

# Submission to the independent review of Queensland's Human Rights Act

26 June 2024

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# About knowmore

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## Our service

knowmore legal service (knowmore) is a nation-wide, free and independent community legal centre providing legal information, advice, representation and referrals, education and systemic advocacy for victims and survivors of child abuse. Our vision is a community that is accountable to survivors and free of child abuse. Our aim is to facilitate access to justice for victims and survivors of child abuse and to work with survivors and their supporters to stop child abuse.

From 2013 to 2018, our service assisted people who were engaging with or considering engaging with the Royal Commission into Institutional Responses to Child Sexual Abuse (Royal Commission). From 1 July 2018, knowmore has delivered legal support services to assist survivors of institutional child sexual abuse to access their redress options, including under the National Redress Scheme (NRS). knowmore also delivers financial counselling services to people participating in the NRS, and works with other services in the NRS support network to support and build their capability. Since 2022, knowmore has also been assisting survivors who experienced child sexual abuse in non-institutional settings, and providing legal and financial counselling support to people engaging with the Territories Stolen Generations Redress Scheme (Territories Redress Scheme).

knowmore uses a multidisciplinary model to provide trauma-informed, client-centred and culturally safe legal assistance to clients. knowmore has offices in Sydney, Melbourne, Brisbane, Perth, Adelaide and Darwin. Our service model brings together lawyers, social workers and counsellors, Aboriginal and Torres Strait Islander engagement advisors and financial counsellors to provide coordinated support to clients.

knowmore is funded by the Commonwealth Government, represented by the Departments of Attorney-General and Social Services and the National Indigenous Australians Agency.

## Our clients

In our Royal Commission-related work, from July 2013 to the end of March 2018, knowmore assisted 8,954 individual clients. The majority of those clients were survivors of institutional child sexual abuse. Almost a quarter (24%) of the clients assisted during our Royal Commission work identified as Aboriginal and/or Torres Strait Islander peoples.

Since the commencement of the National Redress Scheme for survivors of institutional child sexual abuse on 1 July 2018 to 31 May 2024, knowmore has received 133,180 calls to its 1800 telephone line and has completed intake processes for, and has assisted or is currently assisting, 18,719 clients. Almost 2 in 5 clients (38%) identify as Aboriginal and/or Torres Strait Islander peoples. More than 1 in 8 clients (13%) are classified as priority clients due to advanced age and/or immediate and serious health concerns including terminal cancer or other life-limiting illness.

## Our clients in Queensland

knowmore has a significant client base in Queensland – 27 per cent of our clients reside in the state. We therefore have a strong interest in improving human rights protection for children, victims and survivors in Queensland.

Many of our clients experienced child sexual abuse in prison. We therefore also have a strong interest in keeping children out of prison and ensuring that children are safe in all places.

# knowmore's submission

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knowmore supports strengthening Queensland's Human Rights Act, with a focus on the human rights of children, victims and survivors.

## knowmore's overall approach to the review

As a nation-wide service assisting victims and survivors of child sexual abuse, knowmore works with people who have experienced severe violations of their human rights and sees the impact of inadequate human rights protections for children, victims and survivors. We strongly support Human Rights Acts being implemented in all Australian jurisdictions and recognise that Queensland has taken this significant step with the *Human Rights Act 2019* (Queensland's Human Rights Act), which started on 1 January 2020.<sup>1</sup>

We welcome the guidance provided by the Queensland Human Rights Commission (QHRC) in the QHRC's issues paper (issues paper) for the independent review of Queensland's Human Rights Act (independent review).<sup>2</sup> As the issues paper observes, Queensland's Human Rights Act has made a real difference for people in Queensland.<sup>3</sup> With reference to our work, we observe that many elements of Queensland's Human Rights Act that benefit people in Queensland broadly also benefit children and victims and survivors of child sexual abuse (see discussion on pages 14 to 15). At the same time, we recognise that children, victims and survivors have distinct experiences and needs. Queensland's Human Rights Act does not adequately recognise this at present.

In this submission, we first make some general comments about:

- the current inadequate protection of the human rights of children and of victims and survivors of child sexual abuse
- the issues paper.

We then make specific comments about:

- improving protection of the human rights of victims and survivors of child sexual abuse
- adding a participation duty and an equal access to justice duty to Queensland's Human Rights Act
- addressing problems with the override provision.

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1 Queensland Government, *Human rights*, 11 April 2024, accessed 18 June 2024, <[www.qld.gov.au/law/your-rights/human-rights](http://www.qld.gov.au/law/your-rights/human-rights)>.

2 Queensland Human Rights Commission, *Strengthening the Human Rights Act: key issues paper* (issues paper), June 2024, <[www.qhrc.qld.gov.au/\\_data/assets/pdf\\_file/0010/48961/Stengthening-the-Human-Rights-Act-key-issues-paper.pdf](http://www.qhrc.qld.gov.au/_data/assets/pdf_file/0010/48961/Stengthening-the-Human-Rights-Act-key-issues-paper.pdf)>.

3 Issues paper, p 3.

## List of recommendations

### Recommendation 1

The Queensland Government should strengthen Queensland's Human Rights Act by implementing reforms of the nature outlined in the Queensland Human Rights Commission's issues paper for the independent review.

### Recommendation 2

The Queensland Government should ensure that victims and survivors of child sexual abuse have access to free, independent and trauma-informed legal assistance and wraparound support in relation to the comprehensive range of legal issues that victims and survivors experience. This should include assisting victims and survivors of child sexual abuse to raise human rights considerations when dealing with public entities and to make relevant human rights complaints.

### Recommendation 3

The Queensland Government should improve how existing rights under Queensland's Human Rights Act work for victims and survivors, including by implementing reforms of the nature outlined on pages 8 to 10 of the Queensland Human Rights Commission's issues paper.

### Recommendation 4

The Queensland Government should add specific, enforceable protection of victims' and survivors' rights to Queensland's Human Rights Act.

### Recommendation 5

The Queensland Government should add a participation duty and an equal access to justice duty to Queensland's Human Rights Act, reflecting the Australian Human Rights Commission's model for an Australian Human Rights Act.

### Recommendation 6

The Queensland Government should reverse the legislative amendments that have involved an override of Queensland's Human Rights Act by:

- repealing the 'offence to breach conditions of bail' for children
- repealing the power to hold children in watchhouses.

### Recommendation 7

The Queensland Government should implement reforms to address the lack of effective limits on passing laws that breach human rights and place children at heightened risk of being sexually abused.

## Inadequate protection of the human rights of children, victims and survivors

There is currently inadequate protection of the human rights of people in all parts of Australia, including Queensland, contributing to abuses of people's human rights and inadequate responses when this occurs.<sup>4</sup> knowmore particularly sees this in relation to 2 issues, which we discuss further below:

- the widespread, ongoing problem of child sexual abuse
- the significant barriers many victims and survivors of child sexual abuse face in seeking safety, justice and redress.

Before discussing these issues in more detail, we wish to emphasise the importance of an intersectional approach to understanding the experiences of children, victims and survivors. An intersectional approach recognises that social groups are not homogenous or fixed, and that identities can overlap to create compounding experiences of marginalisation.<sup>5</sup> In relation to children, victims and survivors, we note:

- the Australian Child Maltreatment Study reported that girls were twice as likely as boys to experience child sexual abuse<sup>6</sup>

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4 See generally Australian Human Rights Commission, *Free and Equal: A Human Rights Act for Australia*, December 2022, pp 46–59, <[humanrights.gov.au/sites/default/files/free\\_equal\\_hra\\_2022\\_-\\_main\\_report\\_rgb\\_0\\_0.pdf](https://www.humanrights.gov.au/sites/default/files/free_equal_hra_2022_-_main_report_rgb_0_0.pdf)>.

5 United Nations Network on Racial Discrimination and Protection of Minorities, *Guidance note on intersectionality, racial discrimination and protection of minorities*, 22 September 2022, p 3, <[www.ohchr.org/sites/default/files/documents/issues/minorities/30th-anniversary/2022-09-22/GuidanceNoteonIntersectionality.pdf](https://www.ohchr.org/sites/default/files/documents/issues/minorities/30th-anniversary/2022-09-22/GuidanceNoteonIntersectionality.pdf)>.

6 Australian Child Maltreatment Study, *The prevalence and impact of child maltreatment in Australia: findings from the Australian Child Maltreatment Study: brief report*, 2023, p 17, <[www.acms.au/resources/the-prevalence-and-impact-of-child-maltreatment-in-australia-findings-from-the-australian-child-maltreatment-study-2023-brief-report/](https://www.acms.au/resources/the-prevalence-and-impact-of-child-maltreatment-in-australia-findings-from-the-australian-child-maltreatment-study-2023-brief-report/)>.

