

advocacy where we stand

# Children and young people's issues

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## Preamble to policy positions

- QLS adopts these policy positions as the guiding principles for all future advocacy by the QLS when dealing with legal issues affecting children and young people.
- QLS has set out its policy positions in relation to the following children and young people's issues with the assistance of the Children's Law Committee:
  - Aboriginal and Torres Strait Islander youth
  - Youth justice
  - Child protection
  - Education
  - Family
  - Protection of unaccompanied asylum seeker children.
- QLS is primarily guided in its work on children and young people by the following international treaties which Australia is party to:
  - *International Covenant on Civil and Political Rights* (ICCPR)
  - *Convention on the Rights of the Child* (CROC)
  - *United Nations Standard Minimum Rules for the Administration of Juvenile Justice* (the 'Beijing Rules').
- The legal issues affecting children and young people are dealt with by a number of QLS committees. These policy positions aim to:
  - set out the primary considerations that all committees should take into account when responding to policy and law reform issues affecting children and young people
  - provide an opportunity for other QLS committees to discuss these matters with the Children's Law Committee if there are any departures from these policy positions.

## Aboriginal and Torres Strait Islander youth policy position

1. QLS supports the principles outlined in the following international and domestic standards on Aboriginal and Torres Strait Islander people in Australia:
  - *UN Declaration on the Rights of Indigenous Peoples*
  - *International Convention on the Elimination of all Forms of Racial Discrimination*
  - *Closing the gap on Indigenous disadvantage: the challenge for Australia* report
  - The development of the *Aboriginal and Torres Strait Islander Justice Strategy 2011-2014* for Queensland.
2. QLS is alarmed at the over-representation of Aboriginal and Torres Strait Islander young people in the youth justice and child protection systems and advocates for immediate actions to be taken to reduce these numbers.
3. QLS stresses the need for active consultation with Aboriginal and Torres Strait Islander leaders on all decisions that affect their communities, especially for ones affecting children and young people:
  - We especially encourage this in important consultation processes such as the Justice Strategy, which will set out the government's plan for how to reduce the overrepresentation of Aboriginal and Torres Strait Islander people in the criminal justice system.
4. QLS is concerned with the unacceptably high rates of young people being held in remand in Queensland youth detention centres. We support efforts to reduce these rates and believe that tackling this issue will directly benefit the numbers of Aboriginal and Torres Strait Islander young people in the justice system.
5. QLS calls for increased funding for bail and diversionary programs for Aboriginal and Torres Strait Islander youth.
  - We reiterate Article 40 (3) (b) of the Convention on the Rights of the Child which stresses the need for governments to develop means outside of the court system to assist in rehabilitation efforts.
  - We are concerned that young Aboriginal and Torres Strait Islander people in remote areas are being transported from their families and communities to regional centres to attend bail hearings. This no doubt leaves the young person traumatised and without the necessary support they would have had in their own communities. There must be stronger accountability for these actions and a greater focus on protecting the child from unnecessary stress.
  - We call for increased funding for:
    - youth specific rehabilitation/drug and alcohol services
    - bail programs, such as conditional bail support programs, which are effective in successfully diverting young people away from court processes.

6. **QLS supports the use of the Queensland Murri Court and the special circumstances court for young people, and also calls for increased funding to ensure their effectiveness. Therefore we support:**
  - The use of mechanisms to divert Aboriginal and Torres Strait Islander youth away from the traditional court system into more flexible and informal systems. The Murri Court is particularly important as it allows for cultural considerations and for any sentence on a child to take into account the community's views.
  - Enhancing the capacities of the Murri Court as this would greatly impact on the rates of Aboriginal and Torres Strait Islander young people that remain in the youth justice system for long periods of time, and allows young people to access a range of support programs to assist with their issues.
  
