



# The rights of the Indigenous child under the UN Declaration on the Rights of Indigenous Peoples

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Submission to Expert Mechanism on the Rights of Indigenous Peoples Study (UN Office of the High Commissioner for Human Rights)

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# Introduction

1. Thank you for the opportunity to participate in the Expert Mechanism on the Rights of Indigenous Peoples' study on the rights of Indigenous children under the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP). We note that the Expert Mechanism is a subsidiary body composed of seven independent members that provides the Council with expertise and advice on the rights of indigenous peoples as set out in UNDRIP. This submission is informed by the concept note circulated by the Expert Mechanism.
2. Aboriginal and Torres Strait Islander peoples face numerous human rights challenges in Australia. A history of violent dispossession, the Stolen Generations, stolen wages, state control, and ongoing stigma and discrimination contribute to intergenerational trauma. Many of these human rights issues have been recognised by the United Nations Human Rights Committee in its commentary on Australia's progress in implementing the ICCPR.
3. Whereas every other first world country recognises its First Nations people in its Constitution, Australia does not. Further, Australia does not have any treaties with its First Nations people.
4. Aboriginal and Torres Strait Islander peoples have unique spiritual connections to land and waters, forming a key part of their cultural identities. The challenge of delivering services to remote communities, each with unique and discrete needs requires new and innovative approaches by government to avoid repeating the failings of the past.
5. Structural or systemic racism is a barrier to equality before the law in many areas of Queensland life, and underpin government policies, programs, practices and procedures. While in this submission we note positive developments in Queensland, systems are nonetheless set up in ways in which reinforce and perpetuate racial inequalities that particularly impact on Aboriginal and Torres Strait Islander peoples.

## About the QHRC

6. The Queensland Human Rights Commission (QHRC) is an agency created by legislation enacted by the Queensland Parliament, a state of Australia. The QHRC has functions under the *Anti-Discrimination Act 1991* (ADA) and the *Human Rights Act 2019* (HRA) to promote understanding, acceptance and discussion of human rights in Queensland, and to provide information and education about human rights.

7. The QHRC's two person Aboriginal and Torres Strait Islander Unit actively engages with communities to ensure First Nations people in Queensland are aware of their rights.
8. This response was developed in consultation with the QHRC's Aboriginal and Torres Strait Islander Advisory Group which comprises six respected subject matter experts with knowledge and experience in the human rights arena.

## COVID-19

9. While not specifically discussed in the concept note, the COVID-19 pandemic and the government response in Queensland disproportionately impacted upon Aboriginal and Torres Strait Islander children.
10. For example, the QHRC has concerns about the duration of the Australian Government's blanket restrictions placed on remote Indigenous communities under the *Biosecurity Act 2015* (Cth). The relevant determination, made in March 2020, placed significant restrictions on multiple rights including freedom of movement in and out of certain remote communities in Queensland.
11. The QHRC appreciates that the Australian Government imposed these restrictions to protect vulnerable communities, particularly Aboriginal and Torres Strait Islander peoples, and consulted, albeit urgently, with local communities and community controlled health services on these restrictions.
12. As a result of the restrictions and the hard work and discipline of many people living and working in the designated areas, there have been no positive COVID-19 cases in any of Queensland's discrete Indigenous communities. This is a very commendable outcome, particularly considering the devastation this virus is causing in First Nations populations internationally.
13. However, the lack of consistency between the restrictions imposed by the Commonwealth on designated Indigenous communities and those imposed by the state on the rest of Queensland, caused significant frustration in some communities, including Palm Island, Yarrabah and the Torres Strait Islands.
14. For example, the Queensland Chief Health Officer lifted restrictions imposed on Aboriginal and Torres Strait Islander communities in other parts of the state such as North Stradbroke Island on 16 May 2020. Throughout May 2020, the Queensland Government also loosened

restrictions across Queensland, including by allowing residents to travel greater distances. In contrast, restrictions under the Commonwealth Biosecurity Act remained static - thereby preventing residents of designated Indigenous communities from travelling as far as others in Queensland and requiring many to quarantine for 14 days.

