

13 March 2026

**Mr Paul Anastassiou KC**

Commissioner

Commission of Inquiry into Child Safety Systems

Via [submission form](#)

Dear Commissioner

**Initial submission to the Child Safety Commission of Inquiry**

Thank you for the opportunity to provide a submission to the Child Safety Commission of Inquiry (the **Commission of Inquiry**).

The Queensland Human Rights Commission (the **Commission**) appreciates being consulted on this important matter and acknowledges the work of the Commission of Inquiry to better protect children in Queensland's child safety system.

This submission responds to the Commission of Inquiry's call for submissions dated 1 July 2025.<sup>1</sup> The submission addresses the following points:

- reforms to the child safety system must be underpinned by children's human rights;
- there is an urgent need to address the over-representation of Aboriginal and/or Torres Strait Islander children in the child safety system;
- prevention and early intervention measures will support children and families to avoid interactions with the child safety system;
- the overlap between the child protection system and the youth and adult criminal justice system must be considered and addressed.

In relation to these matters, the Commission makes the following recommendations to support the Commission of Inquiry to identify effective and sustainable solutions:

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<sup>1</sup> Child Safety Commission of Inquiry, 'Call for submissions: Complaints system' (Web Page, 1 July 2025) <[https://www.childsafetyinquiry.qld.gov.au/\\_data/assets/pdf\\_file/0009/831078/call-for-submissions-1-july-2025.pdf](https://www.childsafetyinquiry.qld.gov.au/_data/assets/pdf_file/0009/831078/call-for-submissions-1-july-2025.pdf)>.

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1. The Commission of Inquiry must place the human rights of children at the center of its inquiry, and must properly consider human rights and make decisions compatibly with human rights. (**Recommendation 1**).
2. The Commission of Inquiry must prioritise the investigation and development of recommendations to address the overrepresentation of Aboriginal and Torres Strait Islander children in our child safety system (**Recommendation 2**).
3. The Commission of Inquiry must meaningfully engage with impacted groups including, in particular, Aboriginal and Torres Strait Islander children and communities, to ensure their voices inform the inquiry (**Recommendation 3**).
4. The Commission of Inquiry must adopt appropriate, culturally safe protocols and processes for engaging with Aboriginal and Torres Strait Islander children and communities (**Recommendation 4**).
5. The Commission of Inquiry should consider and make recommendations in relation to the effectiveness of existing intervention and prevention measures to support family-based care and prevent children from entering the child safety system (**Recommendation 5**).
6. The Commission of Inquiry must include, as a part of its inquiry:
  - a. how the removal of children from their culture and community and inadequate support in out-of-home care settings contributes to the criminalisation of children, and how these scenarios can be better managed (**Recommendation 6A**).
  - b. the impact of interactions with the criminal justice system on children in care, including the impact on further offending behaviour and community safety (**Recommendation 6B**).
  - c. case studies involving children who have committed offences (not restricted to 'Making Queensland Safer' offences) who are also subject to the child safety system to pursue a more holistic understanding of what is driving the overlap between the child safety and youth justice systems and the impacts on children (**Recommendation 6C**).

## Reforms to the child safety system must be underpinned by human rights

In Queensland, the *Human Rights Act 2019 (Qld)* (**Human Rights Act**) protects children's and families' human rights. It also protects Aboriginal and Torres Strait Islander peoples' rights to culture and recognises the significance of the right to self-determination to Aboriginal and Torres Strait Islander peoples.

### **Families and children have a right to protection**

Every child in Queensland has the right to be safe and protected from harm. The Human Rights Act provides for the protection of families and children in the following terms:

*26(1) Families are the fundamental group unit of society and are entitled to be protected by society and the State.*

*26(2) Every child has the right, 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 26(2) recognises the special vulnerability of children and requires positive measures be taken to protect children by society and the State.<sup>2</sup>

The scope and interpretation of section 26 is informed by the *United Nations Convention on the Rights of the Child* (the **Convention**), which elaborates on the rights of children.<sup>3</sup>

The Convention recognises that children have the following rights:

- a child has the right to enjoy their human rights without discrimination and to protection from discrimination;<sup>4</sup>
- a child has a right to protection from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child;<sup>5</sup>
- respect for a child's inherent right to life, survival and development;<sup>6</sup>
- a child who is capable of forming their own views has the right to express those views and have them be given due weight in accordance with their age and maturity;<sup>7</sup>
- a child has a right to preserve their identity, including family relations;<sup>8</sup>
- a child has a right to maintain contact with both parents and reunite with them unless contrary to their best interests;<sup>9</sup>

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<sup>2</sup> Explanatory Notes, Human Rights Bill 2018 (Qld) 22.