- the Disability Royal Commission found that people with disability are more than twice as likely to experience physical or sexual abuse before the age of 15 than people without disability<sup>7</sup>
- the Royal Commission into Institutional Responses to Child Sexual Abuse (Royal Commission) observed that ‘Aboriginal and Torres Strait Islander children, children with disability and children from culturally and linguistically diverse backgrounds were more likely to encounter circumstances that increased their risk of abuse in institutions, reduced their ability to disclose or report abuse and, if they did disclose or report, reduced their chances of receiving an adequate response’.<sup>8</sup>

These findings are consistent with knowmore’s experience – many of our clients experience intersectional marginalisation, related to their experience of child sexual abuse and their experience of seeking safety, justice and redress (see further discussion below). For example, in a recent submission to the Australian Parliament’s Joint Standing Committee on Implementation of the National Redress Scheme, we provided information about the experiences of survivors who are both Aboriginal and/or Torres Strait Islander people and people with disability.<sup>9</sup> These survivors may have experiences that are distinct from Aboriginal and/or Torres Strait Islander survivors who do not have a disability, and from survivors with disability who are not Aboriginal and/or Torres Strait Islander peoples.

Children, victims and survivors who experience intersectional marginalisation disproportionately experience human rights abuses. This reinforces the importance of ensuring that Queensland’s Human Rights Act includes comprehensive human rights protection.

## The widespread, ongoing problem of child sexual abuse

Child sexual abuse is obviously a severe violation of a child’s human rights, with impacts extending across the victim or survivor’s life.<sup>10</sup> These include impacts on:

- physical health
- mental health
- relationships

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7 Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability (Disability Royal Commission), *Final report: volume 3, nature and extent of violence, abuse, neglect and exploitation*, 29 September 2023, p 10, <[disability.royalcommission.gov.au/publications/final-report-volume-3-nature-and-extent-violence-abuse-neglect-and-exploitation](https://disability.royalcommission.gov.au/publications/final-report-volume-3-nature-and-extent-violence-abuse-neglect-and-exploitation)>.

8 Royal Commission into Institutional Responses to Child Sexual Abuse (Royal Commission), *Final report: volume 2, nature and cause*, December 2017, p 3, <[www.childabuseroyalcommission.gov.au/nature-and-cause](http://www.childabuseroyalcommission.gov.au/nature-and-cause)>.

9 knowmore, *Submission to the Joint Standing Committee on Implementation of the National Redress Scheme*, 27 February 2023, pp 25–26, <[knowmore.org.au/wp-content/uploads/2023/03/submission-joint-standing-committee-on-implementation-of-the-national-redress-scheme-cth.pdf](https://knowmore.org.au/wp-content/uploads/2023/03/submission-joint-standing-committee-on-implementation-of-the-national-redress-scheme-cth.pdf)>.

10 Royal Commission, *Final report: volume 3, impacts*, December 2017, p 9, <[www.childabuseroyalcommission.gov.au/impacts](http://www.childabuseroyalcommission.gov.au/impacts)>.



- connection to culture
- education
- employment
- housing
- economic security.<sup>11</sup>

All of these impacts have human rights implications, which are not fully addressed by Queensland’s Human Rights Act.

The Royal Commission highlighted that child sexual abuse has been widespread in Australian institutions, affecting ‘countless thousands’ of children and occurring ‘in almost every type of institution where children reside or attend for educational, recreational, sporting, religious or cultural activities’.<sup>12</sup> Almost 8,000 victims and survivors shared their experiences with the Royal Commission in private sessions, identifying almost 3,500 institutions where child sexual abuse occurred.<sup>13</sup> In private sessions between May 2013 and May 2017, this included 476 institutions in Queensland, or about 15% of institutions identified in private sessions during that time period.<sup>14</sup>

Many Queensland inquiries have also highlighted the issue of child abuse, including child sexual abuse. These include:

- the Commission of Inquiry into Abuse of Children in Queensland Institutions, also known as the Forde Inquiry (final report dated 31 May 1999)<sup>15</sup>
- the former Queensland Crime and Misconduct Commission’s inquiry into abuse of children in foster care (report dated 6 January 2004)<sup>16</sup>
- the Queensland Child Protection Commission of Inquiry (final report dated 28 June 2013)<sup>17</sup>

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11 Royal Commission, *Final report: volume 3, impacts*, pp 73–156.

12 Royal Commission, *Final report: preface and executive summary*, December 2017, pp 1 and 5, <[www.childabuseroyalcommission.gov.au/preface-and-executive-summary](http://www.childabuseroyalcommission.gov.au/preface-and-executive-summary)>.

13 Royal Commission, *Final information update*, December 2017, p 1, <[www.childabuseroyalcommission.gov.au/sites/default/files/final\\_information\\_update.pdf](http://www.childabuseroyalcommission.gov.au/sites/default/files/final_information_update.pdf)>.

14 Royal Commission, *Final report: volume 2, nature and cause*, p 279.

15 Commission of Inquiry into Abuse of Children in Queensland Institutions (Forde Inquiry), *Final report*, 31 May 1999, <[fordefoundation.org.au/wp-content/uploads/2020/05/forde-inquiry-report.pdf](http://fordefoundation.org.au/wp-content/uploads/2020/05/forde-inquiry-report.pdf)>.

16 Queensland Crime and Misconduct Commission, *Protecting children: an inquiry into abuse of children in foster care*, 6 January 2004, <[www.ccc.qld.gov.au/sites/default/files/Docs/Public-Hearings/Abuse-of-children-in-foster-care/Protecting-children-An-inquiry-into-abuse-of-children-in-foster-care-Report-2004.pdf](http://www.ccc.qld.gov.au/sites/default/files/Docs/Public-Hearings/Abuse-of-children-in-foster-care/Protecting-children-An-inquiry-into-abuse-of-children-in-foster-care-Report-2004.pdf)>.

17 Queensland Child Protection Commission of Inquiry, *Queensland Child Protection Commission of Inquiry*, accessed 18 June 2024, <[www.childprotectioninquiry.qld.gov.au/](http://www.childprotectioninquiry.qld.gov.au/)>.

- the Queensland Women’s Safety and Justice Taskforce (reports dated 2 December 2021 and 1 July 2022).<sup>18</sup>

These inquiries have also highlighted the heightened risk of child sexual abuse for children in out-of-home care and prison, consistent with the detailed findings of volumes 12 and 15 of the Royal Commission’s Final Report.<sup>19</sup> We make further comments about the heightened risk of child sexual abuse for children in prison on pages 23 to 25 below.

The Royal Commission only presents a partial image of the scale of child sexual abuse in Australia (including Queensland), as many survivors of child sexual abuse did not speak with the Royal Commission.<sup>20</sup> Further, the Royal Commission did not address non-institutional child sexual abuse — for example, child sexual abuse within families.<sup>21</sup> A fuller image has emerged from the Australian Child Maltreatment Study, which recently reported that 28.5% of the Australian population had experienced child sexual abuse.<sup>22</sup> This suggests that more than 1.5 million people (1,575,566) in Queensland have experienced child sexual abuse.<sup>23</sup>

The Royal Commission made 409 recommendations,<sup>24</sup> the majority of which were directed to Australian governments, including the Queensland Government. Although the Queensland Government has made considerable reforms to better protect children from child sexual abuse, it has not fully implemented the Royal Commission’s recommendations — on the Queensland Government’s self-assessment in its fifth and final progress report, 97 recommendations remained unimplemented.<sup>25</sup>

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18 Queensland Women’s Safety and Justice Taskforce, *Publications*, accessed 18 June 2024, <[www.womenstaskforce.qld.gov.au/publications](http://www.womenstaskforce.qld.gov.au/publications)>.

19 Royal Commission, *Final report: volume 12, contemporary out-of-home care*, December 2017, <[www.childabuseroyalcommission.gov.au/contemporary-out-home-care](http://www.childabuseroyalcommission.gov.au/contemporary-out-home-care)>; Royal Commission, *Final report: volume 15, contemporary detention environments*, December 2017, <[www.childabuseroyalcommission.gov.au/contemporary-detention-environments](http://www.childabuseroyalcommission.gov.au/contemporary-detention-environments)>.

20 A survivor’s decision about whether, when and how to disclose that they have experienced child sexual abuse is influenced by a variety of factors. Survivors often face barriers to disclosure and some survivors never disclose. See Royal Commission, *Final report: volume 4, identifying and disclosing child sexual abuse*, December 2017, pp 9–11, <[www.childabuseroyalcommission.gov.au/identifying-and-disclosing-child-sexual-abuse](http://www.childabuseroyalcommission.gov.au/identifying-and-disclosing-child-sexual-abuse)>.