7. **QLS is alarmed that Aboriginal and Torres Strait Islander young people are over-represented in every stage of the child protection system, and that these rates are increasing.**
  - We support the Aboriginal and Torres Strait Islander Child Placement Principle and call on the Department of Child Safety to use the Principle as the standard in practice.
  - We support the placement and contact with kin considerations as an instrumental aspect of dealing with Aboriginal and Torres Strait Islander young people in the system.
  - We call for improvement to the quality of cultural planning that is prepared for Aboriginal and Torres Strait Islander young people in the child protection system.
  
8. **QLS calls for increased cultural awareness and sensitivity training for lawyers working with Aboriginal and Torres Strait Islander children, young people and their families.**
  - We recognise that practitioners must have an appreciation and understanding of Aboriginal and Torres Strait Islander issues for young people if they are going to work with them in an effective and culturally appropriate manner.

## Youth justice policy position

1. QLS supports the human rights framework and principles articulated in the international instruments relevant to youth justice administration namely:
  - *International Covenant on Civil and Political Rights* (ICCPR)
  - *Convention on the Rights of the Child* (CROC)
  - *United Nations Standard Minimum Rules for the Administration of Juvenile Justice* (the 'Beijing Rules')
  - *United Nations Guidelines for the Prevention of Juvenile Delinquency* (the 'Riyadh Guidelines')
  - *United Nations Rules for the Protection of Juveniles Deprived of their Liberty*
  - *United Nations Guidelines for Action on Children in the Criminal Justice System*.
2. QLS believes that the following rights – from CROC – are particularly important to children and young people involved in the youth justice system:
  - Right not to be discriminated against (Article 2)
  - Right of a child to have their best interests considered (Article 3)
  - Right to freedom of association (Article 15)
  - Right to be protected from being hurt or mistreated (Article 19)
  - Right to special care and help if they can't live with their parents (Article 20)
  - Right to be diverted from the criminal justice system (Article 40)
  - Right to procedural fairness in criminal proceedings, including the right to be presumed innocent, age appropriate treatment, and detention as a last resort (Articles 37 and 40).
3. We support the Charter of Juvenile Justice Principles (reproduced at the end of this statement), which underpins the *Youth Justice Act 1992*.
4. We call for 17 year olds to be treated as children in the Queensland criminal justice system and under the *Youth Justice Act 1992* to bring Queensland in line with all other Australian States and Territories.
5. We support the principle of detention as a last resort and that young people should spend the shortest period on remand necessary in the circumstances.
6. We do not support the public naming and shaming of children involved in the youth criminal justice system.
  - Public naming of children involved in criminal offending can stigmatise and marginalise young people and increases their sense of alienation from the community, increasing the risk of further offending. It also can stigmatise and marginalise members of young offenders' families, especially their siblings.
  - Naming can become a badge of honour or a rite of passage for disenfranchised children and young people, and can give them a sense of identity, purpose and achievement that can reinforce harmful behaviour.

Note: Amendments to the *Juvenile Justice Act 1992* now found in the *Youth Justice Act 1992* widened courts' power in naming juvenile offenders (section 234).