<sup>3</sup> *Convention on the Rights of the Child*, UN Doc A/RES/44/25 (20 November 1989, entered into force generally on 2 September 1990) arts 5, 12, 18; Explanatory Notes, Human Rights Bill 2018 (Qld) 22; *Certain Children v Minister for Families and Children* [2016] VSC 796; 51 VR 473 [146]; Coroners Court of Victoria, *Inquest into the passing of XY*, Melbourne, Coroner Simon McGregor, 19 June 2024 [74] quoting *Application for Bail by HL (No 2)* [2017] VSC 1 [123].

<sup>4</sup> *Convention on the Rights of the Child* art 2.

<sup>5</sup> *Convention on the Rights of the Child* art 19.

<sup>6</sup> *Convention on the Rights of the Child* art 6.

<sup>7</sup> *Convention on the Rights of the Child* art 12.

<sup>8</sup> *Convention on the Rights of the Child* art 8.

<sup>9</sup> *Convention on the Rights of the Child* art 9.

- a child should grow up in a family environment, in an atmosphere of happiness, love and understanding, and a child deprived of their family environment shall be entitled to special protection and assistance provided by the State;<sup>10</sup>
- every child has the right to a standard of living adequate for the child's physical, mental, spiritual, moral and social development;<sup>11</sup>
- a child's right, in community with other members of their community, to enjoy their own culture.<sup>12</sup>
- a child placed by the State for the purposes of care, protection or treatment has the right to periodic review of the circumstances of their placement.<sup>13</sup>

### The best interests of the child must be a primary consideration

The Convention also provides that the best interests of the child shall be a primary consideration in all actions concerning children.<sup>14</sup> The Committee on the Rights of the Child (the **Committee**) emphasises that given children's dependency, maturity, legal status and, often, voicelessness – if their interests are not highlighted, they can often be overlooked.<sup>15</sup> As such, every decision, policy, and law concerning children must be able to demonstrate that the child's best interests have been a primary consideration.<sup>16</sup> This ensures the full and effective enjoyment of all rights recognised in the Convention, and the holistic development of the child.<sup>17</sup>

The Committee explains that a child's best interests are dynamic and should be adjusted and defined on an individual basis.<sup>18</sup> An assessment of best interests requires consideration of:

- the child's views;
- the child's identity;
- preservation of the family environment and maintaining relations;
- care, protection and safety of the child;
- situation of vulnerability;

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<sup>10</sup> *Convention on the Rights of the Child*, Preamble, art 20.

<sup>11</sup> *Convention on the Rights of the Child* art 27.

<sup>12</sup> *Convention on the Rights of the Child* art 30.

<sup>13</sup> *Convention on the Rights of the Child* art 25.

<sup>14</sup> *Convention on the Rights of the Child* art 3(1).

<sup>15</sup> *CRC General Comment No 14* [37].

<sup>16</sup> United Nations Committee on the Rights of the Child, *General Comment No 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration (art 3, para 1)* UN Doc CRC/C/GC/14 (29 May 2013) [14] ('Committee on the Rights of the Child, *General Comment No 14*').

<sup>17</sup> Committee on the Rights of the Child, *General Comment No 14*' [4].

<sup>18</sup> Committee on the Rights of the Child, *General Comment No 14* [11], [32].

- the child's right to health; and
- the child's right to education.<sup>19</sup>

### **Families have a right to privacy**

The protection of children and families is also supported by the right to privacy (section 25, Human Rights Act). The right to privacy protects against unlawful or arbitrary interferences with a person's family.<sup>20</sup> The term 'family' is interpreted broadly and extends to different cultural understandings of family and small family units.<sup>21</sup> 'Arbitrarily' extends to interferences which, are 'capricious, unpredictable or unjust and also to interferences which, in those circumstances, are unreasonable in the sense of not being proportionate to a legitimate aim sought'.<sup>22</sup> Government decisions that allow for the removal of children from a family unit which are considered to be arbitrary will limit the right to privacy.

### **First Nations children and communities have specific cultural rights**

Section 28, Human Rights Act protects the distinct cultural rights of Aboriginal and Torres Strait Islander people. This includes a right for members of Aboriginal and Torres Strait Islander peoples to enjoy, maintain, control, protect, and develop their kinship ties.<sup>23</sup> Relevant to the interpretation of section 28 and the other rights protected by the Human Rights Act, the preamble to the Human Rights Act recognises that the right to self-determination is of 'particular significance to Aboriginal peoples and Torres Strait Islander peoples of Queensland'.<sup>24</sup>

### **The child safety system is undermining children's human rights**

Queensland's child safety system is failing to act in children's best interests and to protect children's and families' human rights. Queensland has the more children in residential care than anywhere else in the country.<sup>25</sup> As at 30 June 2024, there were 8.2 per 1,000 children in care in Queensland, higher than the national average of 7.7.<sup>26</sup> This suggests we are failing to intervene and prevent children from entering the child safety system. Additionally, the rights of children in the Queensland child safety system are not being appropriately safeguarded. Compared to their peers, children in the child safety system are more likely to experience:

- underachievement in education;

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<sup>19</sup> Committee on the Rights of the Child, *General Comment No 14* [52]–[79].