21 Royal Commission, *Final report: volume 1, our inquiry*, December 2017, p 18, <[www.childabuseroyalcommission.gov.au/our-inquiry](http://www.childabuseroyalcommission.gov.au/our-inquiry)>.

22 Australian Child Maltreatment Study, p 17.

23 28.5% of the population of Queensland, which was 5,528,300 as at 31 December 2023. See Australian Bureau of Statistics, *National, state and territory population*, 13 June 2024, accessed 19 June 2024, <[www.abs.gov.au/statistics/people/population/national-state-and-territory-population/latest-release](http://www.abs.gov.au/statistics/people/population/national-state-and-territory-population/latest-release)>.

24 Royal Commission, *Final report recommendations*, December 2017, <[www.childabuseroyalcommission.gov.au/recommendations](http://www.childabuseroyalcommission.gov.au/recommendations)>.

25 See Queensland Government, *Queensland Government fifth annual progress report: Royal Commission into Institutional Responses to Child Sexual Abuse*, December 2022, p 14, <[www.dcssds.qld.gov.au/resources/dcsyw/about-us/reviews-inquiries/qld-gov-response/gov-annual-progress-report-child-abuse-2022.pdf](http://www.dcssds.qld.gov.au/resources/dcsyw/about-us/reviews-inquiries/qld-gov-response/gov-annual-progress-report-child-abuse-2022.pdf)>.

Child sexual abuse — and how society responds — remains a widespread, ongoing problem,<sup>26</sup> with severe human rights implications.

## Barriers for victims and survivors seeking safety, justice and redress

Victims and survivors of child sexual abuse often experience breaches of their human rights, extending well beyond the immediate impacts of the abuse, into and across the victim or survivor's adult life.<sup>27</sup> In addition to the impacts noted on pages 8 to 9, many victims and survivors face significant barriers in seeking safety, justice and redress.

For example, criminal legal processes for child sex offences often fail to adequately recognise that a fair hearing includes fairness to victims, survivors and the broader community (see further discussion on pages 14 to 22).<sup>28</sup> The independent review notes the charter of victims' rights (victims' rights charter) in the *Victims of Crime Assistance Act 2009* (Qld).<sup>29</sup> However, the victims' rights charter does not adequately protect the human rights of victims and survivors in Queensland. In particular, a significant and fundamental shortcoming of Queensland's victims' rights charter is that the victims' rights charter is legally unenforceable.<sup>30</sup>

In addition, redress, compensation and support processes often fail to adequately recognise:

- the impacts of child sexual abuse on victims and survivors, including distrust of institutions and other impacts that can make it difficult for victims and survivors to access services<sup>31</sup>
- victims' and survivors' human rights, including the right to accessible and effective remedies for human rights violations (see further discussion on pages 17 to 19).<sup>32</sup>

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26 Australian Child Maltreatment Study, p 18.

27 Royal Commission, *Final report: volume 3, impacts*, p 9.

28 See, for example, Royal Commission, *Criminal justice report: parts III to VI*, August 2017, p 521, <[www.childabuseroyalcommission.gov.au/criminal-justice](http://www.childabuseroyalcommission.gov.au/criminal-justice)>; ACT Human Rights Commission, *Submission to the inquiry into Australia's Human Rights Framework*, 1 July 2023, p 8, <[www.aph.gov.au/DocumentStore.ashx?id=fc1eeb51-25b9-4b7d-9710-813238c23d5a&subId=745757](http://www.aph.gov.au/DocumentStore.ashx?id=fc1eeb51-25b9-4b7d-9710-813238c23d5a&subId=745757)>.

29 Independent review of the Human Rights Act (independent review), *For the general public*, 15 May 2024, accessed 18 June 2024, <[www.humanrightsreview.qld.gov.au/discussion-questions/general-public](http://www.humanrightsreview.qld.gov.au/discussion-questions/general-public)>.

30 *Victims of Crime Assistance Act 2009* (Qld), section 7.

31 Royal Commission, *Final report: volume 3, impacts*, pp 187–188.

32 United Nations Human Rights Committee, *General Comment No. 31: The Nature of the General Legal Obligation Imposed on States Parties to the Covenant*, 26 May 2004, pp 6–8, <[tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolno=CCPR%2F2001%2FRev.1%2FAdd.13&Lang=en](http://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CCPR%2F2001%2FRev.1%2FAdd.13&Lang=en)>. See also *Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power*, 29 November 1985, <[www.ohchr.org/en/instruments-mechanisms/instruments/declaration-basic-principles-justice-victims-crime-and-abuse](http://www.ohchr.org/en/instruments-mechanisms/instruments/declaration-basic-principles-justice-victims-crime-and-abuse)>.

For example, knowmore assists many victims and survivors of child sexual abuse in all states and territories to consider their redress and compensation options.<sup>33</sup> For many victims and survivors who experienced child sexual abuse in Queensland, the Victim Assist scheme is an important option.<sup>34</sup> However, victims and survivors who experienced a violent crime in Queensland before 1 December 2009 are not assessed for Victim Assist under current eligibility requirements. Instead, they must navigate complex transitional provisions that apply differently depending on when the violent crime occurred.<sup>35</sup> These transitional provisions often impose insurmountable barriers to accessing financial assistance under Victim Assist for victims and survivors who experienced child sexual abuse in Queensland before 1 December 2009. Additionally, victims and survivors who were abused before 1969 are precluded from accessing Victim Assist or any other victims of crime scheme.

As highlighted on pages 7 to 8, the barriers to safety, justice and redress are often compounded for victims and survivors of child sexual abuse who experience intersectional marginalisation. A particularly unjust dynamic exists for Aboriginal and/or Torres Strait Islander peoples, whereby Australian governments disproportionately place Aboriginal and/or Torres Strait Islander children in prison and out-of-home care,<sup>36</sup> where children are at heightened risk of being sexually abused,<sup>37</sup> only to later deny many of those same Aboriginal and/or Torres Strait Islander people an adequate legal response to the abuse.<sup>38</sup>

knowmore has made detailed comments in previous submissions about improving support for victims and survivors of child sexual abuse in Queensland, including support in relation

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33 knowmore does not provide legal advice about civil compensation. We refer clients to private lawyers for this assistance.

34 See generally Victim Assist Queensland, *Victim Assist Queensland*, accessed 18 June 2024, <[www.qld.gov.au/law/crime-and-police/victim-assist-queensland](http://www.qld.gov.au/law/crime-and-police/victim-assist-queensland)>.

35 See Caxton Legal Centre, *Queensland Law Handbook: assisting victims of crime, transitional provisions*, 12 September 2018, accessed 18 June 2024 <[queenslandlawhandbook.org.au/the-queensland-law-handbook/offenders-and-victims/assisting-victims-of-crime/transitional-provisions/](http://queenslandlawhandbook.org.au/the-queensland-law-handbook/offenders-and-victims/assisting-victims-of-crime/transitional-provisions/)>.

36 58% of young people in detention aged 10 and over are Aboriginal and/or Torres Strait Islander peoples. 43% of children in out-of-home care are Aboriginal and/or Torres Strait Islander peoples. See Australian Institute of Health and Welfare, *Youth justice in Australia 2022–23: detention*, 28 March 2024, accessed 4 June 2024, <[www.aihw.gov.au/reports/youth-justice/youth-justice-in-australia-annual-report-2022-23/contents/detention](http://www.aihw.gov.au/reports/youth-justice/youth-justice-in-australia-annual-report-2022-23/contents/detention)>; Australian Institute of Health and Welfare, *Child protection Australia 2021–22*, 7 May 2024, accessed 4 June 2024, <[www.aihw.gov.au/reports/child-protection/child-protection-australia-2021-22/contents/insights](http://www.aihw.gov.au/reports/child-protection/child-protection-australia-2021-22/contents/insights)>.

37 The Royal Commission found that 75% of Aboriginal and/or Torres Strait Islander survivors experienced child sexual abuse in out-of-home care, while 15.2% of Aboriginal and/or Torres Strait Islander survivors experienced child sexual abuse in youth detention. See Royal Commission, *Final report: volume 5, private sessions*, December 2017, p 400, table P.13, <[www.childabuseroyalcommission.gov.au/final-report-private-sessions](http://www.childabuseroyalcommission.gov.au/final-report-private-sessions)>.

38 See knowmore, *Submission to the Joint Standing Committee on Implementation of the National Redress Scheme*, pp 49–50.

to the criminal legal system and under Victim Assist.<sup>39</sup> We make further comments below about the significant potential of Queensland’s Human Rights Act to better protect the human rights of victims and survivors of child sexual abuse (see especially pages 14 to 19).