7. We do not believe that it is necessary to introduce additional requirements for parental involvement and responsibility in youth justice for their children's offending behaviour. The *Youth Justice Act 1992 (YJA)* and other State legislation make adequate provision for parental involvement and responsibility in the juvenile justice system as follows:
- Parents are entitled to attend youth justice conferences (section 34 (1) (d) of the YJA).
  - Parents must be notified when their child is served with a Notice to appear or arrested (section 392 of the *Police Powers and Responsibilities Act 2000*).
  - Parents are generally required to be present at court proceedings (section 69 of the YJA).
  - Courts have the power to adjourn matters to allow parents an opportunity to attend, to order a parent be present during a court proceeding, or to deal with matters in the absence of a parent if appropriate (sections 69–70 of the YJA).
  - Findings and orders made in the absence of a parent can be set aside upon application of the parent (section 71 (2) of the YJA).
  - Courts have the power to order that a parent pay compensation for an offence committed by their child (sections 257–260 of the YJA).
  - Courts are required to ensure parents present during court proceedings are supported to understand and participate in the proceedings (section 72 of the YJA).
  - The Department of Communities must serve a copy of a complaint relating to a breach of supervised orders on a young person's parent (section 238 (4) of the YJA).
  - A copy of any court order or decision must be given to a child's parent (section 160(2)(b) YJA).
  - A complaint and summons requiring a child to attend must be served on a young person's parent (section 43(2) of the YJA).
  - A police officer applying for permission to take a child's identifying particulars must give notice of the application to the parent (section 25(3)(b) YJA), and the parent is entitled to be heard and provide evidence (section 25(5)(a) of the YJA).
  - The court must explain to the parent the child's right of election in proceedings (section 83(1) and section 88(1) of the YJA).
  - A police officer administering a caution must arrange for an adult chosen by the child or for the parent or an adult chosen by the parent to be present (section 16(2) of the YJA).
  - A police officer applying to take a DNA sample from a child must give notice to the parent (section 488(3)(b) of the *Police Powers and Responsibilities Act 2000*).
8. We support the use and expansion of diversionary options such as cautions, drug diversion and youth justice conferences for children and young people in the youth justice system.
9. We call for adequate funding of all agencies operating in the youth justice system and of organisations providing support and referral services for young people in the areas of mental health, drug and alcohol misuse, anger management and other behavioural and therapeutic interventions including those dealing with inappropriate sexual behaviour by young people. We call for youth-specific services that can address the special issues faced by young people.

## *Youth Justice Act 1992* Schedule 1

### Charter of youth justice principles section 3

1. The community should be protected from offences.
2. The youth justice system should uphold the rights of children, keep them safe and promote their physical and mental wellbeing.
3. A child being dealt with under this Act should be –
  - a. treated with respect and dignity, including while the child is in custody
  - b. encouraged to treat others with respect and dignity, including courts, persons administering this Act and other children being dealt with under this Act.
4. Because a child tends to be vulnerable in dealings with a person in authority, a child should be given the special protection allowed by this Act during an investigation or proceeding in relation to an offence committed, or allegedly committed, by the child.
5. If a child commits an offence, the child should be treated in a way that diverts the child from the courts' criminal justice system, unless the nature of the offence and the child's criminal history indicate that a proceeding for the offence should be started.
6. A child being dealt with under this Act should have procedures and other matters explained to the child in a way the child understands.
7. If a proceeding is started against a child for an offence –
  - a. the proceeding should be conducted in a fair, just and timely way
  - b. the child should be given the opportunity to participate in and understand the proceeding.
8. A child who commits an offence should be –
  - a. held accountable and encouraged to accept responsibility for the offending behaviour
  - b. dealt with in a way that will give the child the opportunity to develop in responsible, beneficial and socially acceptable ways
  - c. dealt with in a way that strengthens the child's family.
9. A victim of an offence committed by a child should be given the opportunity to participate in the process of dealing with the child for the offence in a way allowed by the law.
10. A parent of a child should be encouraged to fulfil the parent's responsibility for the care and supervision of the child, and supported in the parent's efforts to fulfil this responsibility.
11. A decision affecting a child should, if practicable, be made and implemented within a timeframe appropriate to the child's sense of time.
12. A person making a decision relating to a child under this Act should consider the child's age, maturity and, where appropriate, cultural and religious beliefs and practices.