<sup>20</sup> *Human Rights Act 2019* (Qld) s 25.

<sup>21</sup> Queensland Human Rights Commission, *Right to protection of families and children* (Web Page, 28 June 2019) <<https://www.qhrc.qld.gov.au/your-rights/human-rights-law/right-to-protection-of-families-and-children>>.

<sup>22</sup> *Jurecek v Director, Transport Safety Victoria* [2016] VSC 285.

<sup>23</sup> *Human Rights Act 2019* (Qld) s 28(2).

<sup>24</sup> *Human Rights Act 2019* (Qld) Preamble.

<sup>25</sup> Eden Gillespie and Rachel Stewart, 'Commission of inquiry into child safety in Queensland will focus on children leaving care', *ABC News* (online, 23 July 2025) <<https://www.abc.net.au/news/2025-07-23/qld-child-safety-inquiry-investigate-residential-care/105562938>>.

<sup>26</sup> Department of Families, Seniors, Disability Services and Child Safety (Qld), '*Child protection services' Our Performance* (Web Page, 2025) <<https://performance.dcssds.qld.gov.au/our-performance/national-data/child-protection-services>>.

- poor mental and physical health outcomes;
- young pregnancy and young parents;
- alcohol and substance misuse;
- self-harming and suicidal thought patterns;
- disconnection from culture and community; and
- involvement with the youth justice system.<sup>27</sup>

### **The child safety system is undermining Aboriginal and Torres Strait Islander children’s and communities’ human rights**

First Nations children are overrepresented at ‘every point in the child protection system’.<sup>28</sup> Colonisation and dispossession, which involved the forced removal of Aboriginal and Torres Strait Islander peoples from their lands, the attempted destruction of their cultures, and the introduction of discriminatory laws and policies, has led to profound and lasting inequalities that persist today. Practices such as the Stolen Generation, and exclusion from education, employment, entrenched systemic inequalities across generations of First Nations families. Today, these historical injustices are reflected in significant disparities in health, education and housing – which create the conditions conducive to interactions with the child safety system.<sup>29</sup>

At 30 June 2024, the number of Aboriginal and/or Torres Strait Islander children in care was 42.9 per 1000, making up 47.2% of all children in care in Queensland. Research also indicates that the gap between First Nations and non-First Nations children in out-of-home care is increasing over time.<sup>30</sup>

Additionally, even though Queensland’s *Child Protection Act 1999 (Qld)* requires that a First Nations child in care be placed with a member of the child’s family and to be brought up within the child’s own family and community (the First Nations Child Placement Principle),<sup>31</sup> almost half of First Nations children are not placed with kin or other First Nations carers when in out-of-home care.<sup>32</sup>

The removal of Aboriginal and Torres Strait Islander children from their families and culture profoundly undermines their human rights. For many Aboriginal and Torres Strait Islander children, their wellbeing is tied to their connection to country, language, ceremony, kinship networks, and cultural knowledge systems that have been maintained for tens of thousands of years.

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<sup>27</sup> Queensland Family & Child Commission, *Raising expectations: Reforming how we raise children and young people in care* (Position Paper, May 2025) 4,

<sup>28</sup> Queensland Family & Child Commission, *Queensland Child Rights* (Report, 2023) 78.

<sup>29</sup> Australian Institute of Health and Welfare, *Closing the Gap targets: key findings and implications* (Chapter 12: Child protection, 2025) 477.

<sup>30</sup> Australian Institute of Health and Welfare, *Closing the Gap targets: key findings and implications* (Chapter 12: Child protection, 2025) 478, 481.

<sup>31</sup> *Child Protection Act 1999* (Qld) s 5C.

<sup>32</sup> Department of Communities, Child Safety and Disability Services (Qld), *Our Way: A generational strategy for Aboriginal and Torres Strait Islander children and families* (Report, 2017) 5.

When children are removed and placed in non-Aboriginal and/or Torres Strait Islander care settings, their connection to culture is severed. This disconnection can lead to a loss of identity and can have lasting impacts on children's mental health, sense of belonging, and ability to navigate both First Nations and non-First Nations worlds. It also leads to the destruction of cultural transmission across generations, undermining the rights of Aboriginal and Torres Strait Islander communities to maintain their culture.