15. The QHRC is also aware of other community concerns arising from these restrictions including:
  - Inflexible restrictions on the ability of people to quarantine within a designated area.
  - Lack of mental health and cultural supports for those subject to quarantine.
  - Traditional fishing, hunting and food gathering areas being outside the designated areas preventing traditional practices. (This did not appear to be a deliberate measure to address risk of infection, but an unintended consequence of designated areas being based on the boundaries of local government areas).
  - Frustrations that non-Indigenous people, presumably undertaking certain functions deemed 'essential activity' under the determination, are able to visit and leave these communities without quarantining.
  - Lack of access to essential goods such as groceries and clothing due to travel restrictions and the increased price of such goods inside of some designated areas
16. Boarding school students from regional and remote communities were also significantly affected by the COVID-19 restrictions in 2020. The prolonged closure of boarding schools particularly affected around 400 Aboriginal and Torres Strait Islander students from remote communities. Many students in remote areas do not have access to technology, such as reliable internet connections, and so their right to education, protected under the HRA, was significantly disrupted. High transport costs has also made planning difficult for parents. The QHRC has recommended to government that future pandemic or other emergency planning specifically considers the impact on boarding school students from remote communities.

## Response to Section 1

17. We note that this section relates to the right to a nationality, the rights to life, physical and mental integrity, liberty and security of the person,

violence, and access to justice (arising from the preamble, and articles 6, 7, 8, 22 and 43 of UNDRIP).

## Positive developments

### UNDRIP in law

18. Queensland's HRA protects the rights of everyone in Queensland, regardless of citizenship or visa status. It requires public entities - Queensland Government departments and agencies, local councils, and organisations providing services to the public on behalf of the state government - to act and make decisions which are compatible with the rights it protects. Private businesses, private schools and health services, and the national government and its agencies are not obligated to comply with the HRA.
19. The HRA applies from 1 January 2020 to acts and decisions made on or after that date and is not retrospective.
20. The HRA primarily protects civil and political rights drawn from the International Covenant on Civil and Political Rights. It also protects two rights drawn from the International Covenant on Economic, Social and Cultural Rights (rights to education and health services) and one right drawn from the Universal Declaration of Human Rights (property rights).
21. Of most relevance to this study, section 28 of the HRA also explicitly protects the cultural rights of Aboriginal and Torres Strait Islander peoples. Section 28 of the HRA is based on Article 27 of the ICCPR and Articles 8, 25, 29 and 31 of the UNDRIP, and is as follows:

#### **28 Cultural rights—Aboriginal peoples and Torres Strait Islander peoples**

- (1) Aboriginal peoples and Torres Strait Islander peoples hold distinct cultural rights.
- (2) Aboriginal peoples and Torres Strait Islander peoples must not be denied the right, with other members of their community—
  - (a) to enjoy, maintain, control, protect and develop their identity and cultural heritage, including their traditional knowledge, distinctive spiritual practices, observances, beliefs and teachings; and
  - (b) to enjoy, maintain, control, protect, develop and use their language, including traditional cultural expressions; and

(c) to enjoy, maintain, control, protect and develop their kinship ties; and

(d) to maintain and strengthen their distinctive spiritual, material and economic relationship with the land, territories, waters, coastal seas and other resources with which they have a connection under Aboriginal tradition or Island custom; and

(e) to conserve and protect the environment and productive capacity of their land, territories, waters, coastal seas and other resources.

(3) Aboriginal peoples and Torres Strait Islander peoples have the right not to be subjected to forced assimilation or destruction of their culture.