## General comments about the issues paper

We note that the issues paper outlines a range of reforms to strengthen Queensland’s Human Rights Act.<sup>40</sup> knowmore generally supports reforms of this nature. While we do not comment on every reform discussed in the issues paper, we particularly support and make further comments about the following reforms:

- improving how existing rights under Queensland’s Human Rights Act work for victims and survivors (see pages 15 to 16)<sup>41</sup>
- adding ‘a pathway to the courts for standalone human rights claims’ (see discussion on page 8)<sup>42</sup>
- adding a participation duty to Queensland’s Human Rights Act (see pages 19 to 21)<sup>43</sup>
- addressing problems with the override provision in Queensland’s Human Rights Act (see pages 22 to 28).<sup>44</sup>

### Recommendation 1

The Queensland Government should strengthen Queensland’s Human Rights Act by implementing reforms of the nature outlined in the Queensland Human Rights Commission’s issues paper for the independent review.

We also wish to highlight the QHRC’s comments about the need for adequate funding for community legal centres to ensure the full and effective implementation of Queensland’s Human Rights Act in practice:

*Providing adequate, ongoing, and stable funding to the community legal sector could address these concerns [about the human rights complaint process in Queensland] by maximising the benefits of the internal complaint process, addressing power imbalances that arise when an individual is unrepresented, and increasing the chance of a positive outcome from individual complaints.*<sup>45</sup>

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39 See, for example, knowmore, *Submission to the inquiry into youth justice reform in Queensland*, 9 January 2024, pp 26–43, <[knowmore.org.au/wp-content/uploads/2024/01/submission-inquiry-into-youth-justice-reform-qld.pdf](https://knowmore.org.au/wp-content/uploads/2024/01/submission-inquiry-into-youth-justice-reform-qld.pdf)>.

40 See issues paper, p 2.

41 Issues paper, pp 8–10.

42 Issues paper, p 4.

43 Issues paper, p 11.

44 Issues paper, pp 12–13.

45 Issues paper, p 6.

knowmore welcomes this recognition of the vital role played by community legal centres in protecting the human rights of people experiencing marginalisation. We have made detailed comments in previous submissions about the need for all Australian governments, including the Queensland Government, to ensure that victims and survivors of child sexual abuse have access to free, independent and trauma-informed legal assistance and wraparound support in relation to the comprehensive range of legal issues that victims and survivors experience.<sup>46</sup> This should include assisting victims and survivors of child sexual abuse to raise human rights considerations when dealing with public entities<sup>47</sup> and to make relevant human rights complaints.<sup>48</sup>

### **Recommendation 2**

The Queensland Government should ensure that victims and survivors of child sexual abuse have access to free, independent and trauma-informed legal assistance and wraparound support in relation to the comprehensive range of legal issues that victims and survivors experience. This should include assisting victims and survivors of child sexual abuse to raise human rights considerations when dealing with public entities and to make relevant human rights complaints.

## **Improving protection of the human rights of victims and survivors**

As the issues paper notes, many elements of Queensland’s Human Rights Act are beneficial for victims and survivors of violent crime, including victims and survivors of child sexual abuse:

*The rights and interests of victims of violent crimes are protected in the Act by several rights ... Some of these rights require public entities to take positive action to protect people from violence committed by other individuals, and to respond to those crimes appropriately when they occur. Others guide the way that victims should be treated in police investigations and court proceedings.*<sup>49</sup>

This is consistent with experience internationally and in other Australian jurisdictions that have implemented Human Rights Acts. knowmore has made detailed comments in previous submissions about the benefits of Human Rights Acts generally for victims and survivors of

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46 See, for example, knowmore, *Submission to the Australian Law Reform Commission’s inquiry into justice responses to sexual violence*, 7 June 2024, pp 14–18, <[knowmore.org.au/wp-content/uploads/2024/06/submission-justice-responses-to-sexual-violence-cth.pdf](https://knowmore.org.au/wp-content/uploads/2024/06/submission-justice-responses-to-sexual-violence-cth.pdf)>.

47 See *Human Rights Act 2019* (Qld), section 58.

48 See *Human Rights Act 2019* (Qld), section 64.

49 Issues paper, p 8.

child sexual abuse.<sup>50</sup> Despite this, there remains inadequate protection of the human rights of victims and survivors in Queensland, contributing to ongoing abuses of their human rights and inadequate responses when this occurs (as discussed on pages 7 to 13).

We make comments below about 2 sets of reforms that will improve how Queensland's Human Rights Act works for victims and survivors of violent crime, including victims and survivors of child sexual abuse:

- improving how existing rights under Queensland's Human Rights Act work for victims and survivors
- adding specific protection of victims' and survivors' rights to Queensland's Human Rights Act.

### Improving how existing rights work for victims and survivors

We note that the issues paper explores a range of reforms to improve how existing rights under Queensland's Human Rights Act work for victims and survivors.<sup>51</sup> These reforms are modest and generally about clarifying how existing rights should apply in practice – for example, the right to a fair hearing (discussed on page 11 above), the right to security of person, and the right to protection from torture and cruel, inhuman or degrading treatment. For example, the issues paper comments:

*In some jurisdictions, clear elaboration of authorities' positive duties [to prevent and respond to violent crime] has been a powerful way to improve responses for victim-survivors of rape, family violence, and other violent crime, and to ensure accountability where serious failures of the criminal justice system's response occur.*

*Judicial interpretation of the Act has recognised duties owed by public entities to take positive steps to protect rights under the Act. However there may be scope to make some duties, including the duty to undertake an effective investigation, even clearer.*<sup>52</sup>

knowmore supports reforms of this nature. In relation to investigations generally, our clients are often frustrated by barriers that impact on their ability to meaningfully participate in police and prosecution processes.<sup>53</sup> We recommend that the Queensland Government improve how existing rights under Queensland's Human Rights Act work for victims and survivors, including by implementing reforms of the nature outlined on pages 8 to 10 of the issues paper.

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50 See, for example, knowmore, *Submission to the inquiry into the potential for a Human Rights Act for South Australia*, 15 February 2024, pp 12–15, <[knowmore.org.au/wp-content/uploads/2024/02/submission-inquiry-into-the-potential-for-a-human-rights-act-for-sa.pdf](https://knowmore.org.au/wp-content/uploads/2024/02/submission-inquiry-into-the-potential-for-a-human-rights-act-for-sa.pdf)>.

51 Issues paper, pp 8–10.

52 Issues paper, pp 9–10.

53 For further discussion, see knowmore, *Submission to the Australian Law Reform Commission's inquiry into justice responses to sexual violence*, pp 31–33.

### Recommendation 3

The Queensland Government should improve how existing rights under Queensland’s Human Rights Act work for victims and survivors, including by implementing reforms of the nature outlined on pages 8 to 10 of the Queensland Human Rights Commission’s issues paper.

## Adding specific protection of victims’ and survivors’ rights to Queensland’s Human Rights Act

While knowmore supports reforms to improve how existing rights under Queensland’s Human Rights Act work for victims and survivors (as discussed above), these reforms on their own are not sufficient to adequately recognise and protect the human rights of victims and survivors. knowmore has consistently advocated for Human Rights Acts in all Australian jurisdictions, including Queensland, to include specific protection of victims’ and survivors’ rights.<sup>54</sup>

The QHRC has powerfully articulated the importance of specific protection of victims’ rights in a Human Rights Act:

*It has been noted that promoting rights for victims is an attempt to address the persistent difficulties experienced by institutions and professionals to adequately meet the expectations of victims of crime. Having violence inflicted on them and experienced victimisation separates victims from their usual place in society. It disrupts the sense of trust and belonging people generally (though variably) have in others.*<sup>55</sup>

Specific protection of victims’ and survivors’ rights aligns with recommendations from several inquiries. For example:

- The Women’s Safety and Justice Taskforce and the Queensland Parliament’s former Legal Affairs and Safety Committee both recommended that the Queensland Government consider incorporating victims’ rights into Queensland’s Human Rights

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54 See, for example, knowmore, *Submission to the inquiry into the potential for a Human Rights Act for South Australia*, pp 16–18; knowmore, *Submission to the inquiry into Australia’s Human Rights Framework*, 17 July 2023, pp 11–12, <[knowmore.org.au/wp-content/uploads/2023/08/submission-inquiry-into-australias-human-rights-framework-cth.pdf](https://knowmore.org.au/wp-content/uploads/2023/08/submission-inquiry-into-australias-human-rights-framework-cth.pdf)>; knowmore, *Submission on Queensland’s Human Rights Bill 2018*, 25 November 2018, p 4, <[knowmore.org.au/wp-content/uploads/2020/11/submission-human-rights-bill-2018-qld.pdf](https://knowmore.org.au/wp-content/uploads/2020/11/submission-human-rights-bill-2018-qld.pdf)>.