The harms created by the removal of children is compounded by historical trauma, as the removal of Aboriginal and Torres Strait Islander children from their communities by the government echoes the devastating and inhumane policies which led to the Stolen Generations. Many Aboriginal and Torres Strait Islander families and communities view contemporary child removals as a continuation of these past injustices, creating intergenerational trauma and mistrust of government systems.

The Bandarran Marra'Gu Gathering Strength Summit, held on 19 and 20 May 2025, saw over 100 First Nations community members in Queensland come together to draw on their collective wisdom, strength, determination and knowledge to inform a First Peoples agenda promoting a better future for families and communities – in particular children and young people.<sup>33</sup>

At the close of the Summit participants published the *Bandarran Marra'Gu Gathering Strength Statement (Statement)*. Importantly, the Statement concluded:

*'We see the overrepresentation of our children in Queensland's child protection and youth justice systems not as a coincidence, but as a direct consequence of policies that fail to respect our rights, of services that are culturally unsafe, and of decisions made without or leadership and agreement.'*<sup>34</sup>

The Statement called for the Terms of Reference for this Commission of Inquiry to explicitly address the disproportionate representation of Aboriginal and Torres Strait Islander children in the child safety system to 'ensure the systemic harm experienced by [Aboriginal and Torres Strait Islander] children is investigated to the fullest possible capacity to ensure real change occurs'.<sup>35</sup>

While the Commission of Inquiry is not empowered to alter the Terms of Reference, the Commission of Inquiry is empowered to prioritise particular matters in the conduct of its inquiry, and to consider 'any other matter relevant to the inquiry'. The Commission of Inquiry must prioritise the investigation of, and development of recommendations to address the overrepresentation of Aboriginal and Torres Strait Islander children in our child safety system (**Recommendation 2**).

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<sup>33</sup> Bandarran Marra'gu Gathering Strength Summit, *Summit Statement* (20 May 2025) 3  
<[https://www.qhrc.qld.gov.au/\\_\\_data/assets/pdf\\_file/0004/53977/Bandarran-MarraGu-Gathering-Strength-Summit-Statement-Updated.pdf](https://www.qhrc.qld.gov.au/__data/assets/pdf_file/0004/53977/Bandarran-MarraGu-Gathering-Strength-Summit-Statement-Updated.pdf)>.

<sup>34</sup> Bandarran Marra'gu Gathering Strength Summit, *Summit Statement* (20 May 2025) 3  
<[https://www.qhrc.qld.gov.au/\\_\\_data/assets/pdf\\_file/0004/53977/Bandarran-MarraGu-Gathering-Strength-Summit-Statement-Updated.pdf](https://www.qhrc.qld.gov.au/__data/assets/pdf_file/0004/53977/Bandarran-MarraGu-Gathering-Strength-Summit-Statement-Updated.pdf)>.

<sup>35</sup> Bandarran Marra'gu Gathering Strength Summit, *Summit Statement* (20 May 2025) 3  
<[https://www.qhrc.qld.gov.au/\\_\\_data/assets/pdf\\_file/0004/53977/Bandarran-MarraGu-Gathering-Strength-Summit-Statement-Updated.pdf](https://www.qhrc.qld.gov.au/__data/assets/pdf_file/0004/53977/Bandarran-MarraGu-Gathering-Strength-Summit-Statement-Updated.pdf)>.

## The Commission of Inquiry must properly consider human rights when making recommendations for reform

As the Commission of Inquiry is a public entity,<sup>36</sup> the Commission is legally obligated to properly consider human rights when making decisions and to act and make decisions compatibly with human rights, including when developing recommendations that may interfere with rights to privacy, family, and culture.<sup>37</sup>

Section 58(5) of the Human Rights Act gives the following guidance on the meaning of proper consideration:

*giving proper consideration to a human right in making a decision includes, but is not limited to—*

- (a) identifying the human rights that may be affected by the decision; and*
- (b) considering whether the decision would be compatible with human rights.*

The identification of relevant human rights must be approached in a ‘common sense and practical manner’, and decision makers ‘are not expected to achieve the level of consideration that might be hoped for in a decision given by a judge’.<sup>38</sup> Proper consideration requires that the decision-maker:

- (1) understand in general terms which of the rights of the person affected by the decision may be relevant and whether, and if so how, those rights will be interfered with by the decision;*
- (2) seriously turn his or her mind to the possible impact of the decision on a person’s human rights and the implications thereof for the affected person;*
- (3) identify the countervailing interests or obligations; and*
- (4) balance competing private and public interests as part of the exercise of justification.<sup>39</sup>*

Decision-makers are entitled to refer to human rights assessments prepared by their staff. However, proper consideration requires more than just the acceptance of advice.<sup>40</sup>

A decision, including in relation to making a recommendation for reform of the child safety system, will be compatible if it does not limit human rights or if it limits human rights only to an extent that is reasonable and justifiable.<sup>41</sup> In determining whether a limit on rights is reasonable and justifiable, the Human Rights Act prescribes that several factors must be considered.<sup>42</sup> First, the limit must be for a

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<sup>36</sup> *Human Rights Act 2019* (Qld) s 9.