22. While the right is yet to be applied in a meaningful way, indications are that this right, will have particular relevance to Queensland. The state has a larger percentage of residents who identify as being Aboriginal and/or Torres Strait Islander compared to other Australian jurisdictions with human rights legislation. The 'cultural rights' under the HRA may create opportunities to challenge government projects that harm the land and environment and damage sacred sites and places of important cultural heritage. However, the HRA does not contain a right to self-determination, which is an important component of the rights of Indigenous peoples worldwide.
23. All legislation introduced to the Queensland Parliament must be accompanied by a Statement of Compatibility, stating whether in the introducing member's opinion, the Bill is or is not compatible with human rights. In 2020, the Statement of Compatibility that accompanied the Forest Wind Farm Development Bill 2020 considered the application of the cultural heritage right not only to those groups with a claim under native title law, but also to others with a cultural interest. The Bill enabled the establishment and operation of a wind farm within certain state forests. The statement acknowledged that there may be Aboriginal peoples and Torres Strait Islander peoples who do not claim native title rights and interests in relation to the project area, but who nevertheless have cultural rights under section 28. The Government sought, but failed, to identify such persons before introducing the Bill.
24. In considering the Bill, the Queensland Parliament's State Development, Tourism, Innovation and Manufacturing Committee commented that assessing the Bill against section 28 of the Queensland Act required knowledge about what the spiritual relationship of Indigenous people is to the project area as defined in the Bill. While Indigenous Land Use Agreements made under the *Native Title Act 1993* (Cth) would assist

those parties who have either obtained or are claiming native title, the Committee noted that this may not cover all Indigenous persons who have a spiritual connection with the land in the project area.

25. The Committee ultimately determined that section 28 on its face does not require the government to investigate who might hold Indigenous spiritual connections to the land for the Bill. As a result, whether the Bill fell within the scope of this right may only become apparent if any Indigenous people who are able to provide information about connection with the relevant land come forward claiming a breach of the right.
26. Already this cultural right has been cited during litigation involving climate change. For example, in an ongoing proceeding before the Land Court of Queensland, objectors to a mining lease application are arguing that granting the lease would not be compatible with human rights, including cultural rights.<sup>1</sup>

## Path to Treaty

27. The following information from the Queensland Government explains its commitment to negotiating a treaty with Queensland First Nations peoples:<sup>2</sup>

When Queensland was settled, there was no treaty agreement with Aboriginal and Torres Strait Islander peoples as the first custodians. First Nations peoples were displaced from their land without any negotiation, resulting in political, economic and social inequalities that continue to this day.

In 2019 the Queensland Government committed to a reframed relationship with First Nations peoples, issuing a [statement of commitment \(PDF, 947 KB\)](#) and shortly afterwards appointing an Eminent Panel of experts to report on the way forward to treaty. A Treaty Working Group, working to the direction of the Eminent Panel, undertook community consultations around Queensland in 2019 and provided a [report to the Eminent Panel \(PDF, 6.5 MB\)](#) to inform their advice to government.

In February 2020 the Eminent Panel gave their [advice and recommendations \(PDF, 175 KB\)](#) to the Queensland Government. In May 2020 the [Eminent Panel updated their advice \(PDF, 155 KB\)](#) to include COVID-19 considerations.

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<sup>1</sup> See *Waratah Coal Pty Ltd v Youth Verdict Ltd & Ors* [2020] QLC 33

<sup>2</sup> Queensland Government, *Path to Treaty* (2020) <<https://www.datsip.qld.gov.au/programs-initiatives/tracks-treaty/path-treaty>>



In August 2020 the Queensland Government accepted, or accepted in principle, the recommendations of the Eminent Panel and released a [statement of commitment and response \(PDF, 574 KB\)](#).

The next stage will be establishing a Treaty Advancement Committee to partner with the Queensland Government on implementing the Eminent Panel recommendations.

The QHRC will continue to participate in this process.

### *Meriba Omasker Kaziw Kazipa* cultural adoption

28. On 14 September 2020, after passage through the Queensland Parliament, the *Meriba Omasker Kaziw Kazipa (Torres Strait Islander Traditional Child Rearing Practice) Act 2020* (the Cultural Adoption Act) was granted royal assent by the Queensland Governor. The legislation is the first of its kind to align Torres Strait Islander lore with Queensland law.
29. The Cultural Adoption Act provides legal recognition of Torres Strait Islander continued use of traditional child rearing practice. The Torres Strait Islands are a group of small Islands in the Torres Strait, the waterway between the far north of the Australian mainland (Cape York Peninsula) and New Guinea. Shared child rearing is a common and enduring Torres Strait Islander cultural practice.
30. The Cultural Adoption Act gives Torres Strait Islander families a process for making an application for legal recognition. If granted this will result in a permanent transfer of parentage from the biological parents to the cultural parents.
31. The process to apply for a cultural order will ensure receiving parents can make parental decisions (for example, education and health) about their child without difficulty and the child will have the same legal rights as other children of the cultural parents, including inheritance rights.
32. In proposing the legislation, the Queensland Government suggested it promotes the right of Torres Strait Islanders to enjoy, maintain, control, protect and develop their kinship ties as provided for in the HRA, while still ensuring the protection of children in their best interests.
33. The name of the Cultural Adoption Act incorporates language terms from Torres Strait Islander languages. 'Meriba Omasker' and 'Kaziw Kazipa' together translate to 'for our children's children'.
34. The legislation was developed with the engagement of eminent persons who provided legal, cultural and gender expertise during the complex and culturally sensitive consultations with the Torres Strait Islander community.