55 Queensland Human Rights Commission, *Submission to the inquiry into Australia’s Human Rights Framework*, 3 July 2023, p 51, paragraph 265, <[www.aph.gov.au/DocumentStore.ashx?id=b3699ab7-9b83-4b0f-b47b-a45ba35794da&subId=745481](https://www.aph.gov.au/DocumentStore.ashx?id=b3699ab7-9b83-4b0f-b47b-a45ba35794da&subId=745481)>.



Act. These recommendations were supported by the Queensland Government –<sup>56</sup> we recognise that they are reflected in the terms of reference and discussion questions for the independent review.<sup>57</sup>

- The Victorian Law Reform Commission recommended that Victoria’s Charter of Human Rights and Responsibilities be amended to include specific minimum guarantees for victims, namely:
  - to be acknowledged as a participant with an interest in the criminal proceedings
  - to be treated with respect at all times
  - to be protected from unnecessary trauma, intimidation and distress when giving evidence.<sup>58</sup>
- The Victorian Victims of Crime Commissioner recommended that Victoria’s Charter of Human Rights and Responsibilities be amended to ‘recognise victims’ unique status in the criminal justice system and uphold specific rights for victims of crime’, including ‘a right to be protected from unreasonable trial delay’.<sup>59</sup>

Specific protection of victims’ and survivors’ rights is also supported by international human rights standards – for example, as noted on page 11, there is a right to accessible and effective remedies for human rights violations, arising from article 2 of the *International Covenant on Civil and Political Rights*.<sup>60</sup> The United Nations General Assembly has also adopted the *Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power*, which states the following key principle:

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56 Queensland Government, *Response to the report of the Queensland Women’s Safety and Justice Taskforce, Hear Her Voice – Report two: Women and girls’ experiences across the criminal justice system*, 21 November 2022, p 13,

<[www.publications.qld.gov.au/dataset/wshtaskforceresponse/resource/a0705c73-62bd-4263-ab2c-694e5735d058](http://www.publications.qld.gov.au/dataset/wshtaskforceresponse/resource/a0705c73-62bd-4263-ab2c-694e5735d058)>; Queensland Government, *Inquiry into support provided to victims of crime: Queensland Government response*, 19 May 2023, p 4, <[documents.parliament.qld.gov.au/com/LASC-C96E/202324BE-8296/Government%20Response%20to%20LASC%20Report%20No.%2048,%20Inquiry%20into%20support%20provided%20into%20victims%20of%20crime.pdf](http://documents.parliament.qld.gov.au/com/LASC-C96E/202324BE-8296/Government%20Response%20to%20LASC%20Report%20No.%2048,%20Inquiry%20into%20support%20provided%20into%20victims%20of%20crime.pdf)>.

57 Independent review, *Terms of reference*, 15 May 2024,

<[www.humanrightsreview.qld.gov.au/about-the-review/terms-of-reference](http://www.humanrightsreview.qld.gov.au/about-the-review/terms-of-reference)>; Independent review, *For the general public*.

58 Victorian Law Reform Commission, *Victims in the criminal trial process: report*, 22 November 2016, chapter 3, <[www.lawreform.vic.gov.au/publication/the-role-of-victims-of-crime-in-the-criminal-trial-process-report-2/](http://www.lawreform.vic.gov.au/publication/the-role-of-victims-of-crime-in-the-criminal-trial-process-report-2/)>.

59 Victorian Victims of Crime Commissioner, *Sidelined and silenced: systemic inquiry into victim participation in the justice system*, November 2023, pp 327 and 329, recommendations 5 and 6, <[victimsofcrimecommissioner.vic.gov.au/media/lpufjx5h/silenced-and-sidelined\\_systemic-inquiry-into-victim-participation.pdf](http://victimsofcrimecommissioner.vic.gov.au/media/lpufjx5h/silenced-and-sidelined_systemic-inquiry-into-victim-participation.pdf)>.

60 United Nations Human Rights Committee, *General Comment No. 31: The Nature of the General Legal Obligation Imposed on States Parties to the Covenant*, pp 6–8.

*Victims should be treated with compassion and respect for their dignity. They are entitled to access the mechanisms of justice and to prompt redress, as provided for by national legislation, for the harm that they have suffered.*<sup>61</sup>

Other international instruments also recognise rights for victims and survivors of crime, including victims and survivors of child sexual abuse.<sup>62</sup>

As noted on page 11, Queensland's victims' rights charter does not adequately protect the human rights of victims and survivors, with a significant and fundamental shortcoming of the victims' rights charter being that it is legally unenforceable.<sup>63</sup> Adding the rights from Queensland's victims' rights charter to Queensland's Human Rights Act would make victims' and survivors' rights legally enforceable. For example, it would generally:

- require public entities to properly consider victims' and survivors' rights when making decisions<sup>64</sup>
- require public entities to act compatibly with victims' and survivors' rights<sup>65</sup>
- require courts to interpret laws compatibly with victims' and survivors' rights<sup>66</sup>
- enable victims and survivors to enforce their specific rights in legal proceedings (subject to the 'piggy-back' requirement)<sup>67</sup>
- enable victims and survivors to complain about breaches of their specific rights to the QHRC<sup>68</sup> and to avail themselves of the QHRC's conciliation process.<sup>69</sup>

We also note that the issues paper recommends amending Queensland's Human Rights Act to add 'a pathway to the courts for standalone human rights claims'.<sup>70</sup> knowmore supports this recommendation, which would further improve the enforceability of specific victims' and survivors' rights under an amended Human Rights Act.

Adding specific protection of victims' and survivors' rights to Queensland's Human Rights Act would provide clear recognition of victims' and survivors' rights as human rights equal to

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61 *Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power*, article 4.

62 See, for example, *Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography*, 25 May 2000, article 8, <[www.ohchr.org/en/instruments-mechanisms/instruments/optional-protocol-convention-rights-child-sale-children-child](http://www.ohchr.org/en/instruments-mechanisms/instruments/optional-protocol-convention-rights-child-sale-children-child)>; *Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime*, 15 November 2000, article 6, <[www.ohchr.org/en/instruments-mechanisms/instruments/protocol-prevent-suppress-and-punish-trafficking-persons](http://www.ohchr.org/en/instruments-mechanisms/instruments/protocol-prevent-suppress-and-punish-trafficking-persons)>.

63 *Victims of Crime Assistance Act 2009* (Qld), section 7.

64 *Human Rights Act 2019* (Qld), section 58(1)(b).

65 *Human Rights Act 2019* (Qld), section 58(1)(a).

66 *Human Rights Act 2019* (Qld), section 48.

67 *Human Rights Act 2019* (Qld), section 59.

68 *Human Rights Act 2019* (Qld), section 64.

69 *Human Rights Act 2019* (Qld), section 79.

70 Issues paper, p 4.

all other human rights. It would also assist to embed a trauma-informed approach to victims and survivors across Queensland's legal system.<sup>71</sup>

knowmore recommends that the Queensland Government add specific, enforceable protection of victims' and survivors' rights to Queensland's Human Rights Act.<sup>72</sup>

#### Recommendation 4

The Queensland Government should add specific, enforceable protection of victims' and survivors' rights to Queensland's Human Rights Act.

## Adding a participation duty and an equal access to justice duty

We note that the issues paper supports adding a participation duty to Queensland's Human Rights Act, drawing on recent recommendations from the Australian Parliament's Joint Committee on Human Rights (PJCHR).<sup>73</sup> These recommendations expressed the PJCHR's support for an Australian Human Rights Act, broadly reflecting the model proposed by the Australian Human Rights Commission (AHRC) in its position paper, *Free and Equal: A Human Rights Act for Australia* (position paper). We also note that the AHRC's model includes an equal access to justice duty, connected with the participation duty.<sup>74</sup>

In knowmore's view, the Queensland Government should add a participation duty and an equal access to justice duty to Queensland's Human Rights Act, reflecting the AHRC's model for an Australian Human Rights Act. We make further comments about the participation duty and the equal access to justice duty below.

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71 See generally knowmore, *Submission to the Australian Law Reform Commission's inquiry into justice responses to sexual violence*, pp 13–20 and 50–54.

72 For further discussion about specific protection of victims' and survivors' rights in Human Rights Acts, see knowmore, *Inquiry into Australia's Human Rights Framework: answer to question taken on notice*, 17 October 2023, <[www.aph.gov.au/Parliamentary\\_Business/Committees/Joint/Human\\_Rights/HumanRightsFramework/Additional\\_Documents?docType=Answer%20to%20Question%20on%20Notice](http://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Human_Rights/HumanRightsFramework/Additional_Documents?docType=Answer%20to%20Question%20on%20Notice)>.