<sup>37</sup> *Human Rights Act 2019* (Qld) s 58.

<sup>38</sup> *Owen-D’Arcy v Chief Executive, Queensland Corrective Services* (2021) 9 QR 250 [137] (‘*Owen-D’Arcy*’). See also *BZN v Chief Executive, Department of Children, Youth Justice and Multicultural Affairs* [2023] QSC 266 [260]; *Austin BMI Pty Ltd v Deputy Premier* (2023) 16 QR 377 [355] (‘*Austin BMI*’).

<sup>39</sup> *Johnston v Commissioner of Police* [2024] QSC 2 [75], quoting *Bare v Independent Broad-Based Anti-Corruption Commission and Others* (2015) 48 VR 129 [288] (‘*Johnston*’).

<sup>40</sup> *Austin BMI* [243]; *Johnston* [65], [242]-[265].

<sup>41</sup> *Human Rights Act 2019* (Qld) s 13.

<sup>42</sup> *Human Rights Act 2019* (Qld) s 13.

legitimate purpose and there must be a rational connection between the limit on rights and the legitimate purpose (in other words, the limit must help to achieve the purpose). Additionally, there must be no less restrictive, reasonably available alternative, and the limit on rights must be proportionate, taking into account the importance of the purpose of the limitation and the importance of preserving the relevant rights.<sup>43</sup>

Children's and their families' human rights are engaged at every stage of the child safety system, from initial interventions which seek to support children to remain with their family; to decisions to remove a child from their home; to decisions relating to where a child will be placed and what supports will be offered. Every decision throughout this process requires a careful balancing of rights.

The Human Rights Act provides a useful framework for ensuring decisions which involve competing rights and interests are made appropriately and in a manner that does not unjustifiably limit the human rights of any individual or group. The application of this framework will lead to more effective and sustainable solutions. The Commission of Inquiry must place the human rights of children at the centre of its inquiry and must properly consider human rights and make decisions compatibly with human rights (**Recommendation 1**).

### **The Commission of Inquiry must meaningfully engage relevant groups including Aboriginal and Torres Strait Islander children and communities**

Making space for the voices of impacted children, families and communities is essential to ensure those with lived experience of the child safety system can offer their insights as to how challenges can be remedied. Meaningful engagement with those whose rights may be limited by relevant decisions is also typically required for decisions to be made compatibly with human rights, in line with public entities' obligations under the Human Rights Act.

Given the overrepresentation of Aboriginal and Torres Strait Islander children in the child safety system, engagement with Aboriginal and Torres Strait Islander children and communities will be essential. This engagement will provide the Commission of Inquiry with knowledge critical to understanding the systemic issues in Queensland's child protection system and will position the Commission of Inquiry to make recommendations that will reduce the overrepresentation of Indigenous children in care; as well as to create a more culturally responsive system that supports Aboriginal and Torres Strait Islander families to thrive while maintaining their cultural connections and human rights.

As included in the Statement:

*'We hold solutions. It is fundamental that there is adequate opportunity for local Aboriginal and Torres Strait Islander people to participate directly through the entire duration of the inquiry.'*<sup>44</sup>

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<sup>43</sup> *Human Rights Act 2019* (Qld) s 13.

<sup>44</sup> Bandarran Marra'gu Gathering Strength Summit, *Summit Statement* (20 May 2025) 3 <[https://www.qhrc.qld.gov.au/\\_\\_data/assets/pdf\\_file/0004/53977/Bandarran-MarraGu-Gathering-Strength-Summit-Statement-Updated.pdf](https://www.qhrc.qld.gov.au/__data/assets/pdf_file/0004/53977/Bandarran-MarraGu-Gathering-Strength-Summit-Statement-Updated.pdf)>.

The Commission of Inquiry must meaningfully engage with impacted groups including, in particular, Aboriginal and Torres Strait Islander children and communities to ensure their voices inform this inquiry (**Recommendation 3**).

The Commission of Inquiry must adopt appropriate, culturally safe protocols and processes for engaging with Aboriginal and Torres Strait Islander children and communities (**Recommendation 4**).