13. If practicable, a child of Aboriginal or Torres Strait Islander background should be dealt with in a way that involves the child's community.
14. Programs and services established under this Act for children should –
  - a. be culturally appropriate
  - b. promote their health and self respect
  - c. foster their sense of responsibility
  - d. encourage attitudes and the development of skills that will help the children to develop their potential as members of society.
15. A child being dealt with under this Act should have access to legal and other support services, including services concerned with advocacy and interpretation.
16. A child should be dealt with under this Act in a way that allows the child to be reintegrated into the community.
17. A child should be detained in custody for an offence, whether on arrest or sentence, only as a last resort and for the least time that is justified in the circumstances.
18. A child detained in custody should only be held in a facility suitable for children.
19. While a child is in detention, contacts should be fostered between the child and the community.
20. A child who is detained in a detention centre under this Act –
  - a. should be provided with a safe and stable living environment
  - b. should be helped to maintain relationships with the child's family and community
  - c. should be consulted about, and allowed to take part in making, decisions affecting the child's life (having regard to the child's age or ability to understand), particularly decisions about –
    - i. the child's participation in programs at the detention centre
    - ii. contact with the child's family
    - iii. the child's health
    - iv. the child's schooling
  - d. should be given information about decisions and plans about the child's future while in the chief executive's custody (having regard to the child's age or ability to understand and the security and safety of the child, other persons and property)
  - e. should be given privacy that is appropriate in the circumstances including, for example, privacy in relation to the child's personal information
  - f. should have access to dental, medical and therapeutic services necessary to meet the child's needs
  - g. should have access to education appropriate to the child's age and development
  - h. should receive appropriate help in making the transition from being in detention to independence.

*Example for paragraph (h) – help in gaining access to training or finding suitable employment*

## Child protection policy position

1. **QLS supports the human rights framework and principles articulated in the international instruments relevant to child protection law:**
  - *Hague Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Cooperation in respect of Parental Responsibility and Measures for the Protection of Children* ('the Protection Convention')
  - *International Covenant on Economic, Social and Cultural Rights*
  - *Convention on the Rights of the Child* (CROC).
  
2. **QLS believes that the following rights – from CROC – are particularly important to children and young people involved in the child protection system:**
  - Right not to be discriminated against (Article 2 CROC)
  - Right of a child to have their best interests considered (Article 3 CROC)
  - Right to be protected from being hurt or mistreated (Article 19 CROC)
  - Right to live with their parents unless it is unsafe to do so (Article 9 CROC) and right to be raised by their parents if possible (Article 18 CROC)
  - Right to special care and help if they can't live with their parents (Article 20 CROC)
  - Right to have a say and participate in the decisions made about them (Article 12 CROC) and to seek information and ideas (Article 13 CROC)
  - Right to care and protection if they are in out-of-home care or are adopted (Article 21 CROC)
  - Right to have these arrangements looked at and reviewed regularly (Article 25 CROC).
  
3. **QLS supports the Charter of Rights in Schedule 1 of the *Child Protection Act 1999*.**

The Charter of Rights for children in care explicitly states the rights that all children and young people in care should enjoy. These rights are based on those rights articulated in CROC. The Charter states that all children and young people in care have rights to:

  - be provided with a safe and stable living environment
  - be placed in care that best meets their needs and is most culturally appropriate
  - maintain relationships with their family and community
  - be consulted about, and take part in making decisions affecting their lives (having regard to their age or ability to understand), particularly decisions about where they are living, contact with family, health and schooling
  - be given information about decisions and plans concerning their future and personal history, having regard to their age or ability to understand
  - privacy, including in relation to personal information
  - regularly review their care arrangements if they are under the long-term guardianship of the chief executive
  - have access to dental, medical and therapeutic services, necessary to meet their needs
  - have access to education appropriate to their age and development
  - have access to job training opportunities and help in finding appropriate employment
  - receive appropriate help with the transition from being a child in care to independence, including, for example, help about housing, access to income support, and training and education.

4. QLS supports the *Standards of Care in the Child Protection Act 1999*.
5. QLS supports the principles set out in sections 5A to 5C *Child Protection Act 1999* (CPA) that sets out how decisions in this area of law should be made by the Department of Child Safety.

We believe that each child or young person's situation and that of their family is unique and appreciate that each case involves a complex balancing act.