73 Issues paper, p 11; Australian Parliament (Parliamentary Joint Committee on Human Rights), *Inquiry into Australia's Human Rights Framework*, May 2024, p 310–312, recommendations 2 and 4, <[www.aph.gov.au/Parliamentary\\_Business/Committees/Joint/Human\\_Rights/HumanRightsFramework/Report](http://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Human_Rights/HumanRightsFramework/Report)>.

74 Australian Human Rights Commission, *Free and Equal: A Human Rights Act for Australia*, p 17.

### Recommendation 5

The Queensland Government should add a participation duty and an equal access to justice duty to Queensland's Human Rights Act, reflecting the Australian Human Rights Commission's model for an Australian Human Rights Act.

## The participation duty

Under the AHRC's model, a participation duty would primarily 'require public authorities to ensure the participation of certain groups and individuals in relation to policies and decisions that directly or disproportionately affect their rights'.<sup>75</sup> This would apply to children as follows:

*The participation duty in the Human Rights Act as applied to children would include two limbs: best interests of the child; and the right of the child to be heard. It would require that public authorities consider these principles when making decisions concerning children and their rights, and to enable participation by both an individual child subject to a decision, and groups of children where policy and laws are being made that affect their rights.*<sup>76</sup>

The AHRC provided detailed arguments for a participation duty in chapter 7 of the position paper. We also note the QHRC's comments about a participation duty in the issues paper:

*... taking into account a child's views ensures that decisions are not solely based on adult assumptions, and can lead to better, more relevant and informed decisions about children ... explicit acknowledgement of a participation duty would provide clarity and standardise requirements for participation at all levels and areas of government.*<sup>77</sup>

As noted above, knowmore supports adding a participation duty to Queensland's Human Rights Act. The Royal Commission observed that 'where children do not feel listened to, they are less likely to report abuse'.<sup>78</sup> The participation duty would also complement the Royal Commission's recommendation for institutions to implement the Child Safe Standards, which include that 'children participate in decisions affecting them and are taken seriously'.<sup>79</sup> The Child Safe Standards have been incorporated into the National Principles for Child Safe Organisations, which have been endorsed by the Australian Government and all state and territory governments, including the Queensland Government.<sup>80</sup>

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75 Australian Human Rights Commission, *Free and Equal: A Human Rights Act for Australia*, p 21.

76 Australian Human Rights Commission, *Free and Equal: A Human Rights Act for Australia*, p 202.

77 Issues paper, p 11.

78 Royal Commission, *Final report: volume 12, contemporary out-of-home care*, p 182.

79 Royal Commission, *Final report: volume 6, making institutions child safe*, December 2017, pp 211–212, <[www.childabuseroyalcommission.gov.au/making-institutions-child-safe](http://www.childabuseroyalcommission.gov.au/making-institutions-child-safe)>.

80 Council of Australian Governments, *National Principles for Child Safe Organisations*, accessed 19 June 2024, pp 6–7, <[childsafe.humanrights.gov.au/sites/default/files/2019-02/National\\_Principles\\_for\\_Child\\_Safe\\_Organisations2019.pdf](http://childsafe.humanrights.gov.au/sites/default/files/2019-02/National_Principles_for_Child_Safe_Organisations2019.pdf)>.

While our comments above focus on the participation duty as it applies to children, knowmore supports all aspects of the participation duty, including with respect to Aboriginal and/or Torres Strait Islander peoples and people with disability (see the discussion about intersectional marginalisation on pages 7 to 8 above).<sup>81</sup> With respect to Aboriginal and/or Torres Strait Islander peoples, we note that a participation duty would complement the distinct cultural rights recognised by section 28 of Queensland’s Human Rights Act, as well as Queensland’s treaty-making, truth-telling and healing processes for Aboriginal and/or Torres Strait Islander peoples.<sup>82</sup>

## The equal access to justice duty

An equal access to justice duty ‘would mean that public authorities have a positive duty to realise access to justice principles – and would require active steps by public authorities to ensure the provision of key elements of a functioning justice system’.<sup>83</sup> As the AHRC’s position paper recognises:

*The equal access to justice principle will complement the children’s participation duty by requiring the provision of specialist children’s legal assistance, advocates and adjustments to court procedures to facilitate their participation in judicial proceedings.*<sup>84</sup>

As with a participation duty (discussed on pages 20 to 21), knowmore supports adding an equal access to justice duty to Queensland’s Human Rights Act. The Royal Commission recognised that engaging with the legal system can be traumatic for survivors, ‘triggering the impacts of the abuse even after many years’.<sup>85</sup> This is consistent with our clients’ experiences. As we highlighted in our recent submission to the Australian Law Reform Commission’s inquiry into justice responses to sexual violence:

*Many victims and survivors of child sexual abuse achieve life-changing outcomes through the legal system. However, many are also let down by legal processes that are not survivor-focused – processes that are inaccessible, retraumatising and culturally unsafe. Many victims and survivors never receive justice for the abuse perpetrated against them as children and many feel that the legal system only exacerbated the harm.*<sup>86</sup>

Our submission to the Australian Law Reform Commission’s inquiry detailed the extensive barriers faced by victims and survivors of child sexual abuse, in all Australian jurisdictions, in seeking redress, justice and healing. One of the most significant barriers, relevant to an equal access to justice duty, is the lack of free, independent and trauma-informed legal assistance and wraparound support for victims and survivors of child sexual abuse (see the

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81 See issues paper, p 11.

82 See generally Queensland Government, *Queensland’s Path to Treaty*, 26 April 2024, accessed 25 June 2024, <[www.qld.gov.au/firstnations/treaty/queensland-path-to-treaty/progress](http://www.qld.gov.au/firstnations/treaty/queensland-path-to-treaty/progress)>.

83 Australian Human Rights Commission, *Free and Equal: A Human Rights Act for Australia*, p 22.

84 Australian Human Rights Commission, *Free and Equal: A Human Rights Act for Australia*, p 221.

85 Royal Commission, *Final report: volume 3, impacts*, p 184.

86 knowmore, *Submission to the Australian Law Reform Commission’s inquiry into justice responses to sexual violence*, p 12.

discussion on pages 13 to 14 above). An equal access to justice duty has significant potential to support access to legal assistance and wraparound support for victims and survivors of child sexual abuse.

Similarly, the Royal Commission made 12 recommendations about supporting victims and survivors of child sexual abuse to give their best evidence in criminal law cases. These recommendations included:

- allowing for the prerecording of evidence in child sexual abuse prosecutions<sup>87</sup>
- establishing intermediary schemes for prosecution witnesses with communication difficulties in child sexual abuse prosecutions<sup>88</sup>
- allowing children who are not competent to give sworn evidence to simply promise to tell the truth<sup>89</sup>
- providing adequate interpreting services.<sup>90</sup>

The equal access to justice duty would complement these recommendations.

## Addressing problems with the override provision

knowmore is alarmed that the Queensland Government has twice overridden the Human Rights Act. We are particularly alarmed that, on both occasions, the override was with respect to the human rights of children, in support of legislative amendments that place children at greater risk of being imprisoned – that is:

- making it a criminal offence for a child to breach conditions of bail
- allowing children to be held in watchhouses.

knowmore has long held concerns about the heightened risk of child sexual abuse for children in prison, which we discuss below. We then make comments about the legislative amendments that have involved overriding Queensland's Human Rights Act. We consider the QHRC's recommendation that the Queensland Government should repeal the override provision<sup>91</sup> and conclude that the Queensland Government must implement reforms that address the underlying issue – that is, the lack of effective limits on passing laws that breach human rights and place children at heightened risk of being sexually abused.

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87 Royal Commission, *Criminal justice report: parts VII to X and appendices*, August 2017, p 92, recommendation 52, <[www.childabuseroyalcommission.gov.au/criminal-justice](http://www.childabuseroyalcommission.gov.au/criminal-justice)>.