## Prevention and early intervention are key to preserving human rights

Measures that support children and families to maintain a safe stable environment at home where children can grow up with their own family, community, and culture best preserve children's and families' human rights.<sup>45</sup>

Rather than responding once harm to a child has already occurred, prevention measures focus on the delivery of 'upstream' support services for vulnerable children and families, including in areas such as health, education, and housing. Intervention measures provide downstream support for children who are at greater risk of harm and seek to prevent issues from escalating to a point where a more intensive child safety response is required.<sup>46</sup>

Despite extensive evidence supporting the effectiveness of prevention and early intervention approaches, much of Australia's existing reform efforts has focussed on reforming statutory systems for child safety and out-of-home care.<sup>47</sup> A report by the Australian Institute of Family Studies and the Australian Human Rights Commission analysed 3,005 recommendations in child safety reports and inquiries across Australia from 2010 to 2022.<sup>48</sup> The analysis indicates that most recommendations focus on supporting children once they are already in contact with child safety systems, with only 19% of recommendations targeting prevention and early intervention.<sup>49</sup> This is a missed opportunity.

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<sup>45</sup> Family Matters, *The Family Matters Report 2021: Measuring trends to turn the tide on the over-representation of Aboriginal and Torres Strait Islander Children in out-of-home care in Australia* (Report, 2021) 3.

<sup>46</sup> Australian Institute of Family Studies and the Australian Human Rights Commission, *Improving the safety and wellbeing of vulnerable children: A consolidation of systemic recommendations and evidence* (Research report, June 2024) 5.

<sup>47</sup> Parenting Research Centre, *Service systems designed to prevent involvement in child protection and youth justice: Literature review* (Report, 1 October 2024) 4.

<sup>48</sup> Australian Institute of Family Studies and the Australian Human Rights Commission, *Improving the safety and wellbeing of vulnerable children: A consolidation of systemic recommendations and evidence* (Research report, June 2024) 12.

<sup>49</sup> Australian Institute of Family Studies and the Australian Human Rights Commission, *Improving the safety and wellbeing of vulnerable children: A consolidation of systemic recommendations and evidence* (Research report, June 2024) 12.

The Terms of Reference for this Commission of Inquiry allow for an expansive approach to be taken as the Commission of Inquiry has the power to give consideration to any matter deemed relevant.<sup>50</sup> It is recommended that the Commission of Inquiry consider and make recommendations in relation to the effectiveness of existing measures, as well as gaps in service delivery, to support family-based care and prevent children from entering the child safety system (**Recommendation 5**).<sup>51</sup>

## The ‘care to custody’ pipeline must be addressed

The Terms of Reference direct the Commission of Inquiry to:

*‘investigate through case studies children subject to dual Youth Justice and Child Protection Orders or children under the Guardianship of the Department who have committed crimes and fall within the Making Queensland Safer Laws category and determine the failures of policy, process and practice that contributed to these children choosing a life of crime’.*<sup>52</sup>

The Commission emphasises that children who commit offences typically do so as a direct result of external circumstances which they are most often powerless to change. For example, statistics indicate that the majority of children who offend have at least one neurodevelopmental or health disorder.<sup>53</sup> Additionally, 53 per cent have been impacted by domestic and family violence.<sup>54</sup> The Commission considers that describing children’s offending as a ‘choice’ overlooks the complex interplay of disadvantage, trauma, and systemic failure that often underpins such behaviour.

The concerning overlap between the child safety population and the youth justice population must be considered and addressed. During 2020-2021, more than half of children under youth justice supervision in Australia had interacted with the child protection system in the preceding 5 years.<sup>55</sup> The correlation is so well-recognised that it has been referred to as the ‘care-to-custody’ pipeline.<sup>56</sup>

As included in the Statement:

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<sup>50</sup> Queensland, *Queensland Government Gazette*, No. 16 Vol. 399, 23 May 2025, 137.

<sup>51</sup> UNICEF, *Child Protection Strategy 2021-2030* (Programme Division Report, July 2021) 39.

<sup>52</sup> Queensland, *Queensland Government Gazette*, No. 16 Vol. 399, 23 May 2025, 137.

<sup>53</sup> Queensland Family & Child Commission, ‘Addressing the root causes’ (Web Page) <<https://www.qfcc.qld.gov.au/sites/default/files/2024-11/2024085%20Youth%20Justice%20-%20Addressing%20the%20Root%20Causes%20-%20Snap%20Shot.pdf>>.

<sup>54</sup> Queensland Family & Child Commission, ‘Addressing the root causes’ (Web Page) <<https://www.qfcc.qld.gov.au/sites/default/files/2024-11/2024085%20Youth%20Justice%20-%20Addressing%20the%20Root%20Causes%20-%20Snap%20Shot.pdf>>.