These were Ms Ivy Trevallion, Honourable Alastair Nicholson AO RFD QC and Mr Charles Passi.

## Negative developments

### Youth justice

35. Like other Australian jurisdictions, Queensland imprisons Aboriginal and Torres Strait Islander young people on a highly disproportionate basis. Aboriginal and Torres Strait Islander peoples represent 3 per cent of Australia's population, yet of children and young people in youth detention, nearly half of young offenders were of Aboriginal or Torres Strait Islander descent, and First Nations young people represented 70 per cent of young people in custody on an average day<sup>3</sup>. Aboriginal and Torres Strait Islander young peoples are nine times as likely to have a proven offence, 17 times more likely to receive a supervised order, 28 times more likely to be held in custody on an average day and 27 times more likely to be held on remand on an average day.
36. Almost two-thirds of all Queensland children in detention have been impacted by domestic and family violence, and half have a mental health and/or behaviour disorder (diagnosed or suspected). The majority of children in detention have not been sentenced, i.e. are on remand.<sup>4</sup>
37. Until February 2018, Queensland was the only jurisdiction in Australia where the age of adulthood for the purpose of criminal liability was 17 years. When 17 year olds re-entered the youth justice system, the resulting strain on the system created a situation where children were being held in police 'watch houses' for long durations, rather than the state's two purpose built youth detention centres. Watch houses are police cells intended to be used for short-term detention (eg 2-3 days) primarily for adults. They are inappropriate for the detention of children for any prolonged period.
38. In 2019, due to community concerns and national media attention, the Queensland Government moved young people out of such detention.<sup>5</sup> It also committed to implementing many of the recommendations of the Report on Youth Justice by Mr Bob Atkinson, released mid-2018, which recommended four pillars to reform the system as a whole: 1) intervene

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<sup>3</sup> Queensland Government, *Youth Justice Pocket Stats 2018-19* <<https://www.youthjustice.qld.gov.au/resources/youthjustice/resources/pocket-stats-18-19.pdf>>

<sup>4</sup> Ibid.

<sup>5</sup> 'Inside the Watch House', *Four Corners* (Australian Broadcasting Corporation, 2019) <https://www.abc.net.au/4corners/inside-the-watch-house/11108448>.

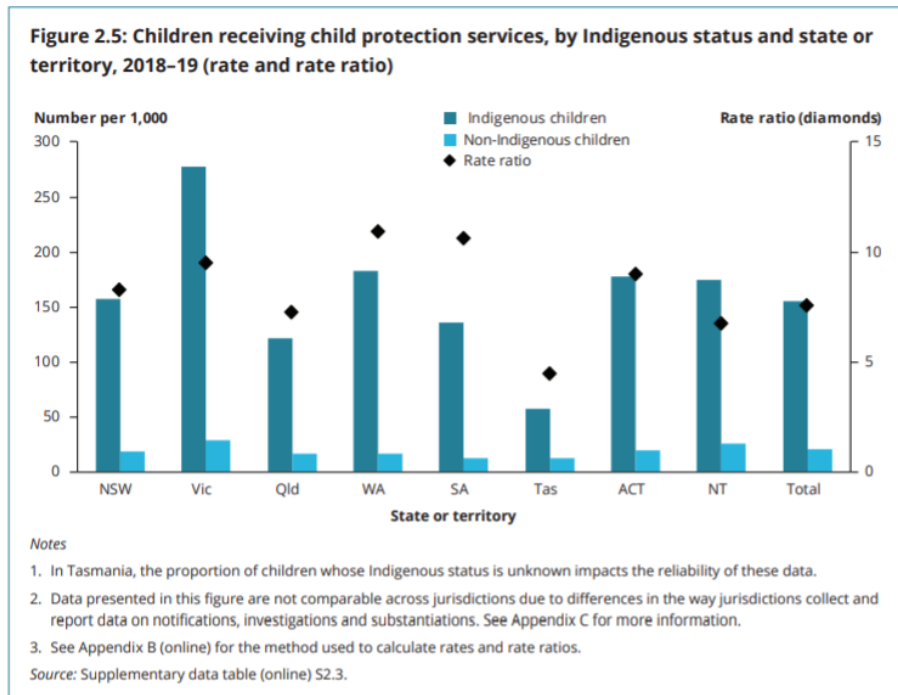
early 2) keep children out of court 3) keep children out of custody and 4) reduce reoffending.

