,881 males and 330 other). 78.6 per cent of the potential NDIS population aged 0–14 years accessed the NDIS in Queensland in 2021–22 (the lowest participation nationally). Table 8.1 compares the percentage of NDIS supports utilised by children and young people in Queensland against the national average.<sup>246</sup>

**Table 8.1.** Percentage utilisation of NDIS supports per active participant with approved NDIS plan, by age group (2021–22)

Age group	Queensland	National
0 to 6 years	60.1%	61.4%
7 to 14 years	68.4%	69.6%
15 to 18 years	67.7%	68.7%

Source: Australian Government Productivity Commission Report on Government Services: Services for people with disability.

Note. Includes participants with and without Supported Independent Living (SIL). Utilisation is measured for each reporting cycle from 1 October to 31 March. A lag is applied when reporting utilisation results as experience in the most recent months is still emerging. The data used is as of 30 June in the reporting cycle. The results include in-kind supports, except where in-kind amounts cannot be allocated to an individual participant.

In 2021–22, more Aboriginal and Torres Strait Islander people than non-Indigenous people accessed the NDIS in Queensland, as a proportion of the population. However, there were fewer people from culturally and linguistically diverse backgrounds. There were also fewer NDIS participants from remote and very remote areas compared with those living in major cities and regional areas of Queensland.<sup>247</sup>

The QFCC explored the barriers to accessing NDIS services by children and young people with cognitive disabilities and their families living in rural and remote Queensland. Barriers include:<sup>248</sup>

- lack of physical service provider offices
- lack of knowledge of the benefits of NDIS plans and how to obtain them
- lack of disability support and health services
- lack of culturally appropriate services for Aboriginal and Torres Strait Islander people
- Aboriginal and Torres Strait Islander families' fear of government involvement.

In 2020, the former Queensland Productivity Commission undertook an inquiry into the NDIS market in Queensland and observed that the NDIS could be improved with greater information, flexibility, choice and efficiency. The final report contained 20 findings and 56 recommendations, which the Queensland Government largely accepted in full or in principle (one recommendation was partially accepted). The Department of Child Safety, Seniors and Disability Services is responsible for leading the government's response and continues to work with other government agencies to implement recommendations.<sup>249</sup> Children, young people and their families should be at the centre of implementation, particularly those who are not already accessing supports, those who may not have experience advocating for themselves or those who are unaware of the advocacy supports available.<sup>250</sup>

The Queensland Government committed to \$5.7 million in 2022–23 to provide a further 12 months funding for the Queensland-run Assessment and Referral Team (ART).<sup>251</sup> The ART provides one-on-one assistance to children and young people aged 7–25 years to complete the NDIS application process, including helping to complete forms, liaising with specialists and facilitating free clinical assessments. Through this service, intensive support is available for children and young people who are:

- Aboriginal and Torres Strait Islander, LGBTQIA+, and culturally or linguistically diverse
- engaged in, or are at risk of entering, the justice or child protection systems
- disengaged from education or are transitioning from school
- experiencing, or are at risk of, domestic and family violence, harm, homelessness or social isolation
- living in regional, rural and remote communities.

## Mental health

Led by the Queensland Mental Health Commission, *Shifting minds: Queensland Mental Health, Alcohol and Other Drugs Strategic Plan 2018–2023* is a five-year plan to improve the mental health and wellbeing of all Queenslanders. Building on *Shifting minds* is Queensland Health's *Better Care Together: a plan for Queensland's state-funded mental health, alcohol and other drug services to 2027*, which follows the Queensland Parliament's Inquiry into the opportunities to improve mental health outcomes for Queenslanders. *Every life: the Queensland Suicide Prevention Plan 2019–2029* is a sub-plan that sets out a whole-of-government approach to suicide prevention.

In 2021–22, Kids Helpline<sup>xxxviii</sup> received over 14,000 contacts from Queensland children and young people aged 5–18 years.<sup>xxxix</sup> Mental health concerns were the top reason children and young people made contact, accounting for 27 per cent of all reported counselling contacts. This was similar for Aboriginal and Torres Strait Islander (29 per cent) and culturally and linguistically diverse children and young people (27 per cent). Contacts about suicide-related concerns were more common for Aboriginal and Torres Strait Islander children and young people (28 per cent), compared with the total population of children and young people who contacted Kids Helpline (18 per cent).<sup>252</sup> Of the 5924 young people who took part in the QFCC's *Growing Up in Queensland* survey in 2020, 33 per cent reported having an emotional or mental health condition.<sup>253</sup>

“ The most important issue for young people today is mental health, and not knowing what to do or who to talk to about their struggles.

Female, 15 years,  
Growing Up in Queensland

Many young people with mental health issues do not seek help from mental health services. Mission Australia found that 44.8 per cent of Queenslanders aged 15–19 years who had experienced mental health issues did not seek support. The top barriers to young people accessing professional mental health support were concerns about confidentiality, feelings of stigma or shame, not knowing where to go for help and cost. For gender diverse young people, feelings of stigma and shame, confidentiality and cost were particular barriers.<sup>254</sup> The same was true for young people who participated in *Growing Up in Queensland*.

“ Mental health. It's not taken seriously, and no one cares to understand. The stigma around it needs to end.

Female, 18 years,  
Growing Up in Queensland

xxxviii Kids Helpline is a free Australian telephone and online counselling service for children and young people aged 5 to 25.

xxxix Age is self-reported and may be missing.

The QFCC advocates to reduce the stigma of seeking help and increase knowledge of the supports and services available for children and young people with mental health concerns.<sup>255</sup> Of the young people who took part in *Growing Up in Queensland 2020*, only half said they knew about services (in the community and online) that can support them when they are stressed.

**“ I think leaders should take more action on advising teenagers about mental health and what services are available to them.**

Female, 17 years,  
Growing Up in Queensland

**“ I was entirely unaware there were mental health facilities for children that were free to attend until I asked my school psychologist.**

Female, 17 years,  
Growing Up in Queensland

Even for young people who are aware of available services, the mental health care system can be difficult to navigate. Participants in *Growing Up in Queensland 2020* described confusion about the process of seeking help, confidentiality and parental consent. They also described the mental health system as intimidating.

**“ I would like to know [how to get] mental health support without having to tell parents or carers.**

Female, 18 years,  
Growing Up in Queensland

**“ All of our systems for mental health are daunting and they are unapproachable.**

Female, 17 years,  
Growing Up in Queensland

**“ Getting professional help for mental illnesses like depression and anxiety etc, is not easy. There’s a lot of awareness about seeking help if you need it but getting help is actually inaccessible and expensive. I know many people who want help and need help but are unable to get it.**

Female, 16 years,  
Growing Up in Queensland

In December 2021, a Mental Health Select Committee was established by the Queensland Parliament to examine opportunities to improve mental health and alcohol and drug outcomes for Queenslanders. Their 2022 report made 57 recommendations covering prevention, crisis response, harm reduction, treatment and recovery; all were accepted in full or in principle by the Queensland Government.<sup>256</sup> Most of the recommendations focused on the state-funded mental health, alcohol and other drug service system. They include ensuring the voices of people with lived experience, families, carers and support people are involved in service delivery reforms. They also include expanding services in the community, including for children and young people and those living in rural and remote areas. Broader recommendations addressed the social factors that impact on mental illness and substance use, such as housing, education, criminal justice, child protection, disability and employment.

We welcome these recommendations. Mental health services, including prevention and early treatment, need to be available and accessible to all children and young people in Queensland, including those under the age of 12. Mental health support must be prioritised for children and young people who: have a disability; are in contact with youth justice; have experienced domestic and family violence; are homeless, living in out-of-home care or leaving care; identify as Aboriginal and Torres Strait Islander; are refugees or asylum seekers; identify as LGBTQIA+; and live in rural and remote areas.

The *Better Care Together* plan responds to the recommendations of the Mental Health Select Committee report that focus on the treatment, care and support system. Queensland Health, the Queensland Mental Health Commission, and Health and Wellbeing Queensland will work together to deliver a public health campaign to reduce stigma, a whole-of-government trauma strategy, and a mental health and wellbeing strategy.<sup>257</sup> An additional \$1.64 billion was committed over five years, plus \$28.5 million in capital funding,<sup>258</sup> to implement the plan and meet Queensland's obligations under the *National Agreement on Mental Health and Suicide Prevention*.