  - Every child has the right to have their best interests considered (Section 5A of the CPA)
  - Every child has a right to protection from harm (section 5B (a) of the CPA)
  - Families have the primary responsibility for the upbringing, protection and development of their children (section 5B (b) of the CPA)
  - The preferred way of ensuring a child's wellbeing is through the support of the child's family (section 5B (c) of the CPA)
  - If a child is in long-term out-of-home care they have a right to regular review of those arrangements (Schedule 1 (g) of CPA).
6. QLS advocates in line with the key legal principles of natural justice and procedural fairness in the decision-making and litigation in child protection law.
7. QLS calls for adequate funding for legal representation of young people and their parents involved in the child protection system.
8. QLS supports the special recognition for Aboriginal and Torres Strait Islander families in Section 6 and Section 83 of the *Child Protection Act 1999*.
9. QLS advocates for the rights of children and young people and their families to be given information to allow their effective participation in decision making and access to advocates, support persons and lawyers.

We support the principles in section 5D of the *Child Protection Act 1999* which promote the participation of young people and their families in the exercise of power and decision making under the Act.
10. QLS supports the positions outlined in the National Association for Prevention of Child Abuse and Neglect (NAPCAN) policy paper entitled 'Towards a better future of children: preventing child abuse and neglect':
  - **An evidence-based consistent approach to prevention:**

Consideration should be given to the development of national best practice standards for clearly defined prevention programs. Commonwealth, State and Territory prevention funding should be linked to the use of these standards.
  - **Better evaluation:**

There is a need for a commitment from governments and the non-government sector to high quality, regular evaluation of all programs. Evaluation must include outcome measures and be an integral part of all programs and activities.
  - **A balanced child protection system:**

There is a need to develop a new model to prevent and respond to child abuse and neglect that better balances the range of responses to individual, family, community and societal problems.

- **Coordination of effort at all levels:**  
There is a need to develop a national child abuse prevention strategy to better plan, coordinate and evaluate prevention activities. At the local level, organisations must commit to coordinated responses.
- **Seeking common causal factors:**  
There is a need to place child abuse prevention within the broader context of the prevention of social problems. Social disadvantage and exclusion must be tackled at a whole of community level with strategies developed to overcome the individual problem focused perspective of government and non-government agencies.
- **Protecting children to be seen as everyone's responsibility:**  
There is a compelling need to understand that while community is the key to unlocking a broader world of child abuse and neglect prevention, we must all play a role in nurturing and protecting children.

## 11. Relevant links and research

- QLS calls for consideration of a 'public health model' in child protection:  
*Rethinking child protection: a new paradigm?* – Peakcare Qld  
[cafwa.org.au](http://cafwa.org.au) > Publications > Rethinking Child Protection: A New Paradigm
- We support the *Statement of Principles* set out by the Secretariat of National Aboriginal and Islander Child Care:  
[snaicc.asn.au](http://snaicc.asn.au) > Policy and Advocacy > SNAICC Publications  
> Policy Papers & Reports > Principles for justice in child well-being and protection SNAICC - Policy Paper 2007
- For further information on child protection issues:
  - Australian Research Alliance for Children and Youth (ARACY):  
[aracy.org.au](http://aracy.org.au) > Projects > Projects overview > Collaborative Projects  
> Protecting children
  - NAPCAN: [napcan.org.au](http://napcan.org.au)