<sup>55</sup> Australian Institute of Family Studies and the Australian Human Rights Commission, *Improving the safety and wellbeing of vulnerable children: A consolidation of systemic recommendations and evidence* (Research report, June 2024) 10.

<sup>56</sup> Australian Institute of Family Studies and the Australian Human Rights Commission, *Improving the safety and wellbeing of vulnerable children: A consolidation of systemic recommendations and evidence* (Research report, June 2024) 9.

*‘The inquiry must recognise and address the clear and distinct intersectionality between the child protection and youth justice system. They are two segments of a pipeline which create a trajectory into ongoing imprisonment, poverty and disadvantage.’*

A key driver of this correlation is that children in the child safety system typically have complex needs resulting from experiences of abuse or neglect, or from disconnection with their culture and community. The impact of these experiences may manifest in inability to regulate behaviours or difficulties in relation to interpersonal skills. These issues, coupled with limited capacity amongst carers to respond to difficult behaviours, often causes children in out-of-home or residential care to be criminalised for behaviours that would typically be managed within families.<sup>57</sup> For example, research from Victoria demonstrates that up to 42 per cent of children in residential care were charged for a criminal offence within one year of placement, with criminal damage being the most common charge, representing 25.2 per cent of all charges in the review period.<sup>58</sup>

Interaction with the criminal justice system tends to have a ‘criminogenic effect’. That is, children who have frequent or multiple contacts with the justice system are at a higher risk of reoffending and of committing more serious offences.<sup>59</sup> As such, where inadequate support in the child safety system leads to early contact with the criminal justice system, this may result in further offending and entrenchment within the youth justice system – with inevitable impacts on both the child and on community safety.

The Commission urges the Commission of Inquiry to consider how the removal of children from their culture and community and inadequate support in care settings contributes to the criminalisation of children, and how these scenarios can be better managed (**Recommendation 6A**). The Commission additionally urges consideration of the impact of interactions with the criminal justice system on children in care, including the impact on further offending behaviour and community safety (**Recommendation 6B**).

Finally, given the scale and significance of this problem, the Commission recommends that any case studies should include children who have committed offences (not restricted to ‘Making Queensland Safer’ offences) who are also subject to the child safety system to pursue a more holistic understanding of what is driving the overlap between the child safety and youth justice systems and the impacts on children (**Recommendation 6C**).<sup>60</sup>

## Ongoing engagement with the Commission of Inquiry

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<sup>57</sup> Victoria Legal Aid, ‘Concern over continued over-criminalisation of children in state care’ (Web Page, 8 September 2023) <<https://www.legalaid.vic.gov.au/new-data-shows-continued-over-criminalisation-kids-state-care>>.

<sup>58</sup> Victoria Legal Aid, ‘Concern over continued over-criminalisation of children in state care’ (Web Page, 8 September 2023) <<https://www.legalaid.vic.gov.au/new-data-shows-continued-over-criminalisation-kids-state-care>>.

<sup>59</sup> See for example: S J Prins, ‘Criminogenic or Criminalized? Testing an Assumption for Expanding Criminogenic Risk Assessment’ *Law and Human Behaviour*, vol. 43, 2019, 484.

<sup>60</sup> UNICEF, *Child Protection Strategy 2021-2030* (Programme Division Report, July 2021) 39.

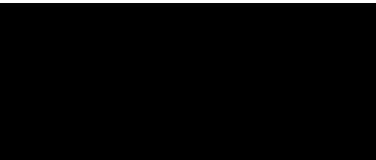
The Commission is grateful for the opportunity to contribute to the Commission of Inquiry and would welcome any further requests for engagement to support the process.

In particular, within the bounds of the Commission's workforce capacity, the Commission would be pleased to provide assistance in relation to assessments of human rights compatibility.

I enclose for your reference the Bandarran Marra'Gu, Gathering Strength Statement, which I hope will guide the Commission of Inquiry in its efforts to engage with Aboriginal and Torres Strait Islander children and communities, and address the overrepresentation of Aboriginal and Torres Strait Islander children in Queensland's child safety system.

If you have any questions regarding this correspondence, please do not hesitate to contact me on the details below.

Yours sincerely



**Scott McDougall**

**Commissioner**



**[Enclosed: Bandarran Marra'Gu, Gathering Strength Statement]**



## **BANDARRAN MARRA'GU GATHERING STRENGTH STATEMENT**

20 May 2025

This week, more than one hundred Aboriginal and Torres Strait Islander people from across Queensland came together in Magan-djin for the Bandarran Marra'gu Gathering Strength Summit.