We acknowledge the positive investment in supporting mental health and wellbeing in Queensland state schools through the *Student Learning and Wellbeing Framework*.<sup>259</sup> Schools play an important role in breaking down the stigma and promoting students' mental health by teaching social, emotional and problem-solve skills. They also have the potential to improve accessibility of mental health services. QFCC's Youth Advocates provided recommendations to the Mental Health Select Committee, including:<sup>260</sup>

“ ... making sure that access to mental health services is practical and convenient rather than being an inconvenience for you to have to search out and go out of your way to get access to basic human health care. This means having counsellors, psychologists and GPs in schools, universities and prominent workplaces that young people are a part of. Further to this, there should not be an extensive waiting period because there are so many people trying to access these services. Online services work for some people but they do not work for everyone.

Youth Advocate, Holly

The Australian Government is also undertaking positive initiatives including implementing the Better Access initiative which provides 10 Medicare-subsidised psychology appointments per year. At the height of the COVID-19 pandemic, the government doubled the number of subsidised appointments that could be accessed.<sup>261</sup> The federal budget for 2022–23 also funds expansion of the headspace network to address wait times for young people.<sup>262</sup>

QFCC's Youth Advocates described barriers to accessing Medicare-subsidised services. The requirement for a Medicare card and referral by a General Practitioner can limit access, including when a child does not want their parents to know or they are in out-of-home care. There is also continuing high demand for psychology services (exacerbated by the pandemic), where it is common to wait six months or more for an initial appointment. Some Youth Advocates reported difficulty finding a psychologist they could connect with, who could provide treatment in a culturally safe manner or who were accessible and inclusive to LGBTQIA+ children and young people. The cost of services, which is often only partly covered by Medicare, can also be prohibitive.<sup>263</sup>

## Alcohol and other drugs

***Achieving balance: The Queensland Alcohol and Other Drugs Plan 2022–2027 sets out the Queensland Government’s commitment to prevent and reduce the individual, family, social and economic impacts of alcohol and other drugs. It builds on Better Care Together: a plan for Queensland’s state-funded mental health, alcohol and other drug services to 2027 and the National Drug Strategy 2017–2026 for preventing and minimising alcohol, tobacco and other drug related health, social and economic harms among individuals, families and communities. Young people are a priority cohort for each of these plans.***

Article 33 of the UNCRC promotes the wellbeing and safety of children by addressing the risks and dangers of drug use. It emphasises the need for comprehensive strategies involving legal frameworks, social support, education and collaboration to protect children from the harmful effects of drugs and promote their healthy development.

Of the 5680 young Queenslanders who participated in Mission Australia’s 2022 survey, 6.9 per cent reported that alcohol and other drugs were an issue of concern for them (7.2 per cent of female participants, 5.4 per cent of male participants and 13.2 per cent of gender diverse participants).

There is limited current data on the prevalence of alcohol and drug use among young people in Queensland. Data provided by Queensland Health showed that in 2021–22, about 1800 children and young people sought treatment for alcohol, nicotine, volatile substances and other drugs.<sup>264</sup> The 2019 National Drug Strategy Household Survey found that, on average, young people first started drinking alcohol at age 16.2 years (similar for males and females).<sup>265</sup> Most 14–17-year-olds had abstained from drinking alcohol in the previous 12 months (73 per cent). However, 8.9 per cent drank alcohol at levels that put them at risk of harm at least once a month in the 12 months prior.

Since 2001, there has been a decrease in the proportion of young people drinking and young people drinking at risky levels. From 2001 to 2019, the proportion of young people aged 14–17 years who abstained from drinking more than doubled (from 32 per cent to 73 per cent).

In 2019, 9.7 per cent of 14–17-year-olds engaged in illicit drugs use (including non-medical use of pharmaceuticals) in the previous 12 months. On average, young people first tried an illicit drug at 17.3 years old. Among 14–17-year-olds who had used an illicit drug in their lifetime, the most common factors that influenced their decision were:

- curiosity (66 per cent)
- friends or family members using it or offering it (49 per cent)
- to do something exciting (25 per cent).

As with alcohol, there has been a decrease in the proportion of young people using illicit drugs in recent years. From 2010 to 2019, illicit drug use (including pharmaceuticals) among 14–17-year-olds fell from 14.5 per cent to 9.7 per cent.<sup>266</sup>

Queensland schools play an important role in delivering an alcohol and other drugs education program. The program uses a harm-minimisation approach to increase students’ awareness and understanding of the impacts of alcohol and other drug use. It promotes their capacity to make responsible, safe and informed decisions and navigate difficult situations.<sup>267</sup>

Priority actions of the *Achieving balance* plan include early intervention and improved outcomes for Aboriginal and Torres Strait Islander children and young people, as well as children and young people involved in the youth justice and out-of-home care systems. The strategy calls for earlier identification and provision of services for children and young people with disability or who have experienced trauma, adverse childhood experiences, foetal alcohol spectrum disorder and developmental delay. Keeping school-based alcohol and drug education up-to-date and evidence-based is another priority action.<sup>268</sup>

In 2022, the Queensland Government announced new and enhanced alcohol and other drug residential treatment services, including a 10-bed residential rehabilitation service in Cairns for young people as well as other non-residential treatment and support services, focused on culturally safe and tailored programs for Aboriginal and Torres Strait Islander young people. Measures also include expanding harm reduction responses for young people.

While we are yet to see the impact of recent initiatives, the QFCC is positive about the government's commitment to implementing the recommendations of the *Inquiry into the opportunities to improve mental health outcomes for Queenslanders*.<sup>269</sup> In particular, ensuring young people with lived experience are involved in planning, delivering and reviewing alcohol and other drug services is critical. The government's recent announcement to introduce pill testing in Queensland for the first time as a harm minimisation approach is a positive step.

#### *In the news:*

### **Pill testing gets the green light**

*“The Palaszczuk Government will allow pill testing services for the first time as part of its commitment to reduce risks and harms associated with illicit drug use.”*

<https://statements.qld.gov.au/statements/97250>

## Smoking and vaping

Findings from the 2019 National Drug Strategy Household Survey revealed that 97 per cent of 14–17-year-olds had never smoked. The average age that young people first smoked a full cigarette was 16.6 years (similar for males and females). From 2001 to 2019, the proportion of young people aged 14–17 years who were daily smokers decreased significantly, from 11.2 per cent to 1.9 per cent.<sup>270</sup>

There is growing concern about the use of e-cigarettes (electronic cigarettes) and vaping among young people. Children and young people have the right to be protected from harmful drugs, such as vaping and e-cigarettes. This includes ensuring that sufficient legislation is in place and that children, young people and their parents/guardians are taught about their effects (Article 33, UNCRC). There is limited population and self-report data available in Queensland. New research of 1006 young Australians aged 15–30 years found that 33 per cent had tried e-cigarettes in the past and 14 per cent were current users.<sup>271</sup> This is significantly higher than figures reported in the 2019 National Drug Strategy Household Survey (4.1 per cent of young people aged 14–24 used e-cigarettes).<sup>272</sup>

“ I see vaping a lot in the community... you see it everywhere. The youngest person I've ever seen with a vape was about eight or nine years old – this little boy running around in my neighbourhood just smoking a vape. It's pretty prevalent.

QFCC Youth Advocate

A recent survey conducted by the South Australian Commissioner for Children and Young People gained insights from young people about how easy it is to access vapes, the reality of nicotine addiction, uncertainty around legislation, lack of information about the short and long-term health consequences of vaping, unhelpful school and community responses, and the costs of maintaining a vaping addiction.<sup>273</sup>

The Australian and Queensland governments have begun taking action to address vaping. In late 2019, the federal Department of Health released its policy and regulatory approach to e-cigarettes in Australia, which has been agreed to by all Australian governments.<sup>274</sup> The guiding principles ensure that protecting the health of children and young people is a primary focus of government action. A national e-cigarette working group will be established to review and advise on measures to protect young people from the harms of e-cigarettes by addressing the availability, appeal and uptake of vaping products. From November 2022 to January 2023, the Therapeutic Goods Administration (TGA) undertook public consultation on potential reforms to the regulation of nicotine vaping products in Australia, including preventing children and young people from accessing nicotine vaping products. After receiving almost 4000 submissions, the TGA is now providing advice to the Australian Government on options for reform.<sup>275</sup>

The QFCC welcomes the Queensland Parliament's inquiry into e-cigarettes and vaping, due to be tabled in August 2023.<sup>276</sup> Schools play a critical role in helping children and young people make healthy and safe decisions and they have already begun taking

action to address vaping in schools at a local level. For example, the Queensland Police Service in Moreton Police District have launched a two-part video series which includes information on vaping laws, and health messages supported by Queensland Health and the Lung Foundation. The videos aim to empower young people to make better choices.<sup>277</sup>

Education about the harmful effects of vaping must consider the views of children and young people and should be carried out at both primary and secondary level. School responses should not be punitive and should be focused on keeping children and young people engaged in education. Families and communities should also be involved in the response and given sufficient information to have conversations with their children. It is a positive step that the approaches being taken in Queensland will be reviewed and form an evidence-base for future initiatives.

