

8.

Queensland

The laws

Decade	Laws applying specifically to Aboriginal children	General child welfare laws/adoption laws
1860s		<p>Industrial and Reformatory Schools Act 1865</p> <p>Established and regulated industrial and reformatory schools for children under 15 who were ‘neglected’ or convicted of an offence. Missions were registered as industrial or reformatory schools.</p> <p><i>Definitions</i></p> <p><i>neglected child</i> – includes any child who wanders about; frequents any public place; sleeps in the open air; has no home or settled place of abode; dwells with a reputed thief or drunkard; is supported wholly or in part by charity; and any ‘child born of an aboriginal or half-caste mother’</p> <p><i>Key provisions</i></p> <p>A constable may arrest without a warrant any child he considers to be neglected. A court composed of two or more Justices may order a child found to be neglected to be removed from his/her mother and placed in an industrial or reformatory school.</p> <p><i>Amended by</i></p> <p>Industrial and Reformatory Schools Amendment Act 1906 – removes reference to Aboriginal children and extends age of child to 17 years.</p> <p><i>Repealed by State Children Act 1911</i></p>
1870s		<p>Orphanages Act 1879</p> <p><i>Definitions</i></p> <p><i>destitute</i> – ‘any child under the age of twelve years who shall be found in the colony without [its] father or mother or who shall be deserted by its father and mother or whose father or mother shall be unable to support it’.</p> <p><i>Key provisions</i></p> <p>A destitute child may be removed to an orphanage declared under this Act.</p> <p><i>Repealed by State Children Act 1911</i></p>

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1890s	<p>Aboriginal Protection and Restriction of the Sale of Opium Act 1897</p> <p>For the 'better protection and care of the aboriginal and half-caste inhabitants of the colony' and 'for restricting the sale and distribution of opium'. Established positions of regional Protectors and later Chief Protector.</p> <p><i>Definitions</i></p> <p><i>half-caste</i> – the 'offspring of an aboriginal mother and other than an aboriginal father'. The term 'half-caste' shall be construed to exclude every half-caste who is 'deemed to be aboriginal'</p> <p><i>aboriginal</i> – 'an aboriginal inhabitant of Queensland'; 'a half-caste living with an aboriginal as wife, husband or child'; 'a half-caste habitually living or associating (otherwise than as husband or wife) with aboriginals'</p> <p><i>Key Provisions</i></p> <p>Minister may order the removal, detention and relocation of Aboriginal people on reserves. Regulations may be made prescribing the mode of removing 'aboriginals' to a reserve and from one reserve to another; providing for the care, custody and education of the children of 'aboriginals'; providing for the transfer of any 'half-caste' child being an orphan or deserted by its parents to an orphanage; prescribing the conditions on which 'aboriginal' or 'half-caste' children may be apprenticed to or placed in service with suitable persons.</p> <p><i>Repealed by Aboriginal Preservation and Protection Act 1939</i></p>	<p>Guardianship and Custody of Infants Act 1891</p> <p><i>Key provisions</i></p> <p>Where a parent has abandoned or deserted an infant or 'allowed his infant to be brought up by any other person ... as to satisfy the court that the parent was unmindful of his parental duties', the court shall not make an order for the delivery of the infant to the parent unless the parent has satisfied the court 'he is a fit person to have custody'.</p> <p><i>Repealed by Children's Services Act 1965</i></p>
1900s		<p>Children's Protection Act 1896</p> <p>Applies to boys under 14 and girls under 16. An offence to 'ill treat, neglect, abandon or expose a child' in a 'manner likely to cause such child unnecessary suffering or injury to its health'. Court can deal with a child found to be ill treated, neglected, abandoned or exposed as the 'circumstances may admit and require'.</p> <p><i>Repealed by the Children's Services Act 1965</i></p> <p>Infant Life Protection Act 1905</p> <p>Any person wishing to adopt a child under the age of 10 may make application to the Director of the State Children Department for permission. The Director must obtain consent in writing of parent, parents or guardian.</p> <p><i>Repealed by State Children Act 1911</i></p>