39. However, at the time of this submission, in the wake of widespread media coverage of youth crime and particularly several tragic deaths resulting from stolen motor vehicles, the Queensland Government has announced a raft of new youth justice measures. Many of these are contrary to the recommendations of the Atkinson Report and are likely to lead to greater incarceration of children, particularly Aboriginal and Torres Strait Islander young peoples. These included presumptions against bail for certain offences and the use of GPS ankle monitors for those granted bail. The number of young people held in prolonged periods in police watch houses is already growing, even before these changes are enacted into law. The QHRC is deeply concerned that these changes will result in Queensland again detaining children in police cells for long durations as occurred in 2019.
40. The minimum of age of criminal responsibility (MACR) remains 10 years of age in Queensland (and all other Australian jurisdictions). The QHRC participated in a national consultation in 2020 regarding changes to MACR, and recommended it be increased to 14 in line with the United Nations standard, as recommended by the UN Committee on the Rights of the Child's concluding observations on the combined 5<sup>th</sup> and 6<sup>th</sup> periodic reports of Australia (CRC/C/AUS/CO/5-6). Thirty-one UN member states also called on Australia to raise the MACR as part of Australia's appearance before the UN Human Rights Council for its Universal Periodic Review (20 January 2021).
41. The QHRC continues to advocate to the Queensland Government that the MACR be increased to 14 years of age. The QHRC has recommended that the Government support this change by developing and funding evidence-based programs to address the underlying causes of youth crime. Community consultation is a critical component of developing such programs, with engagement and funding for rural and remote communities being particularly important. The QHRC recommended that Queensland should adopt a justice reinvestment approach to address the gross over-representation of Aboriginal and Torres Strait Islander children in the justice system.

## Adoption reform

42. Aboriginal and Torres Strait Islander children are 8 times as likely as non-Indigenous children to have received child protection services in Australia,

and are over-represented across the system, including in Queensland.<sup>6</sup> Out of home care refers to alternative accommodation for children and young people who are unable to live with their parents. The following graph is taken from the latest national data on the child protection system from the Australian Institute of Health and Welfare:<sup>7</sup>



43. Past government policies, including forced removals (Stolen Generations), discrimination, and intergenerational trauma contributes to this issue.
44. The Child Protection and Other Legislation Amendment Bill 2020 recently introduced into the Queensland Parliament is unlikely to address these issues, and may make them worse. According to the statement of compatibility, the purpose of this amendment is 'to increase genuine and routine consideration of adoption as an available option for, and to increase its use to, provide permanency for children in out-of-home care when it is appropriate'. The amendment would elevate adoption as third in the order of priority for achieving permanency for a child, after placement of the child with their parents or with a guardian who is a member of the child's family or another suitable person.
45. While for Aboriginal and Torres Strait Islander children adoption will remain the last resort, the QHRC is concerned about the impact of

<sup>6</sup> Australian Institute of Health and Welfare, *Child protection in Australia 2018-19* (18 March 2020) <<https://www.aihw.gov.au/reports-data/health-welfare-services/child-protection/overview>>

<sup>7</sup> Ibid, 15.

changes on these children because of the disproportionate representation of First Nations children in the child protection system.