**Queensland Health has recently launched an awareness campaign Vape Truths, which aims to increase knowledge and awareness about the risks of vaping.<sup>278</sup>**

### *In the news:*

## **What do they contain? Parliamentary Inquiry will get to the truth about e-cigarettes and vaping**

**“A Parliamentary Inquiry will investigate the availability and prevalence of vaping devices – particularly among younger Queenslanders – and the health risks associated with e-cigarettes... [including]:**

- **the prevalence of e-cigarette use, particularly amongst children and young people**
- **the risks of vaping harmful chemicals, including nicotine, to individuals, communities and the health system**
- **the approaches being taken in Queensland schools and other settings relevant to children and young people to discourage uptake and use of e-cigarettes**
- **the awareness of the harmful effects of e-cigarette use to an individual's health and the effectiveness of preventative actions.”**

<https://statements.qld.gov.au/statements/97340>

## Physical health

*My Health, Queensland's future: Advancing health 2026 and A great start for our children: State wide plan for children and young people's health services to 2026* set out Queensland's 10-year vision for Queensland's health and child health systems.

*Making Tracks Together—Queensland's Aboriginal and Torres Strait Islander Health Equity Framework* is the overarching strategy to drive health equity, eliminate institutional racism across the public health system and achieve life expectancy parity for First Nations peoples by 2031.

*Children's Health Queensland Aboriginal and Torres Strait Islander Health Equity Strategy 2022–2025* sets out the state's path to work towards health equity for Aboriginal and Torres Strait Islander children and young people in Queensland.

*Health and Wellbeing Queensland's GenQ* aims to create a positive and lasting generational shift towards better health and wellbeing for all Queenslanders, with a particular focus on children and young people.

### Health equity overview

In its 2019 concluding observations, the UN Committee urged the government to promptly address the disparities in health status of Aboriginal and Torres Strait Islander children and young people, children and young people with disability, living in remote or rural areas and in out-of-home care.<sup>279</sup>

In 2017, the former Queensland Anti-Discrimination Commission (now the Queensland Human Rights Commission) and the Queensland Aboriginal and Islander Health Council commissioned the report *Addressing Institutional Barriers to Health Equity for Aboriginal and Torres Strait Islander People in Queensland's Public Hospital and Health Services*.<sup>280</sup> This report brought to light the enduring challenges and barriers faced by Aboriginal and Torres Strait Islander communities within Queensland's public health system. The report concluded that the *Hospital and Health Boards Act 2011* failed to provide the necessary legislative support for the public health

system to close the gap with Aboriginal and Torres Strait Islander peoples, thereby perpetuating institutional racism and health inequality.

In response, Queensland Health has taken significant steps to initiate a comprehensive health equity reform agenda. These efforts aim to embed health equity principles across the entire health system and address the legacy of institutional racism highlighted in the report. Central to this reform process was the inclusion of Aboriginal and Torres Strait Islander leadership in decision-making within Queensland Health and the empowerment of First Nations health leaders throughout the health system. These actions have provided crucial guidance for the numerous reforms and initiatives implemented over recent years.<sup>281</sup>

*Making Tracks Together* sets out the strategic framework to promote health equity, eradicate institutional racism within the public health system, and attain life expectancy parity for First Nations peoples by 2031 (*Closing the Gap* target). It provides a comprehensive overview of the policy guidelines and strategic pathways for hospital and health services to formulate and execute health equity strategies in accordance with the recent legislative amendments which require hospital and health services to co-develop and co-implement health equity strategies with Aboriginal and Torres Strait Islander peoples and organisations.<sup>282</sup>

**In 2021–22, the percentage of babies born with low birth weight was 9.3 per cent for Aboriginal and Torres Strait Islander women, compared to 4.9 per cent for non-Indigenous women.**<sup>283</sup>

Social, cultural and economic determinants work across our society in ways that can hinder different groups of children and young people from reaching their fullest potential. These root causes of inequity interrelate to influence numerous inequitable outcomes, including health inequity. The **Queensland Equity Framework** is being developed collaboratively with cross-sector government and community voices to understand the conditions holding inequity in place and identify opportunities to shift systems, policies, practices and mindsets for better outcomes for all.

### Physical activity and nutrition

Children and young people have the right to life, survival and development (Article 6) and the right to adequate nutrition and physical activity (Article 24, UNCRC). This includes access to healthy and nutritious food, clean drinking water, and a safe and clean environment to support their growth and development. Inadequate physical activity and poor nutrition can have long-term effects on a child's physical and mental health, and can ultimately impact their overall development.

Data from the Chief Health Officer shows that many Queensland children and young people are not meeting the recommended guidelines for physical activity and fruit and vegetable consumption. In the 2022 report, less than half (46.3 per cent) of 5–17-year-olds were physically active for at least one hour per day, as recommended. Children and young people who met the guideline for sufficient physical activity were more likely to be younger and living in remote areas. Primary school-age children were almost twice as likely as older children to be active for at least one hour a day.<sup>284</sup>

In 2022, 68.8 per cent of Queensland children and young people ate the recommended number of serves of fruit each day, while only 2.8 per cent ate the recommended daily serves of vegetables (although nearly a quarter ate three or more serves of vegetables). Fruit and vegetable consumption patterns were mostly similar across different socio-demographic groups. Children consuming the recommended serves of fruit were more likely to be female and younger.

Healthy behaviours regarding nutrition, physical activity, sedentary behaviour and sleep are established in childhood and are important for healthy growth and development.<sup>285</sup> Supporting children and families to adopt and maintain healthy behaviours can make a significant difference in children and young people's lives,<sup>286</sup> and Article 24 includes ensuring parents and children are supported in basic knowledge of child health and nutrition and have access to education and guidance.

Free, universally available family-based obesity prevention programs can support children and their families to adopt positive health behaviours and provide health professionals with appropriate prevention and early intervention referral options.<sup>287,288</sup>

#### Podsquad

Health and Wellbeing Queensland has led the development of Podsquad, a free, online, play-based wellbeing program helping children and families build healthy habits together. Podsquad supports positive health behaviour changes by exploring the topics of nutrition, physical activity and wellbeing through a behavioural science framework. The program has been co-designed with over 200 Queensland children aged 5–12 years and their families, and research partners the University of Queensland.

### Remote food security

Remote food security is a significant issue in Queensland, particularly in Aboriginal and Torres Strait Islander communities. Remote communities face numerous food security challenges, including limited access to affordable and healthy food options, poor infrastructure, high transportation costs and limited economic opportunities.<sup>289</sup> These challenges are compounded by factors such as climate change, extreme weather events and limited water resources, which can significantly impact local food production and supply.<sup>290</sup>

Food insecurity can have a significant impact on children and young people's health and wellbeing. They are particularly vulnerable to the effects of poor nutrition, which can lead to a range of health problems, including stunted growth, poor cognitive development and compromised immune systems. It can also affect their ability to learn. Limited access to education and healthcare in remote communities can exacerbate food insecurity issues.<sup>291,292</sup>

To address these challenges, the draft *Remote Food Security Strategy and Action Plan for Queensland*<sup>293</sup> and the **Gather + Grow** framework aim to improve access to healthy and affordable food for people living in remote communities, including children and young people. The plan includes actions such as supporting local food production, improving logistics and supply chains and creating healthy communities and healthy housing. By addressing the root causes of food insecurity, the plan aims to improve health and wellbeing outcomes for children and young people in remote areas of Queensland.