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1910s		<p>State Children Act 1911</p> <p>Replaced the 1865 Act.</p> <p><i>Definitions</i></p> <p><i>State child</i> – a neglected child, convicted child or any other child received into or committed to an institution or to the care of the department or placed out or apprenticed</p> <p><i>Key provisions</i></p> <p>The Director of State Children Department is the guardian of all State children. The Director may place a State child in a receiving depot; detain him/her in an institution registered under this Act; transfer him/her from one institution to another; place out or apprentice him/her; or place him/her in the custody of some suitable person. This action may be taken without reference to parents or relatives of the child.</p> <p><i>Amended by</i></p> <p><i>State Children Act 1917</i> – a court may release a child on probation.</p> <p><i>Repealed by Children’s Services Act 1965</i></p>
1930s	<p>Protection of Aboriginals and Restriction of the Sale of Opium Amendment Act 1934</p> <p>Extended the provisions of the 1897 Act and the powers of the Chief Protector.</p> <p><i>Definitions</i></p> <p><i>half-caste</i> – ‘any person being the offspring of parents one of whom is an aboriginal or both of whom are half-castes’; ‘any person being the grandchild of grandparents one of whom is an aboriginal or both of whom are half-castes, who lives or associates with aboriginals or who lives as an aboriginal, or who in the opinion of the Chief Protector is in need of the control and protection of this Act’; ‘any person of aboriginal or Pacific Island extraction who lives or associates with aboriginals, or who lives as an aboriginal, or who in the opinion of the Chief Protector is in</p>	<p>Adoption of Children Act 1935</p> <p>Provides for adoption of ‘infants’ under 21.</p> <p>The Director of the State Children Department is responsible for making an adoption order. Director may dispense with the consent of the child’s parents or guardian if satisfied that a parent or guardian has ‘abandoned or deserted the infant or cannot be found or is incapable of giving consent; has persistently neglected to contribute to support; or is a person whose consent ought, in the opinion of the Director and in all the circumstances of the case, to be dispensed with’.</p> <p><i>Repealed by Adoption of Children Act 1964</i></p>

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	<p>need of the control or protection of this Act'. The definition excludes any 'half-caste who is deemed to be an aboriginal'</p> <p><i>aboriginal</i> – 'any native inhabitant of Queensland or aboriginal native of any other state or territory residing in Queensland; a half-caste living with an aboriginal husband or wife; a half-caste habitually living or associating with aboriginals; a half-caste who in the opinion of the Minister has not sufficient intelligence to manage his own affairs; a half-caste who in the opinion of a Protector is not yet 21 years'</p> <p><i>Key Provisions</i></p> <p>Every Aboriginal and 'half-caste' child who is an inmate of an institution registered under the State Children Act 1911 shall be under the control and supervision of the Protector'. 'The Minister may from time to time cause any aboriginal or half-caste ... to be removed to any reserve, institution, or district and kept there, or to be removed from any reserve, institution, or district to any other reserve institution or district, and kept there'. This does not apply to any 'aboriginal or half-caste who is lawfully married to and residing with any person who is not an aboriginal or half caste or otherwise subject to this Act'; or 'a half-caste child living with and supported by a parent of such child who is not subject to this Act'. A 'half-caste' may be exempted from the provisions of this Act (revokable). If the Minister is of the opinion that any 'aboriginal' or 'half-caste' is uncontrollable he may order the 'aboriginal' or 'half-caste' to be kept in an institution. 'Any such order is sufficient authority for the Chief Protector, or any Protector, or any person acting under the authority of the Chief Protector or of a Protector, or any officer of police to arrest such aboriginal or half-caste and remove to an institution'.</p>	

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	<p>Any 'aboriginal or half caste' who is convicted of an offence against the 1897 Act or this Act may be detained in an institution.</p> <p><i>Repealed by Aboriginal Preservation and Protection Act 1939</i></p>	
	<p>Aboriginals Preservation and Protection Act 1939</p> <p>Repealed the 1897 and 1934 Acts. Established the position of Director of Native Affairs in place of Chief Protector with increased powers.</p> <p><i>Definitions</i></p> <p><i>aboriginal</i> – 'any aboriginal native of the mainland of Australia or any of the islands in the territorial jurisdiction of Australia; any person who has a preponderance of the blood of aboriginals; any half-blood declared by a judge or police Magistrate or two justices to be in need of the protection of this Act and who is ordered to be so protected; any half-blood who lives as wife or husband with an aboriginal or who habitually lives or associates with aboriginals; any resident of a reserve; a child living on a reserve with a mother who is an aboriginal'. An Islander shall not be deemed to be an 'aboriginal' within the meaning of the Act unless he/she is residing on a reserve</p> <p><i>half-blood</i> – 'a person one of whose parents was an aboriginal and whose other parent had no strain of the blood of an aboriginal; or both of whose parents have a strain of aboriginal blood and who himself has a strain of more than 25% of aboriginal blood but who has not a preponderance of such blood'</p> <p><i>Key provisions</i></p> <p>Director of Native Affairs is the 'legal guardian of every aboriginal child under 21'. Director may 'execute agreements between or on the part of aboriginals in the State for the legal custody of aboriginal children by aboriginals or other</p>	