88 Royal Commission, *Criminal justice report: parts VII to X and appendices*, p 101, recommendation 59.

89 Royal Commission, *Criminal justice report: parts VII to X and appendices*, p 103, recommendation 62.

90 Royal Commission, *Criminal justice report: parts VII to X and appendices*, p 108, recommendation 63.

91 Issues paper, p 13.

## The heightened risk of child sexual abuse for children in prison

As noted above, knowmore has long held concerns about the heightened risk of child sexual abuse for children in prison, arising from findings of the Royal Commission<sup>92</sup> and our experience assisting victims and survivors of child sexual abuse.<sup>93</sup> knowmore has repeatedly raised these concerns, including with the Queensland Parliament's:

- Community Support and Services Committee<sup>94</sup>
- former Legal Affairs and Safety Committee (now the Community Safety and Legal Affairs Committee)<sup>95</sup>
- former Youth Justice Reform Select Committee (dissolved on 17 April 2024).<sup>96</sup>

The heightened risk of child sexual abuse in prison environments is linked to the fact that many of these places have characteristics of 'total' or 'closed' institutions.<sup>97</sup> These institutions 'are typically highly controlled and relatively closed to the outside world'.<sup>98</sup> The Royal Commission took a strong interest in total or closed institutions, due to the heightened risk of child sexual abuse in these places.<sup>99</sup>

The following characteristics of prison environments increase the risk of child sexual abuse:

- environmental characteristics, such as 'the deprivation of liberty and lack of privacy'
- operational characteristics, such as 'isolation and disconnection from family, friends, community and culture; lack of trusted adults; the power imbalance between adult staff and detained children; and the use of strict rules, discipline and punishment'

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92 Royal Commission, *Final report: volume 15, contemporary detention environments*, pp 20–21.

93 As noted on page 4, many of knowmore's clients experienced sexual abuse while they were children in prison.

94 See, for example, knowmore, *Submission on Queensland's Criminal Law (Raising the Age of Responsibility) Amendment Bill 2021*, 29 November 2021, pp 6–7, <[knowmore.org.au/wp-content/uploads/2021/12/knowmore.-Committees-version.-Submission-on-Raising-the-Age-of-Criminal-Responsibility-Bill.pdf](https://knowmore.org.au/wp-content/uploads/2021/12/knowmore.-Committees-version.-Submission-on-Raising-the-Age-of-Criminal-Responsibility-Bill.pdf)>.

95 See, for example, knowmore, *Submission on the Monitoring of Places of Detention (Optional Protocol to the Convention Against Torture) Bill 2022*, 11 January 2023, pp 5–7, <[knowmore.org.au/wp-content/uploads/2023/01/submission-monitoring-of-places-of-detention-opcat-bill-2022-qld.pdf](https://knowmore.org.au/wp-content/uploads/2023/01/submission-monitoring-of-places-of-detention-opcat-bill-2022-qld.pdf)>.

96 See, for example, knowmore, *Submission to the inquiry into youth justice reform in Queensland*, pp 12–15. For more information about the dissolution of the former Youth Justice Reform Select Committee, see Julius Dennis, *Disbanded Youth Justice Reform Select Committee hands down interim report today as advocates express 'disappointment'*, ABC News, 18 April 2024, accessed 19 June 2024, <[www.abc.net.au/news/2024-04-18/qld-the-youth-justice-reform-select-committee-disbanded-reaction/103738328](https://www.abc.net.au/news/2024-04-18/qld-the-youth-justice-reform-select-committee-disbanded-reaction/103738328)>.

97 Royal Commission, *Final report: volume 15, contemporary detention environments*, pp 38–40.

98 Royal Commission, *Final report: volume 15, contemporary detention environments*, p 38.

99 Royal Commission, *Final report: volume 15, contemporary detention environments*, pp 39–40.

- cultural characteristics, such as ‘a lack of voice for children and cultures of disrespecting children, tolerating the humiliating and degrading treatment of children, and engendering strong group allegiance among management staff’.<sup>100</sup>

While governments imprison children in a range of different prison environments,<sup>101</sup> the Royal Commission found that youth detention centres ‘perhaps illustrate the highest level of risk’.<sup>102</sup> Of the 6,875 victims and survivors the Royal Commission heard from in private sessions, 551 (8%) had been sexually abused in youth detention.<sup>103</sup> Experiencing sexual abuse in youth detention was particularly common for Aboriginal and/or Torres Strait Islander victims and survivors (15.2%),<sup>104</sup> and victims and survivors who were in adult prisons at the time of participating in their private sessions (32.7%).<sup>105</sup>

The Royal Commission summarised the ongoing risk presented by youth detention centres as follows:

*All youth detention centres are closed, secure environments under the control of adults who exercise a high degree of power and authority over detained children. This power dynamic can also allow perpetrators to exploit opportunities to sexually abuse children, prevent abuse from being identified and inhibit disclosure, both at the time of abuse and in the following years.*<sup>106</sup>

These issues are relevant in all states and territories, but especially in Queensland, which has the highest number of children in prison.<sup>107</sup> Both the number and rate of children in Queensland prisons have increased in recent years.<sup>108</sup>

The Royal Commission’s concerns about youth detention extend to the detention of children in police facilities, such as watchhouses.<sup>109</sup> Many of knowmore’s clients experienced child sexual abuse in watchhouses, including child sexual abuse by the police and by other people detained in the watchhouse. In recent years, there have been concerning media reports about the treatment of children in Queensland’s watchhouses,

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100 Royal Commission, *Final report: volume 15, contemporary detention environments*, pp 39–43.

101 Royal Commission, *Final report: volume 15, contemporary detention environments*, p 34.

102 Royal Commission, *Final report: volume 15, contemporary detention environments*, p 66.

103 Royal Commission, *Final report: volume 2, nature and cause*, p 114, table 2.12.

104 Royal Commission, *Final report: volume 5, private sessions*, p 400, table P.13.

105 Royal Commission, *Final report: volume 5, private sessions*, p. 434, table S.14.

106 Royal Commission, *Final report: volume 15, contemporary detention environments*, pp 20–21.

107 Justice Reform Initiative, *Jailing is failing: state of incarceration*, November 2022, p 1, [assets.nationbuilder.com/justicereforminitiative/pages/318/attachments/original/1668450143/JRI\\_Insights\\_QLD.pdf?1668450143](https://assets.nationbuilder.com/justicereforminitiative/pages/318/attachments/original/1668450143/JRI_Insights_QLD.pdf?1668450143).

108 Justice Reform Initiative, *Jailing is failing: state of incarceration*, p 14.

109 Royal Commission, *Final report: volume 15, contemporary detention environments*, pp 31, 35 and 39.



including reports about children being stripped naked or placed in a holding area with alleged sex offenders.<sup>110</sup>

knowmore considers that keeping children out of prison is a priority for preventing child sexual abuse. We have made detailed comments about this in previous submissions.<sup>111</sup> We make further comments below, relevant to the independent review, about the legislative amendments that have involved an override of Queensland's Human Rights Act. We recommend that the Queensland Government reverse these by:

- repealing the 'offence to breach conditions of bail' for children
- repealing the power to hold children in watchhouses.

### Recommendation 6

The Queensland Government should reverse the legislative amendments that have involved an override of Queensland's Human Rights Act by:

- repealing the 'offence to breach conditions of bail' for children
- repealing the power to hold children in watchhouses.

## Repealing the 'offence to breach conditions of bail' for children

On 22 March 2023, the *Strengthening Community Safety Act 2023* (Qld) came into effect, making it a criminal offence for a child to breach conditions of bail (among other changes).<sup>112</sup> This change was incompatible with the human rights of children and involved what was then an unprecedented override of Queensland's Human Rights Act. As the relevant Minister said:

*The Government acknowledges that this proposed amendment is incompatible with the right of children to protection in their best interests in section 26(2) of the [Human Rights] Act.*

*The amendment may make it more likely that children will be detained pending trial and for this reason is inconsistent with international standards about the best interests of the child ...*

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110 See, for example, Mark Willacy, *The Watch House Files: Queensland children kept in isolation in maximum security adult watch houses*, Four Corners, 13 May 2019, accessed 19 June 2024, <[www.abc.net.au/news/2019-05-13/queensland-children-in-watch-houses-detention/11100226](http://www.abc.net.au/news/2019-05-13/queensland-children-in-watch-houses-detention/11100226)>; Mark Willacy and Alexandra Blucher, *Boy kept 'completely naked' in Brisbane watch house for days*, ABC News, 18 June 2019, accessed 19 June 2024, <[www.abc.net.au/news/2019-06-18/boy-held-completely-naked-in-prison-watch-house-for-days/11207734](http://www.abc.net.au/news/2019-06-18/boy-held-completely-naked-in-prison-watch-house-for-days/11207734)>.

111 See, for example, knowmore, *Submission to the inquiry into youth justice reform in Queensland*, pp 14–15.

112 *Bail Act 1980* (Qld) section 29, as amended by the *Strengthening Community Safety Act 2023* (Qld), item 5; Queensland Government (Department of Employment, Small Business and Training and Department of Youth Justice), *Changes to the Youth Justice Act 1992*, 25 August 2023, accessed 19 June 2024, <[desbt.qld.gov.au/youth-justice/reform/changes-act](http://desbt.qld.gov.au/youth-justice/reform/changes-act)>.