## Obesity

***Making Healthy Happen 2023–2032, being led by Health and Wellbeing Queensland, is the Queensland Government’s response to the National Obesity Strategy 2022–2032. The Strategy takes a systems change approach to develop prevention strategies to create healthy environments and empower people to stay healthy, and better embed prevention, early intervention and treatment into our healthcare system, while actively working to eliminate the negative stigma associated with obesity.***

Despite children and young people having the right to the highest attainable standard of health and living (Articles 24 and 27 of the UNCRC) the *Impact of Obesity on Life Expectancy in Queensland* report highlights that obesity is a leading cause of reduced life expectancy in Queensland, with about one-quarter of Queensland children being overweight or obese. If measures are not taken to address obesity rates, the life expectancy of children born in the next decade from 2023 could decrease by up to 4.1 years in the overall population. For Aboriginal and Torres Strait Islander children, the potential decrease in life expectancy could be even more significant, reaching up to 5.1 years. This could further widen the gap in life expectancy between Aboriginal and Torres Strait Islander and non-Indigenous people in Queensland.<sup>294</sup>

Obesity has also been correlated with reduced mental health, through impacting self-esteem, body image disturbances, weight-based victimisation and stigma.<sup>295</sup> A systematic literature review published in 2015 found that Australian children and young people, compared to their normal-weight peers, not only had

a greater risk for physical health issues, such as heart disease and type two diabetes, but also demonstrated a greater rate of psychological co-morbidities and compromised mental health.<sup>296</sup>

There are significant disparities in the prevalence of obesity based on socioeconomic status, with children and young people from disadvantaged backgrounds more likely to be affected. Overweight and obese children are more likely to be male, younger, and live in more disadvantaged or rural areas. To address this issue, evidence-based preventative measures, including improved nutrition and physical activity, are required. A multi-sectoral approach involving government, industry, and community stakeholders is needed to promote healthy eating habits and physical activity and address childhood obesity in Queensland.<sup>297</sup>

## Sexual health

The National Survey of Australian Secondary Students and Sexual Health<sup>298</sup> is one of the few recurring national surveys that reports on the sexual health of young people. It looks at young people’s experiences of sex and sexuality, understanding of sexually transmitted infections (STI), perceptions of school-based education, and general sexual health. A total of 6841 young people aged 14 to 18 years completed the 7th survey in 2021. While the analysis does not separate the data for Queensland children and young people, 23 per cent of the sample were from Queensland. Of the participants, 65.1 per cent were female, 27.8 per cent were male and 7.1 per cent were transgender or non-binary.

The survey found that 2.2 per cent of young people had been diagnosed with an STI, while 0.3 per cent had been diagnosed with viral hepatitis (B or C), and 0.1 per cent had been diagnosed with HIV. The number of young people reporting they had been tested for an STI increased with age, with young women being more likely to have had STI screening than young men or transgender and non-binary young people.

The survey also assessed young people’s knowledge about HIV transmission, STI, viral hepatitis and HPV. On average, young people answered 46.4 per cent of the questions correctly. Young people learn about sex and sexual health from many sources, with the most common being friends, information from school, websites and their mothers.

Although 93 per cent of the participants reported receiving Relationships and Sex Education (RSE) at school, only 24.8 per cent of them thought it was very or extremely relevant to their needs. Students attending government and independent schools were more likely to find RSE relevant than those attending Catholic schools or home-schooling. LGBTQIA+, transgender and non-binary students were also less likely to find RSE relevant. Most students reported that topics like puberty, respectful relationships and consent were well covered, while issues like safe sex in same-sex relationships and sex for people with disability were not covered at all. Students indicated that RSE did not adequately support their development of sexual relationships or sexual health, and the curriculum lacked meaningful engagement with sex or sexuality.

The survey report recommended a comprehensive approach to RSE and sexual health promotion that includes a focus on helping young people to navigate sexual consent and understand, recognise and respond to sexual violence. The report also highlighted that digital technologies were a common part of young people's sex lives and relationships, and RSE should address this.

As previously recommended by the UN Committee, there is a need to continue providing children and young people with education on sexual and reproductive health as part of the mandatory school curriculum, with special attention on preventing early pregnancy and STI. The findings from the 7th National Survey of Australian Secondary Students and Sexual Health highlights the importance of promoting sexual health education and creating a safe and supportive environment for young people to discuss sexual health matters with their parents, health professionals or peers.

## Case study

(The following case study was provided by True Relationships & Reproductive Health.)

Helping newly arrived parents and carers to understand and affirm children's rights can be challenging. This is particularly so for 'third culture children' who have different perspectives on rights in Australia compared with their families. Children growing up in Australia often have exposure to topics like sexuality and safety through education, media and their peers. Recently arrived parents may lack access to this information due to language barriers, limited exposure and cultural differences. This knowledge gap can lead to intergenerational conflict. It is crucial to provide parents and carers with access to this information and support their understanding of children's rights in Australia.

True's Culturally Responsive Health team has been working with Arabic-speaking communities since 2021 to deliver workshops on topics such as protective behaviours and sexual and reproductive health. These workshops are conducted in collaboration with community leaders and interpreters, and efforts are made to source resources in Arabic. True's resource *I have the Right to be Safe* was adapted in consultation with community members, professional translators and consultants to ensure accuracy and accessibility. The resource was modified to address cultural nuances and sensitivities.

True's efforts to support newly arrived parents and carers have been well-received, with the community expressing a desire for more education sessions. The workshops have filled a knowledge gap and addressed sensitive topics, fostering understanding and empowerment among participants. Feedback from participants has been positive, expressing gratitude for the information provided and the safe environment to share ideas and concerns.

## Female genital mutilation/cutting

### Criminal Code Act 1899 (Qld):

Section 323A deals with female genital mutilation. It is an offence to perform female genital mutilation on another person. Consent by the person being mutilated is not a defence.

Section 323B makes it an offence to take, or arrange to take, a child under 18 years of age from Queensland with the intention of having female genital mutilation performed on the child.

Article 24(3) of the UNCRC emphasises that children and young people have to be protected against harmful traditional practices. The UN Committee's General Comment No. 13 (2011) states that governments have an obligation to prohibit, prevent and respond to all forms of physical violence against children, including harmful practices such as female genital cutting.<sup>299</sup>

Female genital mutilation or cutting (FGM/C) gained attention in 2019 after a Queensland mother was convicted for taking her two daughters to their home country to undergo FGM/C.<sup>300</sup> The prevalence of FGM/C in Queensland is unknown due to a lack of recorded data and very few hospital admissions. There are services that provide support and education to health professionals and girls and women who have experienced FGM/C. However, there is limited access to appropriate health responses outside urban areas. There is also shame within communities from talking about or disclosing FGM/C, and confusion and cultural myths around the practice.<sup>301</sup>

## Housing and homelessness

The Queensland Housing Strategy 2017–2027 sets out the government's 10-year plan to deliver more social and affordable homes and transform the way housing services are delivered across Queensland. The Housing Strategy is being delivered through a series of action plans:

- Housing Strategy Action Plan 2017–2020
- Queensland Aboriginal and Torres Strait Islander Housing Action Plan 2019–2023
- Queensland Housing and Homelessness Action Plan 2021–2025

Towards ending homelessness for young Queenslanders 2022–2027 is the government's policy for supporting young people's housing needs.

Queensland is experiencing a housing crisis in a time when many people are struggling with high cost of living and high inflation following the COVID-19 pandemic. Children and young people are affected by housing issues and homelessness in ways that are often different to that experienced by adults. For example, many children and young people face issues living with their families in an unsuitable or overcrowded house, they have difficulty finding accommodation after leaving out-of-home care or transitioning from youth detention, and they need access to safe crisis accommodation when escaping domestic and family violence. Unstable housing and homelessness are linked to other forms of social disadvantage. They have a ripple effect on the lives of children and young people, including disruption to education, employment and health care, exposure to isolation, exploitation and violence, and increased mental illness and alcohol and drug use.<sup>302</sup> The right policy settings, centred around affordable housing and income support are needed to ensure that children and young people have the right to thrive and develop to their fullest potential.