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	<p>persons who in his opinion are suitable persons to be given legal custody of such children'. Director may cause any 'aboriginals' who are camped near a town to 'remove their camp to such other place as he may direct'. Director may cause any 'aboriginals' to be 'removed from any district to a reserve and kept there for such time as may be ordered' or to be removed from one reserve to another. This power does not apply to 'a half-blood child living with and supported by a parent of such child who is not subject to this Act'. Regulations made for the 'care, custody and education of the children of aboriginals' and prescribing the conditions on which 'aboriginal' children may be apprenticed or placed in service.</p> <p><i>Repealed by Aboriginal and Torres Strait Islander Affairs Act 1965</i></p>	
	<p>Torres Strait Islander Act 1939</p> <p><i>Definitions</i></p> <p><i>Islander</i> – a 'person of the native race of the Torres Strait Islands'; 'a descendant of the native race of the Torres Strait Islands' who habitually associates with Islanders; a person other than an Islander who is living on a reserve with an Islander as wife or husband; or any such person who habitually associates on a reserve with Islanders</p> <p><i>reserve</i> – 'any Torres Strait Island or part of a Torres Strait Island granted in trust or reserved from sale or lease by the Governor in Council for the benefit of Islanders under the provision of any law in force in Queensland'</p> <p><i>Key provisions</i></p> <p>Director may cause an Islander to be removed from any reserve to another reserve or to a reserve under the Aboriginals Act 1939 and kept there. 'No such removal shall be effected without the recommendation of the Island court'.</p> <p><i>Repealed by Aboriginal and Torres Strait Islander Affairs Act 1965</i></p>	

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1960s	<p>Aboriginal and Torres Strait Islander Affairs Act 1965</p> <p>Established position of Director of Aboriginal and Island Affairs in place of Director of Native Welfare. Director is no longer the legal guardian of Aboriginal and Torres Strait Islander children.</p> <p><i>Definitions</i></p> <p><i>Aboriginal</i> – ‘a full blood descendant of the Indigenous inhabitants of the Commonwealth; a person who has a preponderance of the blood of an Aborigine; a part Aborigine who lives as spouse with an Aborigine; a resident of a reserve for Aborigines other than an officer or other person authorised to so reside by the district officer.’</p> <p><i>part Aborigine</i> – ‘person with one parent an Aborigine and the other parent has no strain of the blood of the Indigenous inhabitants of the commonwealth; both of whose parents have a strain of the blood of the indigenous inhabitants of the Commonwealth other than a Torres Strait Islander and who himself has a strain of more than 25% of such blood but who has not a preponderance of such blood’.</p> <p><i>Islander</i> – ‘full blood descendant of the Indigenous inhabitants of the Torres Strait Islands; descendant of the Indigenous inhabitants of any of the Torres Strait Islands other than a full blood descendant thereof who habitually associates with Islanders; a descendant of the Indigenous inhabitants of the Torres Strait Islands who lives as spouse with an Islander; a resident of a reserve for Islanders or of a reserve for Aborigines under such circumstances that he is not deemed to be an Aborigine such resident being other than an officer or other person (having no strain of Island blood) authorised to so reside by the district officer’. An Islander deemed to be an Aborigine if residing on reserve for Aborigines otherwise than as a member of a community comprised exclusively or predominantly of Islanders.</p>	<p>Adoption of Children Act 1964</p> <p>The Supreme Court is responsible for making an order for adoption. The welfare and interests of the child are the paramount consideration in making an order for adoption. Grounds for dispensing with consent similar to those in 1935 Act and include ‘special circumstances by reason of which the consent may properly be dispensed with’.</p> <p><i>Amended by</i></p> <p><i>Adoption of Children Act 1983</i> – to dispense with consent the court must also be satisfied that the welfare and interests of the child will be promoted if the order is made.</p> <p>Children’s Services Act 1965</p> <p>Replaced the 1911 Act. Established Department of Children’s Services. Missions and government settlements were licensed as institutions.</p> <p><i>Definitions</i></p> <p><i>child</i> – a person under or apparently under the age of 17</p> <p><i>children in need of care and protection</i> – includes a child who is without a parent or guardian who exercises proper care and guardianship over him/her; is in the custody of a person who is unfit by reason of his conduct and habits to have custody of the child; is found apparently abandoned or loitering or sleeping in a public place and has no visible means of support or no settled place of abode; or is apparently deserted by his parent or guardian</p> <p><i>child in need of care and control</i> – a child who is falling or is likely to fall into a life of vice or crime or addiction to drugs; exposed to moral danger; is or appears to be uncontrollable</p>