*The proposal may also tend to limit the ability to divert children away from formal criminal process.*

*... because it appears that less restrictive options are available to achieve the same purpose, the proposal limits human rights in a way which is not justified.*<sup>113</sup>

These comments speak for themselves. Media reports suggest that the offence to breach conditions of bail for children has led to a surge in the criminalisation of children, with 169 children charged with 299 breach of bail offences in a period of about 2 months from when the change came into effect.<sup>114</sup> Two-thirds of these children were Aboriginal and/or Torres Strait Islander children.<sup>115</sup>

The 'offence to breach conditions of bail' for children has been widely criticised.<sup>116</sup> We particularly note the comments of the Queensland Human Rights Commissioner, delivered in the context of the *Strengthening Community Safety Bill* as a whole, that:

*The proposals will inevitably lead to greater pressure on detention centres and threatens to normalise the inhumane treatment of children by exposing them to an unacceptable risk of psychological and physical harm.*<sup>117</sup>

Building on the Commissioner's comments, knowmore would specifically note the risk of child sexual abuse in this context (see pages 23 to 25). As recommended on page 25, the Queensland Government should repeal the offence to breach conditions of bail for children.

## Repealing the power to hold children in watchhouses

On 1 September 2023, part of the *Child Protection (Offender Reporting and Offender Prohibition Order) and Other Legislation Amendment Act 2023* (Qld) came into effect. The changes included the following, with retrospective effect:

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113 Mark Ryan MP, *Strengthening Community Safety Bill 2023: statement of compatibility*, 26 October 2022, pp 2–3, <[documents.parliament.qld.gov.au/tp/2023/5723T166-F46A.pdf](https://documents.parliament.qld.gov.au/tp/2023/5723T166-F46A.pdf)>.

114 Eden Gillespie, *Hundreds of breach of bail charges laid against children in the first two months of controversial Queensland law*, The Guardian, 25 May 2023, <[www.theguardian.com/australia-news/2023/may/25/hundreds-of-children-charged-for-breaching-bail-in-first-two-months-of-controversial-queensland-law](https://www.theguardian.com/australia-news/2023/may/25/hundreds-of-children-charged-for-breaching-bail-in-first-two-months-of-controversial-queensland-law)>; Eden Gillespie, *Two-thirds of children charged with Queensland's new breach of bail offence are Indigenous*, The Guardian, 31 May 2023, <[www.theguardian.com/australia-news/2023/may/31/two-thirds-of-children-charged-with-queenslands-new-breach-of-bail-offences-are-indigenous](https://www.theguardian.com/australia-news/2023/may/31/two-thirds-of-children-charged-with-queenslands-new-breach-of-bail-offences-are-indigenous)>.

115 Eden Gillespie, *Two-thirds of children charged with Queensland's new breach of bail offences are Indigenous*.

116 See knowmore, *Submission to the inquiry into youth justice reform in Queensland*, pp 19–20.

117 Queensland Human Rights Commission, *Commissioner alarmed about rush to pass harsher youth justice laws*, 21 February 2023, <[www.qhrc.qld.gov.au/\\_data/assets/pdf\\_file/0020/42509/2023.02.21-Media-statement-Rush-to-pass-youth-justice-laws.pdf](https://www.qhrc.qld.gov.au/_data/assets/pdf_file/0020/42509/2023.02.21-Media-statement-Rush-to-pass-youth-justice-laws.pdf)>.

- allowing children to be held in watchhouses<sup>118</sup>
- validating the past conduct of the police in unlawfully holding children in watchhouses<sup>119</sup>
- overriding Queensland’s Human Rights Act for these purposes until the end of 2026 or 2027.<sup>120</sup>

In noting the incompatibility of these changes with the human rights of children, the relevant Minister said:

*It is acknowledged that watchhouses are designed to hold adults for relatively short periods of time. They are not designed for holding children for longer periods during which they may be held together with other children, may not have access to appropriate fresh air or direct sunlight, may face issues receiving visits from family members and may see or hear adult detainees in the watchhouse.*

*However ... holding children in police watchhouses is preferable to transferring them to overcrowded [youth detention centres].<sup>121</sup>*

As with the Minister’s comments about the offence to breach conditions of bail for children (discussed on page 25), these comments speak for themselves. We would add that we hold particular concerns about the heightened risk of child sexual abuse for children in watchhouses (see page 24), and the lack of adequate or trauma-informed support for children in watchhouses.<sup>122</sup>

We are particularly concerned by the suggestion that children must be detained in watchhouses due to overcrowding in youth detention centres. In knowmore’s view, the overcrowding of youth detention centres reflects the excessive criminalisation and imprisonment of children, and the need for a stronger diversionary approach that supports

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118 *Youth Justice Act 1992* (Qld), sections 56, 210 and 262, as amended by the *Child Protection (Offender Reporting and Offender Prohibition Order) and Other Legislation Amendment Act 2023* (Qld), items 70 and 72–73; *Child Protection (Offender Reporting and Offender Prohibition Order) and Other Legislation Amendment Bill 2022: explanatory notes for amendments*, 24 August 2023, pp 10–12, <[www.legislation.qld.gov.au/view/pdf/bill.third.exp/bill-2022-008](http://www.legislation.qld.gov.au/view/pdf/bill.third.exp/bill-2022-008)>.

119 *Youth Justice Act 1992* (Qld), part 11, division 22, as amended by the *Child Protection (Offender Reporting and Offender Prohibition Order) and Other Legislation Amendment Act 2023* (Qld), item 82; *Child Protection (Offender Reporting and Offender Prohibition Order) and Other Legislation Amendment Bill 2022: explanatory notes for amendments*, pp 10–12.

120 See, for example, *Youth Justice Act 1992* (Qld), sections 56, 210 and 262A, as amended by the *Child Protection (Offender Reporting and Offender Prohibition Order) and Other Legislation Amendment Act 2023* (Qld), items 70, 72 and 74; *Child Protection (Offender Reporting and Offender Prohibition Order) and Other Legislation Amendment Bill 2022: explanatory notes for amendments*, pp 10–12.

121 Mark Ryan MP, *Child Protection (Offender Reporting and Offender Prohibition Order) and Other Legislation Amendment Bill 2022: statement of compatibility for amendments*, 24 August 2023, p 17, <[www.legislation.qld.gov.au/view/pdf/bill.third.hrc/bill-2022-008](http://www.legislation.qld.gov.au/view/pdf/bill.third.hrc/bill-2022-008)>.

122 Youth Advocacy Centre, *Orange paper #1: the use of Queensland watch houses to hold children*, March 2019, pp 4–6, <[yac.net.au/use-of-police-watch-houses/](http://yac.net.au/use-of-police-watch-houses/)>.

children to remain safely with their families and their communities.<sup>123</sup> We share the concerns of the National Children’s Commissioner Anne Hollonds as to the self-defeating nature of the present approach:

*The recent toughening of bail laws has led to overflowing children’s prisons, resulting in the need to lock up more children in adult facilities, in breach of human rights laws.*

*On any level — surely this is a sign of something seriously wrong. This is a system in crisis. And the community is not safer.*<sup>124</sup>

As recommended on page 25, the Queensland Government should repeal the power to hold children in watchhouses.

## Addressing the lack of effective limits on passing laws that breach human rights

As noted on page 22, the QHRC has recommended repealing the override provision in Queensland’s Human Rights Act.<sup>125</sup> Without taking a specific position for or against this recommendation, we are concerned that repealing the override provision (without further reform) does not address the underlying issue – namely, that with or without the override provision, there is a lack of effective limits on passing laws that breach human rights and place children at heightened risk of being sexually abused.<sup>126</sup>

Noting that we are not specialists in the relevant areas of law, we would welcome the independent review’s guidance as to appropriate and effective reforms to address the underlying issue. We recommend that the Queensland Government implement reforms to address the underlying issue.

### Recommendation 7

The Queensland Government should implement reforms to address the lack of effective limits on passing laws that breach human rights and place children at heightened risk of being sexually abused.

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123 For further discussion about an appropriate diversionary approach, see knowmore, *Submission to the inquiry into youth justice reform in Queensland*, pp 14–15.

124 Australian Human Rights Commission, *National Children’s Commissioner slams ‘shocking’ new Qld youth justice laws*, 25 August 2023, <[humanrights.gov.au/about/news/media-releases/national-childrens-commissioner-slams-shocking-new-qld-youth-justice-laws](https://humanrights.gov.au/about/news/media-releases/national-childrens-commissioner-slams-shocking-new-qld-youth-justice-laws)>.

125 Issues paper, p 13.

126 Issues paper, p 13.

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Image inspired by original artwork by Ngunawal man Dean Bell, depicting knowmore's connection to the towns, cities, missions and settlements within Australia.

knowmore acknowledges the Traditional Owners of the lands and waters across Australia upon which we live and work. We pay our deep respects to Elders past and present for their ongoing leadership and advocacy.

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