In 2021, approximately 24 per cent of all people experiencing homelessness<sup>xl</sup> in Queensland were children and young people (18 years and younger). This is an increase from 2016 (22 per cent). In 2021, 3453 children under the age of 12 experienced homelessness or living in severely crowded dwellings in Queensland (see Table 8.2). Aboriginal and Torres Strait Islander people (of any age) in Queensland accounted for 21 per cent of all homeless people.<sup>303</sup>

**In 2021, Aboriginal and Torres Strait Islander people in Queensland experienced homelessness at a rate of 201 per 10,000 of the population, compared to 33.2 per 10,000 of the non-Indigenous population.**

Between 2021–22, 5603 young people aged 15–24 years presented alone to specialist homelessness services in Queensland (10.7 per 10,000 of the population). Of these young people, 45 per cent had a current mental health issue, 30 per cent experienced domestic and family violence and 12 per cent reported experiencing problematic alcohol or drug use. In the same period, 923 children and young people on a child protection order received support from a specialist homelessness service (2.1 per 10,000 of the population).<sup>304</sup> Young people transitioning from out-of-home care are at higher risk of homelessness. Research from the CREATE Foundation found that up to one in three young people are homeless in the first year after leaving out-of-home care.<sup>305</sup>

**Table 8.2.** Number and rate of homeless persons by homeless operational groups and age (Queensland, 2021)

Age	People living in improvised dwellings, tents, or sleeping out		People in supported accommodation for the homeless		People staying temporarily with other households		People living in boarding houses		People in other temporary lodgings		People living in 'severely' crowded dwellings	
	No.	Rate per 10,000	No.	Rate per 10,000	No.	Rate per 10,000	No.	Rate per 10,000	No.	Rate per 10,000	No.	Rate per 10,000
Under 12	68	0.9	1012	13.3	515	6.8	17	0.2	18	0.2	1823	24.0
12–18	68	1.5	540	11.8	291	6.3	29	0.6	8	0.2	1177	25.7

Source. Australian Bureau of Statistics, *Estimating homelessness: Census, 2021*.

xl The ABS statistical definition of homelessness is: When a person does not have suitable accommodation alternatives, they are considered homeless if their current living arrangement: is in a dwelling that is inadequate; has no tenure, or if their initial tenure is short and not extendable; does not allow them to have control of, and access to, space for social relations. The definition has been constructed from a conceptual framework centred around the following elements: adequacy of the dwelling; security of tenure in the dwelling; control of, and access to, space for social relations.

In addition to the provision of homelessness services, the Queensland Government supports people at risk of homelessness, including through social housing and private rental market assistance. According to research commissioned by Queensland Council of Social Services (QCOS), approximately 150,000 households across Queensland have unmet affordable housing needs.<sup>306</sup> According to Productivity Commission, the Queensland Government spent \$168.8 million on homeless services and \$686.2 million on social housing in 2021–22.<sup>307</sup>

In 2021–22 in Queensland overcrowding in social housing remains a significant issue for First Nations people (see Table 8.3). In 2021, 71.0 per cent of survey participants living in state-owned and managed Indigenous housing (SOMIH), lived in dwellings of an acceptable standard,<sup>xli</sup> down from 90.5 per cent in 2018. This means that almost 30 per cent of SOMIH homes do not meet people’s right to an adequate standard of living. This includes children and young people.

**Table 8.3. Percentage of overcrowding of social housing dwellings by type (Queensland, 2020–22)**

Social housing type	2020–21	2021–22
Public housing	5.3%	5.9%
SOMIH	14.9%	16.3%
Community housing dwellings	2.5%	2.4%
Indigenous community housing	24.3%	23.5%

Source. Australian Government Productivity Commission: Report on Government Services: Housing.

Note. Data are based on the Canadian National Occupancy Standard for overcrowding (where one or more additional bedrooms are required to meet the standard).

In 2021, 81.2 per cent of Aboriginal and Torres Strait Islander people in Queensland live in appropriately sized (not overcrowded) housing, compared to 94.8 per cent for non-Indigenous people.<sup>308</sup> The *National Agreement on Closing the Gap* aims to increase this number to 88 per cent by 2031. It also sets 2031 targets that all Aboriginal and Torres Strait Islander households:

- within discrete Aboriginal and Torres Strait Islander communities receive essential services that meet or exceed the relevant jurisdictional standard
- in or near to a town receive essential services that meet or exceed the same standard as applies generally within the town.<sup>309</sup>

Data shows that, although improvement has been made, we are not on track to meet these targets.

With the release of the *Queensland Aboriginal and Torres Strait Islander Housing Action Plan 2019–2023*, Queensland established Aboriginal and Torres Strait Islander Housing Queensland, a peak body for Aboriginal and Torres Strait Islander community housing providers. This is a positive step in ensuring the interests of Aboriginal and Torres Strait Islander housing providers are represented and improving Aboriginal and Torres Strait Islander housing outcomes in Queensland.<sup>310</sup>

xli A dwelling is assessed as meeting minimum acceptable standards if it has at least four working facilities (for washing people, for washing clothes/bedding, for storing/preparing food, and for removing sewerage) and not more than two major structural problems.

We acknowledge the significant investment the Queensland Government is making to prioritise appropriate and affordable housing, particularly for young people. *Towards ending homelessness for young Queenslanders 2022–2027* is a positive example of government listening to children, young people and their supports, to inform fit-for-purpose policy. It is also a positive example of cross-agency collaboration. It acknowledges that responding to the housing needs of children and young people is not just about providing houses and requires an integrated approach. The Queensland Government has announced a \$29.8 million investment in the next budget to deliver the policy, including for:<sup>311</sup>

- tailored and improved information on homelessness and housing assistance for young people to promote earlier access to services
- an innovative program of housing with onsite support in Brisbane, to assist families before they come into contact with the child protection or youth justice system, supported by construction of 38 new housing units under the Queensland Housing Investment Growth Initiative
- working with young people and immediate supported accommodation services to respond to the diverse and complex needs of young people
- flexible financial housing assistance to support young people to obtain and sustain housing when transitioning from temporary supported accommodation, care, corrections, youth justice and Youth Foyers
- additional specialist homelessness services that provide coordinated support to young people, with services funded specifically to support young First Nations peoples
- supporting young pregnant or parenting women to settle into and maintain secure housing
- new specialist housing workers who will help young people obtain and sustain safe, secure and affordable housing with support.

### Living affordability

Queenslanders are facing a challenging time as they grapple with the impact of high inflation on the cost of living and increasingly unaffordable housing. Recent natural disasters and weather events in Queensland, including droughts, floods and bushfires, have exacerbated the economic strain. For example, in 2022 the Department of Communities, Housing and the Digital Economy (former) provided over \$30.2 million financial support to almost 99,000 people who were impacted by flooding in South East Queensland between February and April 2022.<sup>312</sup> More than a year later, many homes remain unliveable.

**It is estimated that 1 in 5 Queensland children live in poverty.**

QCOSS produces an annual report, *Living Affordability in Queensland*, to monitor the cost-of-living pressures and establish whether low-income households can afford a basic standard of living. The 2022 report found that low-income households are spending more than 30 per cent of their income on housing. In all households modelled, none receive enough income to meet a basic standard of living, with the exception of a couple accessing the age pension.<sup>313</sup>

Housing affordability is a major issue for low-income households; it places families at further risk as they limit spending on other basic essentials, such as food, health care and education.<sup>314</sup> An unacceptable number of children, young people and families are facing food insecurity in Queensland. As a result, people are skipping meals or are substituting healthy meals with cheaper, less nutritious alternatives.<sup>315</sup>

“ Costs of living and not having our opinions and ideas taken seriously due to our age.

Female, 17 years,  
Growing Up in Queensland

“ Coping with the cost of living and the mental health balance.

Female, 18 years,  
Growing Up in Queensland

## Case study

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(The following case study was provided by Micah Projects.)

Paula (pseudonym), a single mother with five children in different levels of schooling, had to evacuate their Brisbane home during the 2022 floods. The flood damaged their home, rendering it uninhabitable due to furniture and personal items being destroyed, and widespread mould growth caused by moisture, even though the upper level remained unaffected. They were referred to Micah Project’s Family Support and Advocacy Team for assistance in finding long-term crisis accommodation.

Their previous home accommodated their needs and was conveniently located, with access to public transport, the children’s schools, and a nearby hospital facility that was essential for one of the children. Initially, the family was placed in motels in nearby suburbs, but this arrangement posed challenges for their daily activities, such as coordinating school drop-offs, attending medical appointments and cooking meals, due to the motel’s location and limited facilities.

As a result, the children’s school attendance suffered, medical appointments were delayed and their nutrition was compromised due to lack of proper storage and cooking facilities for fresh ingredients. After two months, the family managed to secure temporary housing in another suburb, disrupting their usual routine and displacing them from their familiar surroundings. This arrangement proved unsustainable, leading the family back into homelessness. Micah Projects continues to support the family to manage these daily challenges and find stable and appropriate housing.

Paula and her children are in need of ongoing support and advocacy to maintain motel accommodation, secure social housing to break the cycle of homelessness and regain the stability they had before the floods.

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According to a report by The McKell Institute, over two million Australians experience food insecurity, including 25 per cent of households in the lowest income quintile. The report also found that food insecurity has a significant impact on the cost of living, with households experiencing food insecurity often cutting back on other expenses such as utilities, health care and education.