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	<p><i>assisted Aborigine</i> – ‘an Aborigine resident upon a reserve for Aborigines; Aborigine, part Aborigine or person having a strain of Aboriginal blood declared by Director to be an assisted Aborigine and every child of such an Aborigine, part Aborigine or person declared; an Aborigine, part Aborigine or person having a strain of Aboriginal blood declared by a court to be in need of care and every child of such an Aborigine, part Aborigine or person declared; Aborigine or part Aborigine in respect of whom a court orders that care be provided; a child born by or to an assisted Aborigine which child is declared by the Director pursuant to this Act to be an assisted Aborigine.’</p> <p><i>assisted Islander</i> – defined similarly to ‘assisted Aborigine’.</p> <p><i>Key provisions</i></p> <p>Director may order an assisted Aborigine or Islander who is not residing on a reserve ‘to be transferred from any district to a reserve’; and upon the recommendation of an Aboriginal Court of a reserve on which the assisted Aborigine is residing, order the assisted Aborigine to be transferred from such reserve to another reserve for Aborigines. Similar provisions in relation to Islanders.</p> <p>Regulations may be made for the preservation, development, assimilation, integration, education, training and employment of assisted Aborigines and assisted Islanders; the care of children of assisted Aborigines or assisted Islanders other than such children who are in the care, protection or control of the Director of the State Children Department; and the employment and apprenticeship of children of assisted Aborigines or Islanders other than such children who are in the care, protection or control of the Director of the State Children Department.</p> <p><i>Repealed by Aborigines Act 1971 & Torres Strait Islander Act 1971</i></p>	<p><i>Key provisions</i></p> <p>A child found to be in need of care and protection may be admitted to the ‘care and protection’ of the Director of the Department if a court is satisfied that the child’s care and protection cannot be secured by any other order it could make such as ordering a parent or guardian to enter into a recognizance or ordering the Director to have ‘protective supervision’ over the child. The Director has guardianship of a child admitted to his/her care and protection. Similar powers in relation to a child in ‘need of care and control’. Once admitted to the care and protection of the Director the child may be placed, in the best interests of the child, with the child’s parents, a relative or friend, in an institution licensed under the Act or in a hostel. The Director may grant financial assistance to a family to help care for a child.</p>

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1970s	<p>Aborigines Act 1971</p> <p>Abolished status of 'assisted Aborigine'. Established Director of Aboriginal and Island Affairs. An offence to be on a reserve unless entitled under the Act to be there. A permit may be revoked by the Aboriginal council established for that reserve or by the Director. Regulations may be made with respect to the development, assimilation, integration, education, training and preservation of Aborigines; the care of children (being Aborigines) other than those who are in the care and protection or control of the Director of Children's Services.</p> <p><i>Repealed by Community Services (Aborigines) Act 1984</i></p>	
	<p>Torres Strait Islander Act 1971</p> <p>Abolished the status of assisted Islander. Similar provisions to the <i>Aborigines Act 1971</i>.</p> <p><i>Repealed by Community Services (Torres Strait) Act 1984</i></p>	

After the *Aboriginal and Torres Strait Islander Affairs Act 1965*, Indigenous children were removed from their families under the *Children's Services Act 1965*. On reserves the dormitory system continued under the 1971 Acts.

1980s	<p>Adoption of Children (Amendment) Act 1987</p> <p>Amended the <i>Adoption of Children Act 1965</i> to provide that the Director 'shall have regard to the indigenous or ethnic background and cultural background of the child'.</p>
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