Guided by the lived experience of Senior Elders and all generations following, we drew on our collective strength, determination and knowledge to inform a First Peoples agenda promoting better futures for our families and communities – in particular, our children and young people.

Our Children and Young People's rights are not negotiable. Culture is not optional. Justice is a responsibility.

At the centre of our discussions was the ongoing violation of human and cultural rights of our people and in particular, the targeted harm perpetuated against our children and young people by this Government.

Our children come from many different Peoples and are all Queenslanders. They are not safe, and they cannot wait any longer.

Queensland is a human rights jurisdiction. This must mean something for Aboriginal and Torres Strait Islander children, families and communities.

We argue that what is happening in Queensland are egregious breaches of human rights against children, reminiscent of past Queensland Government policies and practices separating children and families. We fear that acts are being committed by the State with the intent to destroy our First Nations by forcibly transferring our children from our responsibility, out of our care, and out of our communities.



We see the overrepresentation of our children in Queensland's child protection and youth justice systems not as a coincidence, but as a direct consequence of policies that fail to respect our rights, of services that are culturally unsafe, and of decisions made without our leadership or agreement.

We demand compliance with Australia's international human rights obligations, United Nations Convention on the Rights of the Child, United Nations Declaration on the Rights of Indigenous Peoples and the Queensland Human Rights Act.

We demand that the Terms of Reference for the Queensland Commission of Inquiry into the Child Safety System be reviewed to acknowledge and address the systemic harm against Aboriginal and Torres Strait Islander children. We further call on the current government to meet with representatives of our communities to determine the pathway forward and the actions that we deem are in the best interests of our children.

We hold solutions. It is fundamental that there is adequate opportunity for local Aboriginal and Torres Strait Islander peoples to participate directly through the entire duration of the inquiry.

The inquiry must recognise and address the clear and distinct intersectionality between the child protection and youth justice system. They are two segments of a pipeline which create a trajectory into ongoing imprisonment, poverty and disadvantage. The pipeline of the removal and incarceration of our children exists because of the systemic failure of housing, education and health, as identified in a number of reports including by the Queensland Productivity Commission's 2019 Report into Imprisonment and Recidivism.



The Queensland Government's ongoing wilful and wanton disregard of the decades of evidence, countless reports and our ongoing calls to take responsibility for our children have resulted in the current crisis that all Queenslanders are facing.

We do not need another inquiry that speaks around us. We need action that starts with us.

We call for the Terms of Reference of the Child Protection Commission of Inquiry to be explicitly inclusive of the disproportionate representation of Aboriginal and Torres Strait Islander children. The terms need to ensure that the systemic harm experienced by our children is investigated to the fullest possible capacity to ensure that real change occurs.

There is precedent set in Queensland under the Meriba Omasker Kaziw Kazipa (Torres Strait Islander Traditional Child Rearing Practice) Act 2020 that cultural lore and responsibility to our children sits with our people, and can be embedded within state legislation (law).

Our People and our rights are under attack. The treatment of Aboriginal and Torres Strait Islander peoples in this state, is an "affront to dignity and justice". We have lost all faith in the capacity of the Queensland Government to ensure our interests are represented.

The prospect of resetting the relationship between Aboriginal and Torres Strait Islander Peoples and the Queensland Government is now significantly diminished and continues to be undermined under the current leadership.



There is no substitute for truth, respect and shared power. Anything less reinforces the same systems that have failed our children for generations.

Human rights are universal, inalienable, and indivisible. Governments have a moral and legal obligation to ensure they are realised.

On 21 April 2025, United Nations Secretary-General, António Guterres, affirmed that “the individual and collective rights of Indigenous Peoples are non-negotiable”. He emphasised that in recognising and acting upon the leadership, rights, and needs of Indigenous Peoples, “Governments must honour their obligations in the Declaration on the Rights of Indigenous Peoples – without delay”.

As rights holders, we are determined to achieve truth, justice and healing for our people and our future generations. We will use all tools at our disposal to ensure our rights are recognised, realised, and respected.

We call on all agencies across Queensland to respect the human rights of Aboriginal and Torres Strait Islander peoples in Queensland. Above all, respect our children and their futures.

We speak with the authority of our lived experience, our cultural knowledge and commitment to our children and next generations. When we talk about making communities safer, it must start by listening to those who have carried that responsibility for generations. Similarly, if the Queensland Government is serious about keeping our communities safe, they will stop punishing symptoms and start partnering with Aboriginal and Torres Strait Islander parents, teachers, community leaders, and community-controlled services.

We are not asking — these are our rights. We are entitled to be safe, heard, and grounded in who we are.