Food Bank is another organisation that provides support to people experiencing food insecurity in Queensland. According to their *Hunger Report 2022*, there has been a significant increase in demand for food relief during the COVID-19 pandemic. The report found that in 2021, 534,140 Queenslanders experienced food insecurity, an increase of 6.8 per cent from the previous year. Queensland has the second-highest rate of child food insecurity in the country (26.8 per cent of households with children).<sup>316</sup>

The Smith Family provides learning support to disadvantaged children and young people. Their research indicates that food insecurity is one of the main barriers to children's educational outcomes. While it is not specific to Queensland, the Smith Family's research shows that children from low-income families who experience food insecurity are more likely to miss school, have lower academic performance and experience poor health outcomes.<sup>317</sup>

These issues are exacerbated by inadequate income support, as highlighted by the Australian Council of Social Service (ACOSS) research, which shows that income support payments are not keeping up with the cost of living, with many people living below the poverty line. This lack of income support means that many people are forced to choose between essentials such as food, housing and healthcare.<sup>318</sup>

“ I think the most important issue for young people today is hunger or families homeless.

Male, 13 years,  
Growing Up in Queensland

# Education and play

Early years

Schooling

Leisure and play



# A child rights approach would:

Promote child and youth participation by encouraging schools state-wide to empower students in decision-making and contribute to their educational experiences.

Ensure active engagement, learning, and socialisation of children with disability in kindergarten and Early Childhood Education and Care (ECEC) settings through appropriate support, accommodations and inclusive practices.

Improve the Closing the Gap education targets for Aboriginal and Torres Strait Islander children and young people. Invest in teachers' cultural competency and understanding of the history of these communities to support the educational needs and aspirations of Aboriginal and Torres Strait Islander students, especially in remote areas.

Foster inclusive education practices that meet the diverse needs of all students. Create accessible, supportive and inclusive educational settings for students with disability, providing necessary accommodations, resources and specialised support to ensure their educational success.

Respond to advocacy bodies' calls for an independent inquiry into school disciplinary absences in Queensland state schools, addressing the disproportionate exclusion of Aboriginal and Torres Strait Islander students, students with disability and students in out-of-home care.

Implement trauma-responsive strategies within schools and expand the availability of restorative practices to resolve school-based incidents, focusing on addressing trauma-based behaviours.

Recognise the positive commitment made through the *Equity and Excellence: realising the potential of every student strategy* to improve education at the early childhood, primary and secondary levels. Ensure that the principles of equity and excellence are upheld regardless of the setting, whether it be youth justice facilities, hospitals or remote learning environments.

Address concerns about education, leisure and play access for children and young people in youth detention. Invest in the development of facilities and resources in Queensland's youth detention centres to promote overall wellbeing, healthy development and opportunities for education, recreation and leisure activities.

All children and young people have the right to an education (Article 28, UNCRC). Education should develop each child’s personality and talents to the full. It should encourage children to respect their parents, their cultures and other cultures (Article 29, UNCRC). Children have the right to relax, play and join in a wide range of leisure activities (Article 31, UNCRC).

*Equity and Excellence: Realising the potential of every student* is the Queensland Department of Education’s framework for schooling which focuses on educational achievement, wellbeing, engagement, culture and inclusion.

*Every student with disability succeeding plan 2021–2025* is the Queensland Department of Education’s plan to transform Queensland’s education system and enable students with disability to achieve their full potential and live a life of choice.

## Early years

### Early childhood development

The science behind rapid brain development in the first three years of a child’s life and the studies on economic return on early years investment are considerable.<sup>xlii</sup> Approaches that work intergenerationally with a child’s extended family, and integrate education, health and family support sectors can have the greatest impact in a child’s early years. The opportunities for optimal early childhood development are not afforded equally to all children.<sup>319,320</sup>

Data on children’s development is collected nationally every three years in a child’s first year of school (prep year in Queensland) through the Australian Early Development Census (AEDC). The latest AEDC data (2021) highlights that just over half (51.4 per cent)

of Queensland children were considered developmentally on track on all five domains.<sup>xliii</sup> Queensland children continue to experience higher levels of developmental vulnerability than the national average (54.8 per cent).

Target four of *Closing the Gap* is to increase the proportion of Aboriginal and Torres Strait Islander children assessed as developmentally on track in all five domains of the AEDC to 55 per cent by 2031. This will require substantial effort in Queensland with only 33.8 per cent of Aboriginal and Torres Strait Islander children reported as being on track on all five domains, compared with 53.2 per cent of non-Indigenous children. The proportion of Queensland Aboriginal and Torres Strait Islander children developmentally on track on all five domains did not increase significantly in 2021. Aboriginal and Torres Strait Islander children were most likely to be developmentally on track in the physical health and wellbeing domain (64.1 per cent), and most likely to be developmentally vulnerable in the language and cognitive skills (school-based) domain (21.6 per cent).<sup>321</sup>

The data is collected at a community (not individual) level and has been used in Queensland by schools, health providers and communities for early years planning. While such a community level indicator is useful for understanding trends, there is caution that as a population level data set AEDC data should be used in combination with other data to provide a fulsome picture of child development at a community level.

xlii Refer to [Children’s Research at Telethon Kids](#); [Centre for Community Child Health](#); [Centre for Community Child Health \(CCCH\) \(rch.org.au\)](#); [Center on the Developing Child at Harvard University](#); [Welcome to ARACY – Australian Research Alliance for Children and Youth \(ARACY\)](#)

xliii The Australian Early Development Census (AEDC) collects data nationally every three years across five domains of child development: Physical health and wellbeing; Social competence; Emotional maturity; Language and cognitive skills (school-based); and Communication skills and general knowledge.

### Early childhood education and care

The foundations of early childhood education and care are grounded in the UNCRC (Articles 3, 6, 18, 28 and 31) and inform the 2012 National Quality Framework, which set performance standards for long day care, preschool, kindergarten and other early childhood care.<sup>xliv</sup> The *Education and Care Services National Law Act 2010*<sup>322</sup> details objectives and guiding principles, including ‘that the rights and best interests of the child are paramount’. In 2022, *Belonging, Being and Becoming: The Early Years Learning Framework for Australia* made explicit statements about the rights of children and the role of educators to:<sup>323</sup>

- recognise children as competent and capable learners who have rights and agency
- make curriculum decisions that uphold all children’s rights to have their cultures, identities, abilities and strengths acknowledged and valued, and respond to the complexity of children’s and families’ lives
- mediate and assist children to negotiate their rights in relation to the rights of others
- enable children to advocate for their own rights with the adults that care for them.

In Queensland, the early childhood education and care sector is made up of over 3000 approved long day care, family day care, kindergarten and outside school hours care, delivered by the state, private providers and community-based not-for-profit services.<sup>324</sup>

### Access and participation

Since 2008, Queensland has made significant gains in the participation of children in kindergarten (the year prior to school). In 2022, 54,094 children were enrolled in kindergarten<sup>xlv</sup> (87.1 per cent of children).<sup>325</sup> Aboriginal and Torres Strait Islander children’s participation in kindergarten is even higher (95.2 per cent) due mainly to state-delivered

**kindergarten** in remote and discrete Aboriginal and Torres Strait Islander communities and community-controlled initiatives such as **Deadly Kindies**. They contribute to Queensland’s *Closing the Gap* target of high quality, culturally appropriate early childhood education for Aboriginal and Torres Strait Islander children.

Queensland also has some of the highest levels of childcare accessibility in Australia, with a median of 0.48 childcare places per child, which is higher than the national median.<sup>326</sup>

Access and affordability remain a significant barrier to participation for some children. Only 80.2 per cent of children who lived in disadvantaged areas in 2021–22 were enrolled in an early childhood education program.<sup>327</sup> The 2022 report *Deserts and oases: How accessible is childcare in Australia?* highlighted the disparity of service access in remote parts of the state and in lower socio-economic communities.

Children with disability have some of the greatest benefits to gain from participation in kindergarten but are least likely to experience kindergarten programs. In 2022, children with disability made up 7.1 per cent of children in kindergarten, even though they make up approximately 9.5 per cent of the 4–5-year-old Queensland population.<sup>328</sup>

Early childhood education and care services are not required to meet the *Disability Standards for Education 2005*.<sup>xlvi</sup> A national review of these standards in 2020 examined the extent to which families, educators and providers knew about their rights and responsibilities under the *Disability Discrimination Act 1992*. The review did not go as far as recommending early childhood education and care services be captured under the Disability Standards for Education but did recommend building awareness and capability in the sector.<sup>329</sup>

xliv The National Quality Framework (NQF) introduced a new quality standard in 2012 to improve education and care across long day care, family day care, preschool/kindergarten, and outside school hours care services.

xlv Children enrolled in a preschool program in the state-specific year before full time schooling.

xlvi *The Disability Standards for Education 2005* clarify the obligations of education and training providers and seeks to ensure that students with disability can access and participate in education on the same basis as students without disability.