## Education policy position

1. **QLS supports Article 28 and 29 of the Convention on the Rights of the Child which states the right of the child to access and participate in education.**
  - We call for an increased focus on the “development of respect for human rights and fundamental freedoms, and for the principles enshrined in the Charter of the United Nations” in education (Article 29, *Convention on the Rights of the Child*).
2. **QLS supports the following rights for consideration in education policy:**
  - Right to free education (Article 36, *Universal Declaration of Human Rights*)
  - The right of youth in the criminal justice system to receive educational and vocational training while in custody (Rule 13, *United Nations Standard Minimum Rules for the Administration of Juvenile Justice* (‘the Beijing Rules’))
  - Right of persons with disabilities to access inclusive education (Article 24, *Convention on the Rights of Persons with Disabilities*)
  - The elimination of discrimination against women in the education sphere (Article 10, *Convention on the Elimination of All Forms of Discrimination Against Women*).
3. **QLS is concerned with the continuing low rates of positive education outcomes for Aboriginal and Torres Strait Islander young people. We encourage a holistic approach to a child’s education, taking into account culturally-appropriate training and flexibility to accommodate the child’s circumstances. Therefore we support:**
  - that “Indigenous peoples have the right to the dignity and diversity of their cultures, traditions, histories and aspirations which shall be appropriately reflected in education and public information” (Article 15(1), *Declaration on the Rights of Indigenous Peoples*)
  - Flexi-school arrangements which accommodate a young person’s personal circumstances including those young people experiencing social hardship
  - Access to confidential counselling and support services for young people in education especially for those young people at risk of disengaging from education.
4. **QLS does not support increased powers to exclude and suspend students in state schools under the *Education (General Provisions) Act 2006*.**
  - Article 28(2) of the *Convention on the Rights of the Child* specifically states that governments should “take all appropriate measures to ensure that school discipline is administered in a manner consistent with the child’s human dignity and in conformity with the present Convention”.

- QLS does not support increases to the powers of principals and the Department of Education to make exclusion and lengthy suspension decisions. Of particular concern are decisions that are not reviewable by a court or tribunal thereby denying a young person natural justice and procedural fairness in key decision-making processes. A young person is denied the right to have their decisions reviewed in a tribunal in these situations:
    - Suspension of a student for not more than 20 days (section 285 *Education (General Provisions) Act 2006*)
    - Decision by the principal to exclude a student from the particular school the student is enrolled in (section 288A *Education (General Provisions) Act 2006*)
    - Decision by the principal's supervisor to exclude a student from the school the student is enrolled or from certain state schools (but not all) (section 289 *Education (General Provisions) Act 2006*)
    - Decision by the Chief Executive to exclude a student from the school the student is enrolled in or from certain state schools (but not all) (section 297 *Education (General Provisions) Act 2006*).
5. **QLS calls for funding for legal representation for young people challenging decisions made about them in the education system.**
- The legislation provides for a student to make submissions on suspension and exclusion decisions. We support the creation of funding for young people involved in review of these decisions, so that they have access to appropriate advocacy and legal advice and representation to ensure that all the relevant evidence is placed before the decision-maker.
6. **QLS advocates for the government to provide appropriate education means for all students who are expelled or suspended, or suspended pending an exclusion decision.**
7. **QLS calls for schools to obtain informed consent from students about decisions surrounding their information being provided to third parties.**
- We call on schools to use their discretion to provide confidential information to third parties (such as police) cautiously, in balancing the risks involved and the serious breach of privacy against the student.
8. **QLS calls for a reasoned and evidence-based approach to media reports surrounding violence in schools.**
- We are concerned that the reporting of alleged offences taking place in schools, such as fights between students that are caught on videotape and distributed on the internet, is encouraging a one-sided approach to discipline in schools.
  - We support schools implementing strategies to deal with bullying in schools.
9. **Further research**
- *Re-engaging students in education*, Youth Affairs Network Queensland found at [http://www.yanq.org.au/images/stories/Documents/yanq\\_report\\_final-art\\_press\\_compress.pdf](http://www.yanq.org.au/images/stories/Documents/yanq_report_final-art_press_compress.pdf)

## Family law policy position

1. **QLS supports a 'best interests' approach to supporting children in the family law system.**
  - We support section 60CA of the *Family Law Act 1975*, which states:  
“In deciding whether to make a particular parenting order in relation to a child, a court must regard the best interests of the child as the paramount consideration”.
  - We call for the views of children to be heard, consistent with section 60CC(3)(a) of the *Family Law Act 1975*.
  - We support that Aboriginal and Torres Strait Islander children have the right to enjoy their culture in a meaningful way.
  