46. The change was unexpected. Following a comprehensive period of review from 2015-2017, in 2018 the Queensland Government introduced significant reforms to improve permanency outcomes for children involved in the child protection system. These recent reforms included the insertion of principles for achieving permanency, greater emphasis on permanency goals in case planning, and the introduction of Permanent Care Orders (PCOs).
47. PCOs are made by order of the Children's Court. PCOs have the goal of ensuring that a child has a secure and permanent home, but without replacing the parents of the child. Adoption, conversely, has the potential to permanently sever relationships with parents, siblings, extended family, community and culture.
48. Unlike adoption, a PCO does not sever the legal relationship with the child's biological parents or change the child's legal identity. The guardian appointed under the PCO takes on responsibility for most aspects of parenting, but the biological parents and extended family remain in contact unless there are serious concerns that would not allow this to occur in the best interests of the child.
49. The QHRC has advocated against the change including because it limits several rights including the protection of families, rights of the child and cultural rights. The limitations on cultural rights are particularly significant because of the continuing disproportionate representation of Aboriginal and Torres Strait Islander children in the child protection system in Queensland, and the past forced adoption practices during the Stolen Generation.
50. In the QHRC's opinion, insufficient evidence has been presented to demonstrate why these amendments are needed to achieve the stated purpose, particularly in view of the significant limitations adoption can impose on the rights of children and families outlined in more detail below.
51. The QHRC, along with other independent bodies, proposed further safeguards if the changes were to proceed. This included that the legislature introduce a requirement for the government to take 'active efforts' to implement the Aboriginal and Torres Strait Islander Child Placement Principles. This principles aim to keep children connected to their families, communities, cultures and country, and to ensure the participation of Aboriginal and Torres Strait Islander peoples in decisions about their children's care and protection.

52. This would require statutory authorities to clearly document their active efforts and prove these to the courts prior to an order being granted. Courts should only make an order if satisfied that active efforts have been undertaken to support the child to stay with their family. This responsibility will be particularly important for permanency decisions, such as adoption.
53. Even before this proposed legislation, it was clear the government must make further efforts to reduce the over-representation of Aboriginal and Torres Strait Islander children in the child protection system.

## Response to Section 2

54. We note that this section relates to non-discrimination, health, housing (as part of the right to an adequate standard of living and non-discrimination), employment, labour, culture; education. (arising from articles 14, 17 and 21 of UNDRIP)

## Positive developments

### Changes to Hospital and Health Service boards

55. The *Health Legislation Amendment Act 2020* amended the *Hospital and Health Boards Act 2011* to strengthen health equity for Aboriginal people and Torres Strait Islander people. This implemented key recommendations of the Health Equity Report provided to the QHRC in 2017 (when the QHRC was known as the Anti-Discrimination Commission Queensland).
56. In 2008, the Commonwealth and all Australian States and Territories committed to action to 'Closing the Gap' between Aboriginal people and Torres Strait Islander people and other Australians through the National Indigenous Reform Agreement.
57. Through the *Hospital and Health Boards Act 2011*, Queensland's public health system is established as a federated health system. Under this governance model Hospital and Health Services (HHSs) throughout Queensland have direct responsibility for the provision of public health services and are accountable for their own performance through a Board to the Deputy Premier and relevant minister.
58. In March 2017, Adrian Marrie (consultant and Associate Professor (Adjunct), School of Human Health and Social Sciences CQ University) provided the *Addressing institutional barriers to health equity for Aboriginal and Torres Strait Islander people in Queensland's public hospital and health services* report (the Health Equity Report) to the then Anti-Discrimination Commission Queensland. The Health Equity Report



identified institutional barriers to health equity for Aboriginal people and Torres Strait Islander people in Queensland's public health system. The Report identified several issues with the *Hospital and Health Boards Act* and concluded that, 'the Hospital and Health Boards Act fails to give the necessary legislative force to the COAG national partnership agreements and federal and Queensland policy imperatives to close the Aboriginal and Torres Strait Islander health gap, thus indicating to the Aboriginal and Torres Strait Islander communities that the State is not taking its responsibilities to close the Indigenous Health Gap seriously'.