Not having the safeguard of the Disability Standards for Education may lead to some services refusing to enrol children with disability. This is compounded when families are left to navigate lengthy, complex and cumbersome linkages between early childhood education and care services and NDIS Early Childhood Early Intervention supports. The frustration experienced by families managing this interface may contribute to lower participation for children with disability.

## Schooling

A total of 575,285 students were enrolled in Queensland state schools in 2022. Aboriginal and Torres Strait Islander students made up 64,301 enrolments (11.2 per cent of the total).<sup>330</sup> Queensland state schools reported around 116,000 students with disability; 5000 of these were in special schools. Approximately 95 per cent of children with disability in Queensland attend their local state school.<sup>331</sup>

This report covers education provided by the Queensland Department of Education, through state schools (including schools of distance education). Future reports will extend analysis to education provided by the Catholic schools (educating about 20 per cent of all school-aged students) and independent schools (educating about 16 per cent of all school-aged students).

In 2022, the Department of Education released *Equity and Excellence: Realising the potential of every student*.<sup>332</sup> This strategy focuses on three key areas: educational achievement, wellbeing and engagement, and culture and inclusion. From a child rights perspective, the intentions behind *Equity and Excellence* are encouraging. It recognises that excellence requires a focus on addressing inequity in education, so all students can feel success.

“ Ensuring that students are happy with their learning and are given all the support and opportunities they need to do their best.

Male, 16 years, Growing Up in Queensland

## Inclusive education

Only 50 per cent of the 5924 young people who took part in our *Growing Up in Queensland* survey reported feeling a sense of belonging at school.<sup>333</sup>

“ (I think leaders should take more action on) making everyone feel safe and included at school.

Female, 17 years, Growing Up in Queensland

In 2017, the Department of Education commissioned a review to examine the extent to which current policy settings support students with disability to reach their educational potential.<sup>334</sup> The review made 117 recommendations, all of which were implemented by 2022 according to the Department of Education. The review led to the department’s Inclusive Education Policy Statement, based on the nine features of inclusive education in the *United Nations Convention on the Rights of Persons with Disabilities*. The statement was recognised with a Zero Project<sup>xlvii</sup> award in 2020.

The Inclusive Education Policy Statement takes a broad perspective on inclusive education, recognising that many students need supports and reasonable adjustments to access and fully participate in learning. It also draws attention to certain cohorts of students and the intersectionality of their experiences of educational equity. The statement has led to some priority action on procedures and programs for:

- students with disability
- Aboriginal and Torres Strait Islander students
- students living in out-of-home care
- gifted and talented students
- students with mental health needs
- refugee students
- culturally and linguistically diverse students
- LGBTQIA+ students
- students living in rural and remote areas.

xlvii The Zero Project is a research-driven approach that aims to identify, curate, and share inclusive solutions, as intended, and encouraged by *United Nations Convention on the Rights of Persons with Disabilities*. <https://zeroproject.org/view/project/17e4c70d-9317-eb11-a813-000d3ab9b226>

While the legislative and policy settings are generally sound, we have concerns with how the educational practice is implemented day-to-day in schools and classrooms. Students can continue to experience bullying and harassment from their peers, inaccessible or irrelevant curriculums, physical inability to participate, and impacts of trauma on their ability to learn. These are made worse for students of families that do not have the resources to support their child's full participation (for example, healthy lunches, uniforms, excursion fees and the skills to engage in their child's learning). Without necessary adjustments, many of these students do not achieve their potential.

The government has announced a new resourcing model to be introduced to Queensland state schools from 2023 and fully implemented by 2025. Under the 'game changing' disability resourcing model, more than 30,000 extra children with disability will receive dedicated support in Queensland state schools each year, bringing to 70,000 the total number of children supported.<sup>335</sup> Under the model, the focus of investment will shift from addressing particular prescribed disabilities to the adjustments needed for students to fully participate. For the first time, dedicated funding will support students with dyslexia, ADHD, foetal alcohol syndrome, tourette syndrome and mental health conditions. This approach aligns more closely with the Nationally Consistent Collection of Data on School Students with Disability. This annual collection counts the number of school students receiving an adjustment (or 'help') due to disability and the level of adjustment they are receiving to access education to the same level as other students.<sup>336</sup>

### **Restrictive practices**

The 2017 disability review identified that the use of restrictive practices,<sup>xlviii</sup> such as seclusion and physical restraint, was inconsistent across schools. The report recommended that clear, unambiguous advice should be provided by the Department of Education and the use of restrictive practices should be clearly articulated in each school behaviour support plan. Additionally, the department should measure and monitor the use of restrictive practice with the aim of minimising use. As a result, the Department of Education has enhanced its restrictive practices procedure and provided fact sheets for staff.<sup>337</sup> As part of the revised procedure, principals must ensure data is appropriately recorded in OneSchool<sup>xlix</sup> for review by the principal's supervisor or delegate.

### **School disciplinary absences**

Chapter 12 of the *Education (General Provisions) Act 2006* prescribes the use of suspensions, exclusions and cancellation of enrolment of state school students to maintain good order and management. The legislation is supported by the *Student discipline procedure* and additional information such as fact sheets.<sup>338</sup> Collectively suspensions, exclusions and cancellation of enrolment are known as school disciplinary absences (SDA).

In Queensland, children and young people with disability, who are Aboriginal and Torres Strait Islander or who are living in out-of-home care (or a combination of these) are being suspended and excluded from school at higher rates than their peers. Based on an investigation by Queensland Advocacy for Inclusion and the Aboriginal and Torres Strait Islander Legal Service Ltd, it was found that while Aboriginal and Torres Strait Islander students made up approximately 10 per cent of all Queensland state school enrolments, they received 23 to 30 per cent of all school exclusions between 2016–2020.

xlviii Restrictive practices are the use of interventions or strategies that have the effect of restricting the rights or freedom of movement of a student. Restrictive practices include: seclusion, physical restraint, containment, mechanical restraint, chemical restraint, and clinical holding.

xlix OneSchool is the Department of Education's IT suite that is used by schools.

Students with an Education Adjustment Program verified disability made up approximately 5.5 per cent of all Queensland state school enrolments, however these students received 9.4 to 11.5 per cent of all school exclusions between 2016–2020.<sup>339,340</sup>

Data from 2022 shows that 14.0 per cent of Aboriginal and Torres Strait Islander students received one or more SDA, 14.9 per cent of students with disabilities received one or more SDA, and 24.5 per cent of students in out-of-home care received one or more SDA (prep to year 10).<sup>341</sup>

**In 2022, 26.1 per cent of Aboriginal and Torres Strait Islander students in out-of-home care received one or more SDA, and 21.6 per cent of Aboriginal and Torres Strait Islander students with disabilities received one or more SDA (prep to year 10).**

In the short-term, students on an SDA are denied access to learning opportunities and are socially isolated from their peers. Parents also face stress and financial hardship. The long-term impacts of SDA can also be severe and enduring. Research has demonstrated that students who have received SDA can go on to experience poorer mental health, prolonged unemployment, increased stigma and feelings of rejection, increased likelihood of becoming involved in crime and increased risk of homelessness.<sup>342</sup>

**“(Things that might stop me achieving my goals are) being suspended too many times at school, mum not having enough money, not being smart enough to have a job.**

Male, 13 years,  
Growing Up in Queensland

Under the Queensland Human Rights Act, the Department of Education has a legal obligation to uphold every child’s right to access a primary and secondary education appropriate to their needs.<sup>1</sup> The experiences of students suggests that this right is being withheld for certain cohorts of students without reasonable justification.

The 2017 disability review found that effective behaviour management would reduce the incidence of SDA and restrictive practices, and that schools needed to understand ‘...when difficult behaviour may be a manifestation of a child’s impairment that may be altered through environmental adjustments.’<sup>343</sup>

The *Equity and Excellence* framework uses SDA as a measure for ‘maximising learning days’. During 2022, the Department of Education focused on children in prep and saw a significant decrease in the numbers of children suspended or excluded in their first year of school. The *Every student with disability succeeding plan 2021–2025* also uses ‘decreasing the proportion of students with disability receiving a SDA’ as a measure of success, however public reporting is not yet available.