2. **QLS calls for legal representation for children involved in family law matters.**
  - We support the provision of legal representation for children in family law matters. We recognise that children with the capacity to contribute to the decisions involving their future should be heard through representation before the courts, including direct representation where appropriate.

## Protection of unaccompanied asylum seeker children policy position

1. QLS supports the human rights framework and principles articulated in the international instruments relevant to the treatment of child refugees and asylum seekers namely:

- *Convention on the Rights of the Child*
- *Convention relating to the Status of Stateless Persons*
- *Convention relating to the Status of Refugees*
- *Protocol relating to the Status of Refugees*
- Committee on the Rights of the Child General Comment No. 6 (2005) – *Treatment of unaccompanied and separated children outside their country of origin.*

2. QLS reiterates article 3 of the *Convention on the Rights of the Child* which states that the best interests of the child is the primary consideration.

- General Comment No. 6 (2005) – *Treatment of unaccompanied and separated children outside their country of origin* explains that the best interests principle is the primary consideration in the search for short and long-term solutions, and must be respected at each stage of the displacement cycle.
- QLS calls for legislative reform to enshrine the best interests principle and the child's right to participate in all matters affecting the child.

3. QLS emphasises that unaccompanied children must be afforded the same rights given to all children under the Convention on the Rights of the Child. These include:

- Right not to be discriminated against (article 2)
- Right to participate in all matters affecting the child (article 12)
- Right to freedom of expression (article 13)
- Right to freedom of association (article 15)
- Right to be protected from being hurt or mistreated (article 19)
- Right to highest attainable standard of health (article 24)
- Right to education (articles 28 and 29)
- Right to leisure, play and culture (article 31)
- Right to procedural fairness in criminal proceedings, including the right to be presumed innocent, age appropriate treatment, and detention as a last resort for the shortest appropriate period of time (articles 37 and 40).

4. QLS calls for an end to the mandatory detention policy of asylum seekers of the Australian Government.

Article 37 of the *Convention of the Rights of the Child* states that “No child shall be deprived of his or her liberty unlawfully or arbitrarily”. QLS strongly objects to the mandatory detention of children and young people, which is contrary to the best interests of the child.

- Despite undertakings by government to place the majority of children in community-based accommodation and the enunciation of detention as a last resort in the *Migration Act 1958*, the mandatory detention of unaccompanied children continues.
- QLS calls for the implementation of the recommendations contained in the Australian Human Rights Commission report *National Inquiry into Children in Immigration Detention, A Last Resort?*

5. QLS recognises the serious mental health issues that unaccompanied children face because of their inherent vulnerability and lack of support.

This is often compounded by the stress and anxiety that is associated with immigration procedures. We are alarmed at the high rates of mental illness and self-harm incidents experienced by unaccompanied children. QLS calls for:

- Appropriate support and counselling for these children
- Appropriate legal support for unaccompanied children
- Provision of services, including access to education, health and recreational facilities.

6. QLS urges the Department of Immigration and Citizenship to protect the rights of the unaccompanied children who are under its guardianship as stated in the *Immigration (Guardianship of Children) Act 1946*.

7. QLS calls for an end to the mandatory sentencing laws for people smuggling offences. Additionally, QLS believes that:

- Crew members who claim to be children should not be detained in adult prisons until such time as it is accurately proven that they are adults
- Age-determining tests, such as X-ray testing, should not be used. The Royal Australasian College of Physicians, the Royal Australian and New Zealand College of Radiologists, the Australian and New Zealand Society for Paediatric Radiology and the Australasian Paediatric Endocrine Group in a letter to the Department of Immigration and Citizenship dated 19 August 2011 said:

*“We would like to ask that you urgently reconsider the use of ionizing radiation (X-rays) or genital examination by those under your direction in your department and the Australian Federal Police as a means of deciding the age of a person.*

*We advise you that these methods are unreliable and untrustworthy when used as criminal evidence in a court of law, and unethical when used by medical practitioners in situations when their use is for administrative purposes.”*