59. The amendments include mandating Aboriginal and Torres Strait Islander representation on Queensland Hospital and Health Service Boards.

## Negative developments

### UN action by Torres Strait Islander peoples.

60. Torres Strait Islander peoples are already seeing the adverse effects of climate change on their lands and will be particularly impacted by rising sea levels. Australian media reports suggest that Torres Strait Islander peoples are '...currently seeing the effects of climate change on our islands daily, with rising seas, tidal surges, coastal erosion and inundation of our communities.' Sea levels around the world are expected to rise between 75 cm and 1.5 m by the end of the century, depending on greenhouse gas emissions. According to the Australian Department of Environment and Energy, a rise of just 50cm would increase the risk of flooding around Australia by 300 times — making a once a century flood likely to occur several times a year. In some areas of Australia, flooding risk would rise much more — up to 10,000 times.<sup>8</sup> The precise sea level rise around the Torres Strait and the projected inundation has not been calculated, but low-lying islands are expected to experience a much greater flooding risk than mainland Australia. The department identifies the remote islands of the Torres Strait as some of the most vulnerable, as does the Intergovernmental Panel on Climate Change (IPCC), which warns communities they may be forced to relocate.
61. In May 2019 a group of Torres Strait Islander people complained to the United Nations Human Rights Committee about climate-based human rights breaches by the Australian Government.<sup>9</sup>

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<sup>8</sup> AAP, 'Torres Strait islanders invite Scott Morrison to see climate crisis first hand' *The Guardian* (online, 19 September 2019) <https://www.theguardian.com/environment/2019/sep/19/torres-strait-islanders-invite-scott-morrison-to-see-climate-crisis-first-hand>.

<sup>9</sup> Katherine Murphy, 'Australia asks UN to dismiss Torres Strait Islanders' claim climate change affects their human rights' *The Guardian* (online, 14 August 2020)

## Exclusion from education

62. Residents of Queensland are privileged to have access to free primary and secondary education that is essential for giving our children a great start in life. There is, however, not the same level of accessibility and inclusion of every child or young person in Queensland. Attendance rates in schools are significantly lower for children who are Aboriginal or Torres Strait Islander or children who are in out-of-home care. Expulsion and exclusion from education is a particular barrier for Aboriginal and Torres Strait Islander children in Queensland.
63. In 2019, the rates of children attending school was significantly different between Indigenous and non-Indigenous students with approximately 82% of Aboriginal and Torres Strait Islander students attended school compared to 92% of non-Indigenous children. This is consistent with rates in preceding years.<sup>10</sup>
64. Unfortunately, many Aboriginal and Torres Strait Islander children face race discrimination at school. For example, a race discrimination complaint received and resolved by the QHRC involved an allegation that a teacher told an Aboriginal parent that her child had head lice because her hair, skin and smell was different to non-Aboriginal children. The alleged comment and the school's subsequent handling of the mother's complaint led the family to move 60 kilometres to be closer to another school. Through a conciliation process at the QHRC, the Education Department agreed to pay the family financial compensation and provide a letter of apology.
65. The QHRC has also previously received complaints on behalf of children with emotional or behavioural disorders who have been excluded from state schools. Repeated or lengthy suspensions may not address the reasons for a student's behaviour and risks leading to poorer outcomes for a student's engagement in education, especially when suspension is used alone without interventions and supports that address the underlying reasons for the incident(s). Imposing disciplinary absences is also not shown to be an effective way of achieving good behaviour in the student population in the long run.
66. Students with disabilities are also often required to attend shortened school days or are delivered only part of the curriculum, on the basis that

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<https://www.theguardian.com/australia-news/2020/aug/14/australia-asks-un-to-dismiss-torres-strait-islanders-claim-climate-change-affects-their-human-rights>.

<sup>10</sup> Australian Government, *Closing The Gap Report: School Attendance* (2020)

<https://ctgreport.niaa.gov.au/school-attendance>



the child seems unable to 'cope' with full days in an unmodified environment.

67. The QHRC may be able to accept individual complaints under the ADA and HRA in regards to these issues, however such complaints may not address the underlying systemic drivers.