While these steps are encouraging, there are areas of continued concern where urgent attention to address children’s rights are required. These include:

- principals’ use of discretionary power with limited oversight, particularly the use of repeated or rolling short suspensions (up to 10 days) and the use of informal suspensions (when a student’s parent is called to collect their child from school, resulting in the child missing days of learning, without it being recorded)
- inconsistency of appeal processes, which can often be lengthy and confusing for a child or parent to navigate, and fail to afford basic procedural fairness as is required by the UNCRC (for example, there is no right of appeal for short suspensions (up to 10 days) and appeals of long suspensions (up to 20 days) can take more time to review than the length of the suspension)
- inconsistency in maintaining a suspended or excluded child’s right to education, which risks them becoming lost in the system without anyone supporting them to enrol in an alternative school (under the *Education (General Provisions) Act 2006*, the principal (or Chief Executive) is responsible for arranging continued access to an education program for a suspended (or excluded) student.

<sup>1</sup> Human Rights Act 2019 (Qld), s 36(1).

## Case study

(The following case study was provided by Queensland Advocacy for Inclusion (QAI).)

Sam (pseudonym), a 17-year-old attending a metro high school in year 12, faces mental health challenges while living independently. Despite absences due to health issues and homelessness, Sam maintains high grades and receives support from teachers who are aware of the situation. However, the school issued a warning notice threatening enrolment cancellation, significantly impacting Sam's mental health and housing stability.

Sam has been attending multiple monitoring meetings with the school management team, sometimes without a support person, causing anxiety and disrupting valuable class time. Sam believes these meetings create fear rather than helping to understand and support his graduation goals.

Seeking assistance, Sam contacted QAI for advocacy. Sam requested the cessation of monitoring meetings to ensure uninterrupted class attendance and sought reassurance regarding enrolment cancellation. Sam also wanted to understand his rights at school.

Positive outcomes from the advocacy support included:

- The advocate accompanied Sam to a monitoring meeting, resulting in the decision to discontinue further meetings and implement additional supports for Sam.
- The advocate ensured the school management team understood the conditions and responsibilities associated with enrolment cancellation and the negative impact of the warning on Sam.
- Sam received information about his rights regarding enrolment cancellation and the necessary processes and considerations.
- Sam continues to excel academically and remains on track to graduate in a few months.

### Education outcomes

A child's access, participation and achievement in education has enduring consequences for a child's life. Australian governments committed through the Alice Springs (Mparntwe) Education Declaration to improving educational outcomes for all young Australians as central to social and economic prosperity.<sup>344</sup>

In 2021–22, 97.4 per cent of students who stayed at school to year 12 left with a school-based apprenticeship or traineeship or were awarded one or more of: Queensland Certificate of Education, International Baccalaureate Diploma or Vocational

Education and Training Qualification. Six months after completing year 12, 86.8 per cent of these students were participating in post school education, training or employment.<sup>345</sup>

Key to achieving educational success is increasing the attendance and retention for all students. Target 5 under *Closing the Gap* is to increase the proportion of Aboriginal and Torres Strait Islander people attaining year 12 or equivalent qualification to 96 per cent by 2031. There are differences in school attendance for Aboriginal and Torres Strait Islander students at 75.6 per cent, while their non-Indigenous peers had attendance rates of 86.9 per cent (for students from year 1 to year 10 in 2022). In 2022, for Aboriginal and

Torres Strait Islander students the apparent retention rate<sup>li</sup> from year 10 to year 12 was 58.8 per cent, compared to 76.1 per cent for non-Indigenous students.<sup>346</sup>

In 2021, 78.5 per cent of children and young people in care were awarded a certification by the end of year 12, compared to 95.0 per cent for all Queensland school students. This number drops to 73.2 per cent for Aboriginal and Torres Strait Islander students in care. In the same year, 78.4 per cent of Aboriginal and Torres Strait Islander students in care were awarded a Queensland Certificate of Education, Vocational Education and Training qualification or International Baccalaureate Diploma, or were completing a school-based apprenticeship by the end of year 12. This compares with 89.3 per cent for non-Indigenous students in care and 97.8 per cent for students not in care. Children and young people in care are far less likely to undertake further study after completing year 12 (35.5 per cent), compared with all Queenslanders who complete school (63.2 per cent).<sup>347</sup>

## Leisure and play

Every child has the fundamental right to unwind, engage in leisurely activities and pursue their interests, such as playing sports and indulging in cultural or artistic pursuits (Article 31, UNCRC). The UN General Comment No. 17 describes the ideal conditions for children to relax and play. It highlights the importance of a stress-free environment safe from social exclusion, prejudice, violence and physical hazards. Children need ample leisure time and space to play freely without adult control. They need access to challenging outdoor environments and opportunities to engage with nature, animals and cultural heritage. They should also have access to games, sports and recreational activities with trained facilitators. Society should recognise and uphold their right to these activities.<sup>348</sup>

The QFCC's 2021 *Living through COVID* report found that many children and young people reported decreased contact with friends and family outside of their immediate household due to restrictions and social distancing during the pandemic. Many children and young people had to adapt to new forms of socialisation, such as online communication and virtual gatherings. While this provided a means of staying connected with others during the pandemic, it also highlighted the importance of in-person socialisation and face-to-face interactions. The pandemic had a particularly significant impact on the socialisation of children and young people experiencing mental health difficulties, with disability and from disadvantaged backgrounds. These groups were more likely to experience social isolation and disconnection during the pandemic.<sup>349</sup>

“ Not being able to go out and visit friends and my grandparents.

Male, 13 years,  
Growing Up in Queensland

“ Not being able to socialise with my friends. It made me feel sad.

Male, 15 years,  
Growing Up in Queensland

“ Not being able to see people in person, it was a struggle to have to see people through a screen and not have the normal human interactions I was used to.

Female, 14 years,  
Growing Up in Queensland

li Apparent retention rate is an indicative measure of the number of full-time school students in a designated year level of schooling as a percentage of their respective cohort group in a base year. For example, the apparent retention rate for year 10 – year 12, 2021, is the number of students in year 12 2021 as a percentage of the number of students in that cohort in year 10 in 2019 (the base year), two years earlier.

Through the *Growing Up in Queensland* project, we heard from children and young people across Queensland about their experiences of their communities. Young people reported that they like various aspects of their communities, including the natural environment and green spaces, access to public transport, social events, and facilities such as libraries, swimming pools and parks. Many also appreciated the cultural diversity of their communities and the sense of safety they feel. Some young people mentioned the sense of community and friendly neighbours, while others noted the availability of jobs and educational opportunities.

**“ What makes my community a great place is that people understand each other and help as much as they can. You could easily make a new friend.**

Female, 10 years,  
Growing Up in Queensland

The most recent youth survey found that 60 per cent of young people aged 13–18 years felt safe in their community. The survey found that 59 per cent felt their community is a place where they belong and 55 per cent felt that there are enough safe places in their community to spend time with their friends.

Access to play and leisure opportunities vary based on location, with children in regional and remote areas often having limited options for leisure. Children and young people from low-income households were less likely to participate in extracurricular activities, such as sports or music lessons, due to financial barriers. Children and young people with disability reported facing additional barriers to accessing play and leisure opportunities.<sup>350</sup>

The QFCC’s *Safe Spaces* report (2022) focused on the experiences of children and young people with safety, security and access to safe spaces in their communities. Access to safe spaces is particularly important for children and young people with a disability or mental health condition, Aboriginal and Torres Strait Islander children and young people, and children from low socioeconomic backgrounds. Creating safe spaces for young people to socialise, learn and play is critical for their wellbeing and development. Communities need to work together to provide these spaces and ensure they are accessible and welcoming for all young people.<sup>351</sup>

We are concerned about children and young people’s access to education, leisure and play while in youth detention, given the findings discussed in [Chapter 3](#). Inadequate opportunities for learning, recreation and play can contribute to feelings of isolation, boredom and frustration, which may exacerbate behavioural and mental health issues. Play and leisure activities provide opportunities for young people to socialise, build relationships and develop important life skills such as communication, teamwork and conflict resolution. Without access to opportunities, young people may not develop these skills and may struggle to reintegrate into their communities after release.



**The most important issue for youth today  
is the lack of connection  
to the community and its members  
as outside of school they can feel  
as if they have no value or significance.**

Male, 17 years,  
Growing Up in Queensland



**Programs that can incorporate teens  
into activities and courses  
that they are actually interested in  
to develop a sense of worth and give them  
a reason to get up in the morning.**

Female, 18 years,  
Growing Up in Queensland

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