



# 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>

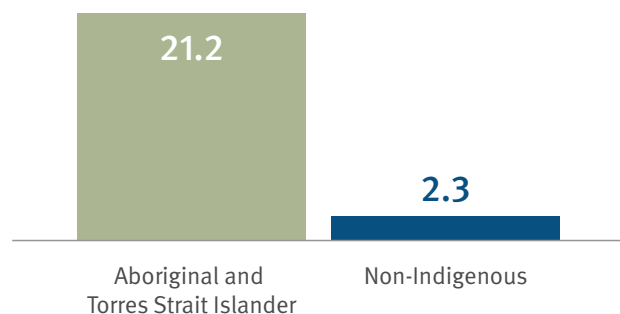
“ Like once you’re taken away from your family you just lose all that respect for everyone I guess. And so, I don’t know, you just don’t listen to anybody anymore.

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).

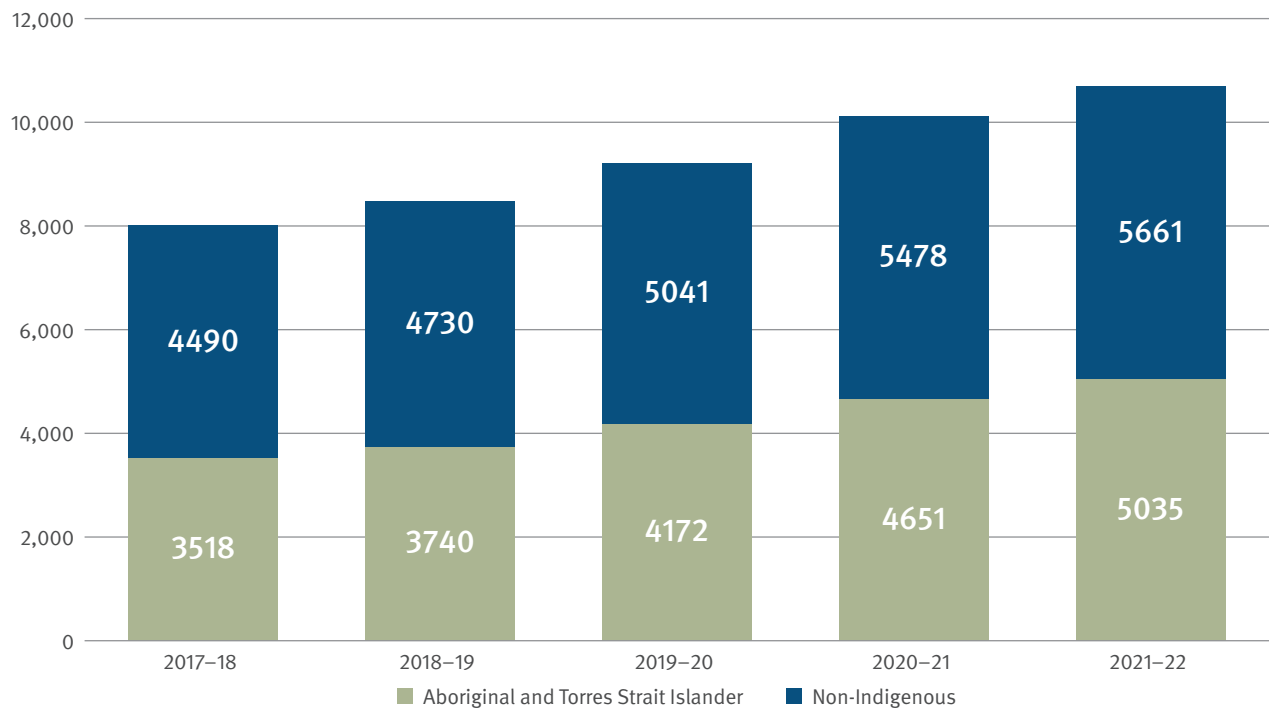
**Figure 7.2.** Rate per 1000 children and young people in out-of-home care for five or more years (Queensland, 2021–22)



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>



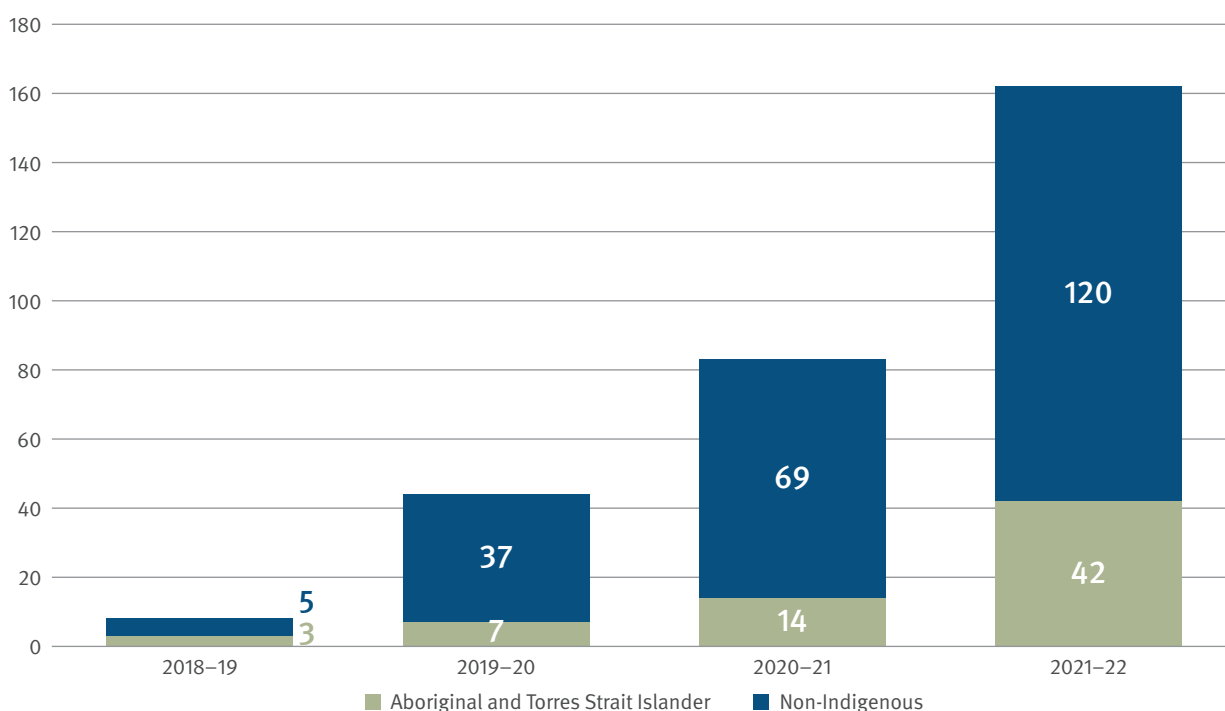
Source: Department of Child Safety, Seniors and Disability Services. (2023). *Our Performance*.

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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